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 for the Aging

EMERGENCY RULE MAKING

Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services

I.D. No. AGE-51-10-00007-E
Filing No. 1244
Filing Date: 2010-12-06
Effective Date: 2010-12-06

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

Action taken: Amendment of sections 6654.15, 6654.16 and 6654.17 of Title 9 NYCRR.

Statutory authority: Elder Law, sections 201(3) and 214

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

Specific reasons underlying the finding of necessity: Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends.

NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) grant which are tied to the adoption and implementation of state funded consumer directed in-home services. Thus far, three counties (Broome, Onondaga and Oneida) are participating in the NHDMP and are required to transition the federally funded consumer directed in-home services portion of this grant to state funded consumer directed in-home services under EISEP by the end of September 2010, when the grant expires. Additionally, there are seven counties participating in the CLP grant (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed in-home services under EISEP in September 2010.

The Notice of Emergency Adoption is necessary to enable NYSOFA to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP. Accordingly, it would only apply to the ten counties participating in the two grants and would expire when the regulations are published for final adoption in the *State Register*.

Subject: Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services.

Purpose: The purpose of the proposed rule is to incorporate the Consumer Directed In-Home Services delivery model into EISEP.

Substance of emergency rule: The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under the Expanded In-home Service for the Elderly Program (EISEP). The proposed amendments to 9 NYCRR sections 6654.15, 6654.16 and 6654.17 incorporate a consumer directed in-home services delivery model into EISEP.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. Specifically, the amendments address the requirements an individual or their representative must meet in order to participate in the consumer directed in-home services delivery model. In addition, several terms have been defined in order to provide the regulated parties with clear direction as to what is meant when each of the defined terms are used in the regulations. Some of these terms are new to EISEP (e.g., Consumer, Consumer Representative, Consumer Directed In-home Services and Fiscal Intermediary) and others are not, though they had not been defined previously (e.g., In-home Services, In-home Services Agency and In-home Services Worker).

In addition, for purposes of this emergency adoption the eligibility criteria for those who can participate in Consumer Directed In-home Services found in § 6654.15, is limited to individuals who may be served by the ten counties currently participating in the two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services, currently being administered by New York State Office for the Aging.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorporated into the EISEP regulations. Specifically, NYSOFA clearly delineated those tasks that are the responsibility of the case manager in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. This section of the regulations also articulates that while case managers will work with and assist consumers and/or consumer representatives who receive services under the consumer directed in-home services model, responsibility for the interviewing, selecting, scheduling, training, supervising and dismissing the in-home services worker lays with the consumer or the consumer rep-

resentative and not the case manager. NYSOFA also made several technical amendments in this section that brought the regulations up to date with current practice.

NYSOFA also amended § 6654.17 of the regulations to incorporate the consumer directed in-home services model into EISEP. Again, the major focus of the changes in this section of the regulations was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. The amendments to this section also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA clarified when a criminal background check is required and the type of criminal background check that is required. NYSOFA also made some technical amendments to this section to bring the regulations in line with current practice and enhance the consistency with the New York State Department of Health's (DOH) regulations for the Medicaid funded Personal Care Program and regulations for licensed home care services agencies. Among the amendments in this category are the changes to the guidelines regarding the qualifications needed by the nurse who supervises the in-home services worker who is providing home care under EISEP. Section 6654.17 provides guidance as to the type and content of records that must be maintained by the fiscal intermediary that is providing the administrative functions under consumer directed in-home services. The amendments also incorporate by reference the DOH's regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and incorporating the DOH's requirements into the EISEP regulations by reference will facilitate regulatory compliance for regulated parties.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 5, 2011.

Text of rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: stephen.syzdek@ofa.state.ny.us

Regulatory Impact Statement

1. Statutory Authority - Section 201(3) of the New York State Elder Law allows the Director of the New York State Office for the Aging (NYSOFA) with the advice of the advisory committee for the aging to promulgate, adopt, amend or rescind rules and regulations necessary to carry out the provisions of Article II of the Elder Law.

New York State Elder Law Section 214 governs the administration of the Expanded In-home Services for the Elderly Program (EISEP).

2. Legislative Objectives - The legislative objectives of the statute that created EISEP are to increase the availability of in-home support services to non-Medicaid eligible elderly persons in need of assistance and improve access to and management of appropriate care through the use of comprehensive case management. In addition, the legislative intent of EISEP is to foster the use of non-medical supports to avoid the inappropriate use of more costly forms of care at home and in institutional settings; improve the targeting of aging network resources to those most in need and make optimal use of informal caregivers; and assist elderly clients to remain in their homes and communities. One of the ten main objectives found in the Older Americans Act (OAA) is to enable older people to secure equal opportunity to the full and free enjoyment of the following: freedom, independence and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect and exploitation (Subsection 10 of Section 101 of the (OAA).

3. Needs and Benefits - The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under EISEP. NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services. Three counties (Broome, Onondaga and Oneida) are participating in the first NHDMP and are required to transition the federally funded consumer directed portion of this grant to state funded consumer directed services - EISEP - by the end of September, when the grant expires.

Additionally, there are seven counties participating in the CLP (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed services under EISEP in September. The Notice of Emergency Adoption would only apply to the ten counties that are participating in the federal grants referenced above and would expire when the regulations are published for final adoption in the State Register.

NYSOFA is filing a Notice of Emergency Adoption in order to ensure that it is able to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP.

Consumer direction is a service delivery model that provides consumers with more control and choice in the delivery of the care that they receive than the traditional models of care. Consumer direction has many variations and the scope of what is included within the construct of consumer direction varies from program to program. However, all consumer directed programs stem from the idea that individuals with needs should be empowered to make decisions about their care. Depending on the parameters established by a program, consumers select, train, schedule, supervise and dismiss their in-home services workers; decide what services and goods to spend their budget on and which providers or workers (other than for in-home services) to hire and when work will be performed.

Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends. New York State is participating in two such grant programs.

EISEP services are provided to seniors through the Area Agencies on Aging (AAA's). Under the traditional EISEP model, case managers use the assessment and care planning process to determine the type, amount and the delivery method for the services to be provided. In-home services are provided by an agency, which is usually either a licensed home care services agency or a certified home health agency.

Under the consumer directed in-home services delivery model, consumers will have much more control, authority and decision-making capacity regarding the home care services that they receive. They will determine who will provide their home care, how the care will be provided and when it will be provided. They will establish the worker's schedule, deciding when each task will be performed. The consumer will do so within the context of the assessment and care plan that is developed by the case manager with the consumer. However, the participation of the consumer in this process will be stronger and their role enhanced as a strength based and person centered approach is adopted.

By creating the consumer directed in-home services delivery model under EISEP, New York State continues to move toward the AoA's objective that states incorporate consumer directed models of service delivery into their programs. Moving in this direction allows for innovative, creative, flexible and cost saving options to meet the needs of older New Yorkers.

AAA's will not be mandated to implement consumer directed in-home services under EISEP. Each AAA will decide if, when and how to implement consumer direction. However, it is anticipated that over time all of New York State's AAA's will choose to implement the consumer directed model. It should also be noted that the traditional home care services delivery model remains the same and unchanged by these regulations. AAA's and clients will be free to continue to provide and receive traditional home care services.

This rule making amends three sections (9 NYCRR § 6654.15, 6654.16 and 6654.17) of the EISEP regulations to accommodate consumer direction.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. As a result of extensive outreach to interested parties, NYSOFA learned that the eligibility criteria and terms needed to be expanded and clarified. As a result, NYSOFA clearly lays out who is eligible to participate in consumer directed in-home services and defines key terms so that regulated parties can better understand the regulations.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorporated into the

case management regulations. Specifically, NYSOFA clearly delineates those tasks that are the responsibility of the case managers in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. NYSOFA also made several technical amendments in this section that made the regulations more reflective of the way that EISEP is currently administered.

NYSOFA also amended § 6654.17 to incorporate the consumer directed in-home services model into the in-home services regulations. Again, the major focus of these changes was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are usually the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. These amendments also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA has also made some technical amendments to this section to more accurately reflect the current administration of EISEP. The amendments also incorporate by reference the New York State Department of Health's (DOH) regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and NYSOFA has decided that incorporating the DOH's requirements into the EISEP regulations will facilitate regulatory compliance for regulated parties.

4. Costs - This proposed rule imposes no additional costs to the regulated parties, NYSOFA or state and local governments to implement and to continue to comply with this proposed rule. It should be noted that as mandated by the new 9 NYCRR section 6654.19(d), EISEP continues to be the payer of last resort and any services that are able to be provided through another source or program may not be provided through EISEP.

5. Paperwork - The proposed rule does not change any of the reporting requirements, forms or other paperwork from what is already required of the AAAs administering the program. However, for those AAA's that do decide to undertake consumer directed in-home services there will be some additional paperwork such as authorizations and releases that will need to be completed.

6. Local Government Mandates - The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district other than what is already required of the AAAs administering the program.

7. Duplication - There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this proposed rule.

8. Alternatives - NYSOFA's internal workgroup discussed several significant programmatic alternatives during the development of this proposal. Some in the community of aging services providers believe that older adults will not have their needs met and be at greater risk of fraud and abuse under the consumer direction service model. NYSOFA rejected these notions as studies continue to demonstrate that older adults who manage their own care are more satisfied with the services that they receive, effective managers, less likely to be subjected to fraud and/or abuse at the hands of their caregivers and remain out of long term care facilities for a longer period of time. As a result, NYSOFA made the decision to allow for consumer directed in home services to be provided under EISEP. NYSOFA also considered limiting who could participate in the consumer directed in-home services program. Again, some are of the opinion that older adults with physical or mental disabilities should not be allowed to direct their own care. After discussing this concern with advocacy groups and other state units on aging that have implemented consumer directed care, NYSOFA believes that as long as the AAA delivering services is able to confirm that the consumer or the consumer's representative is able to assume responsibility for managing the consumer's care, these individuals should be given an opportunity to attempt to do so. Additionally, there were suggestions that the regulations place too much responsibility on the fiscal intermediary. NYSOFA, in drafting these amendments, discovered that there are varying degrees to which fiscal intermediaries involve themselves in the administrative duties and/or the support they provide to consumers who direct their own care. As a result, NYSOFA has rejected suggestions that limit the role of the fiscal intermediary and decided that the level of involvement of the fiscal intermediary will be determined by the AAA and particular fiscal intermediary involved in the consumer's care plan.

9. Federal Standards - This rule does not exceed Federal standards.

10. Compliance Schedule - AAAs will be able to comply with this proposed rule immediately after promulgation.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP on small businesses or local governments. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP on public or private entities in rural areas. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

NOTICE OF ADOPTION

Provide a New Part 6650 of the Agency's Regulations for Public Access to Records of the New York State Office for the Aging

I.D. No. AGE-36-10-00008-A

Filing No. 1245

Filing Date: 2010-12-06

Effective Date: 2010-12-22

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

Action taken: Repeal of Part 6650; and addition of new Part 6650 to Title 9 NYCRR.

Statutory authority: Elder Law, section 201(3); and Public Officers Law, section 87

Subject: Provide a new Part 6650 of the Agency's Regulations for Public Access to Records of the New York State Office for the Aging.

Purpose: This Rule will update Agency Freedom of Information Act Regulations to reflect Statutory changes since adoption of current regulations.

Text or summary was published in the September 8, 2010 issue of the Register, I.D. No. AGE-36-10-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: John T. Phelan, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 473-6293, email: jack.phelan@ofa.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-10-00002-P

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

Proposed Action: Amendment of 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 of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, under the subheading ''Authorities Budget Office,'' by adding thereto the position of Counsel.

Text of proposed 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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-10-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To add a subheading and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, under the heading ''Miscellaneous,'' by adding thereto the subheading ''New York State Teachers' Retirement System'' and the positions of NYSTRS Investment Officer 1 (6), NYSTRS Investment Officer 2 (11) (various parenthetics) and NYSTRS Investment Officer 3 (11) (various parenthetics).

Text of proposed 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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-10-00004-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: Substitute a subheading in the exempt and non-competitive classes; classify and delete positions in the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading ''Office of Homeland Security,'' and by adding thereto the subheading ''Division of Homeland Security and Emergency Services,'' and the positions of Director State Emergency Management Office, Deputy State Fire Administrator, Executive Director and State Fire Administrator and by transferring all of the remaining titles from the Office of Homeland Security to the Division of Homeland Security and Emergency Services; in the Executive Department, by deleting therefrom the subheading ''State Emergency Management Office,'' and the position of Director State Emergency Management Office; and, in the Department of State, by deleting therefrom the positions of Deputy State Fire Administrator and State Fire Administrator and by decreasing the number of positions of Executive Director from 3 to 2; and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading ''Office of Homeland Security,'' and by adding thereto the subheading ''Division of Homeland Security and Emergency Services,'' and the positions of øAssistant Director State Emergency Management Office (1), Communications Technician 1 (2) and Radio Technician (2) and by transferring all of the remaining titles from the Office of Homeland Security to the Division of Homeland Security and Emergency Services; and, in the Executive Department, by deleting therefrom the subheading ''State Emergency Management Office,'' and the positions of øAssistant Director State Emergency Management Office (1) and Communications Technician 1 (2).

Text of proposed 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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-51-10-00005-P

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

Proposed Action: Amendment of 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 of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Agriculture and Markets, by increasing the number of positions of Assistant Director State Fair from 1 to 2.

Text of proposed 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

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Division of Criminal Justice Services

EMERGENCY
RULE MAKING

Probation State Aid Block Grant Funding

I.D. No. CJS-51-10-00014-E
Filing No. 1248
Filing Date: 2010-12-07
Effective Date: 2010-12-07

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

Action taken: Repeal of Part 345 and addition of new Part 345 to Title 9 NYCRR.

Statutory authority: L. 2010, chs. 50 and 56; Executive Law, sections 243 and 246

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: In order to promote public safety, probation State aid block grant monies must be readily available to local governments for probation department operations to ensure continuity of probation services to the criminal justice and juvenile justice system and timely implementation of Chapter 56 of the Laws of 2010 with respect to probation State aid grants. Funding of probation services is viewed as a critical component to promote the effective application of the probation system and the new emergency regulation will avoid potential disruption of probation services caused by delayed funding attributed to late enactment of the Executive Budget and recent statutory change in funding of probation departments which have rendered the past rule in this area obsolete. The new regulatory provisions are consistent with Chapters 50 and 56 of the Laws of 2010, which merged the former Division of Probation and Correctional Alternatives with the Division of Criminal Justice Services, and empowered the Acting Commissioner of DCJS with the authority to timely adopt and implement new regulations with respect to probation funding. This emergency regulation will help maintain and improve service delivery to the criminal and juvenile justice systems with respect to the probation population in general, as well as for specialized high-risk populations for which targeted grant monies have been statutorily earmarked for distribution.

Subject: Probation State Aid Block Grant Funding.

Purpose: To conform probation state aid rule with new statutory provisions with respect to block grant funding.

Text of emergency rule: Part 345 of 9 NYCRR is REPEALED and a new Part 345 is added to read as follows:

Part 345 - Probation State Aid Block Grant

Section 345.1 Objective.

To provide for the distribution of State aid to county probation services and to the probation services of New York City and to provide State financial assistance to local governments for regular and/or specialized probation programming to promote offender accountability, rehabilitation, and enhance public safety.

Section 345.2 Definitions.

When used in this Part:

(a) ''Division'' shall mean the Division of Criminal Justice Services.

(b) ''Commissioner'' shall mean the Commissioner of the Division of Criminal Justice Services.

(c) ''Office'' shall mean the Office of Probation and Correctional Alternatives located within the Division of Criminal Justice Services.

(d) ''Director'' shall mean the Director of the Office of Probation and Correctional Alternatives within the Division.

(e) ''Department'' shall mean a county probation department or the City of New York probation department.

Section 345.3 State Aid Plan Application Submission and Eligibility for State Aid.

Every county outside of the City of New York and the City of New York shall annually file a probation state aid plan application with the Office pursuant to the format, timeframe and schedule prescribed by the Commissioner in consultation with the Director.

(a) Applications shall include a detailed plan with cost estimates covering probation services for the fiscal year or portion thereof for which aid is requested. Included in such estimates shall be clerical costs, maintenance and operation costs, salaries of probation personnel and other pertinent information including an overview of probation program services relating to staff training, investigation, supervision, and intake.

(b) An approved plan and compliance with standards relating to the administration of probation services, promulgated by the Commissioner in consultation with the Director, shall be a prerequisite to eligibility for State Aid.

(c) A county outside of the City of New York and the City of New York may apply for additional state aid as part of a block grant award for enhanced program services with respect to specific populations, including aid for Intensive Supervision Programs, Enhanced Specialized Services for Sex Offenders, Juvenile Risk Intervention Coordination Services or any other specific population determined by the Commissioner.

(d) The Commissioner shall allocate block grant monies based upon a review of all approved plans and their respective budgets and pursuant to a plan prepared by the Commissioner and approved by the Director of the Division of the Budget. All state aid shall be granted by the Commissioner after consultation with the State Probation Commission and the Director.

(e) State aid monies received by the Division during 2010 shall be, to the greatest extent possible, distributed in a manner consistent with the prior year distribution amounts and thereafter as authorized by law.

Section 345.4 Plan approval, funding, and reporting.

(a) State aid grants shall not be used for expenditures for capital additions or improvements, or for debt service costs for capital improvements.

(b) Each plan shall:

(1) ensure adherence to all applicable laws and rules and regulations governing probation services;

(2) ensure that the Integrated Probation Registrant System will be maintained by the Department in a timely and accurate manner and that the proportion of active but closable adult supervision cases will be maintained at less than five (5) % of the total active Department caseload and whenever in excess, immediate steps will be undertaken to reduce percentage to less than five (5) %;

(3) ensure that the Department will timely collect DNA from individuals under their supervision who have not yet submitted DNA as agreed upon pursuant to a plea, as required by law, or as otherwise ordered by the court and routinely review the ''DNA Owed'' report on the Division's Probation Services Suite for such purposes;

(4) ensure that the Department will facilitate timely compliance with the Sex Offender Registration Act (registration, submission of photographs, completion of annual address verification form, change of address forms, and 48-hour forms) by the Department and by any registered sex offender subject to supervision by the Department and conduct quarterly address checks of registerable sex offenders under probation supervision as requested by the Division to verify compliance;

(5) ensure that all line probation officers have access to the Division's eJusticeNY;

(6) ensure that the Department uses a Division approved fully validated Risk/Need Assessment instrument for juvenile and adult offender populations;

(7) if application is made for Intensive Supervision Program service funding, make the following assurances:

(i) defendants will be screened at the earliest/appropriate stage in the dispositional process for program participation using Division eligibility criteria, and any additional criteria developed by the Department;

(ii) the Department will maintain and update, when applicable, local eligibility criteria that will further limit the unnecessary incarceration of certain high risk offenders. These criteria shall be in accordance with Division rules and regulations and such criteria and any update shall be forwarded to the Division;

(iii) the Department will use an approved Division assessment process or instrument to identify and target those with greatest risk and needs for program participation;

(iv) the Department will reduce the number of defendants who may be unnecessarily incarcerated by diverting them into the program by facilitating a probation sentence with the condition of program participation for suitable high risk defendants who would otherwise have been incarcerated and probationers who violate the original order and conditions of probation who will be continued under probation supervision with the condition of program participation, as an alternative to incarceration;

(v) the Department will complete a full assessment of all probationer program participants' criminogenic risks and needs, using a Division approved instrument and establish a supervision plan in a timely manner;

(vi) the Department will refer all such probationers to appropriate service providers based on the case planning assessment in the supervision plan; and

(vii) the Department will ensure that all such probationer's participate and engage in all service programs, and monitor their progress.

(8) if application is made for Enhanced Specialized Services for Sex Offenders funding, make the following assurances:

(i) the Department will ensure that all Level 2 or 3 registered sex offenders under probation supervision are subject, where applicable, to the mandatory sex offender condition(s) set forth in Penal Law § 65.10(4-a), and the sex offender is subject to other specialized sex offender conditions which may include, but are not limited to, the internet restriction condition under Penal Law § 65.10 (5-a) and/or other local conditions specific to sex offenders;

(ii) the Department will ensure that all such sex offenders are assigned to the caseload of an experienced probation officer/ probation unit who either solely or primarily supervises sex offenders, or has a significant concentration of sex offenders on the caseload, and who has received specialized training on sex offender management;

(iii) the Department will perform enhanced field work (i.e. surveillance, collateral contacts, employment visits, as well as use of electronic monitoring, global positioning systems, computer scanning, internet usage monitoring, and other enforcement initiatives) in supervising such sex offenders;

(iv) the Department will conduct at least one visit to a Level 2 or 3 sex offender's home each quarter during which, at a minimum, a plain view search for prohibited items and/or substances is completed;

(v) the Department will ensure that all such sex offenders are assessed by a probation officer or treatment provider using a sex-offender specific assessment instrument approved by the Division;

(vi) the Department will ensure that all such sex offenders are referred to, participate in, or successfully complete Association for the Treatment of Sexual Abusers (ATSA)-compliant clinical evaluation and/or treatment;

(vii) the Department will maintain and implement a policy which provides for collaboration with other law enforcement and service agencies on: warrant execution sweeps, home visits, surveillance, searches, treatment planning, housing, and other activities related to general sex offender management;

(viii) the Department will maintain and implement a policy which provides for officers to independently or in concert with law enforcement execute warrants on Sex Offenders, including apprehending absconders who are found, pursue extradition where appropriate, and secure warrants and retake interstate sex offenders where required and/or necessitated; and

(ix) the Department will utilize polygraph examinations for the management of certain sex offenders consistent with the goals of community safety.

(9) If application is made for Juvenile Risk Intervention Services Coordination (JRISC) funding, make the following assurances:

(i) the Department will use an approved Division risk and needs assessment process or instrument, refer alleged and/or adjudicated Persons In Need of Supervision(PINS) and Juvenile Delinquent (JD) youth who are determined to be high risk and appropriate for program services and conduct reassessments as necessary; and

(ii) the Department will assign juvenile probation officers trained in family intervention and cognitive behavioral techniques, youth supervision and delinquency prevention to perform program services and/or work collaboratively with evidence-based intervention provider(s) to achieve reductions in dynamic risk for JRISC youth and to achieve successful program completion.

(10) Ensure adherence to other program goals, objectives, and performance target requirements set forth by the Division for additional state aid with respect to special/specific populations other than the populations specified in paragraphs seven, eight and nine of this subdivision.

(c) The Commissioner may require modification of the plan in order to obtain approval. Any modification of a plan requires Commissioner approval.

(d) Vouchers and program reports shall be in a format established by the Division and shall be submitted on a schedule established by the Division.

(e) Division or other governmental findings by audit or program analysis and review which show that the Department has not adhered to the approved plan of operation and/or standards governing probation practice, may be the basis for withholding the payment of State aid or recouping monies. A county or the City of New York may request reconsideration of the decision to withhold payment or recoup monies to the Office and shall submit information as to their respective position and specific details in support of its position and such other information as may be requested by the Director. After consultation with the Director, the Commissioner will render a final determination which may include the steps that are necessary to obtain funding.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 6, 2011.

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Esq., NYS Division of Criminal Justice Serivces, 4 Tower Place - 3rd Floor, Albany, New York 12203, (518) 457-8413, email: linda.valenti@dcjs.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Pursuant to Chapter 56 of the Laws of 2010, the former Division of Probation and Correctional Alternatives (DPCA) was merged within the Division of Criminal Justice Services (DCJS) and is now the Office of Probation and Correctional Alternatives. Section 8 of Part A of this Chapter specifically transferred all rules and regulations of DPCA to DCJS and established that such shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, section 17 of Part A of this Chapter amended Executive Law Section 243(1) to make conforming changes and establish in pertinent part that the Commissioner of DCJS has authority to ''adopt general rules which shall regulate methods and procedure in the administration of probation services…'' so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws throughout the state.'' Such rules are binding with the force and effect of law. Further, section 10 of Part D of such Chapter amended Executive Law Section 246 to revamp probation state aid funding from approvable

expenditures to block grant distribution and authorize within such grant monies funding for other specific enhanced program services related to specific probation populations.

2. Legislative objectives:

These regulatory amendments are consistent with legislative intent to maintain State financial assistance to local governments for regular and/or specialized probation programming while at the same time establishing a new streamlined mechanism for local government to apply for and receive probation state aid block grant monies and afford greater flexibility to probation departments with respect to managing probation operations. The amendments will help guarantee probation service delivery consistent with state law, rules and regulations, and additional specific state programmatic requirements, promote offender accountability and rehabilitation, and enhance public safety.

3. Needs and benefits:

The need for a proposed regulation in this area replacing the existing probation state aid rule with a new probation state aid block grant is necessitated by recent statutory changes in the enacted 2010 Executive Budget (L. 2010, Chapters 50 and 56). Immediate regulatory changes must be implemented to ensure the timely distribution of probation funding to local governments to guarantee that there is no disruption of service delivery. This regulation will provide local probation departments mandate relief with respect to the manner which they may apply for state monies for probation management operations. The proposed regulation has been designed to streamline application procedures, reduce program standards to core components in order to achieve fiscal efficiencies, and provide greater flexibility as to local probation department service delivery consistent with law, and good professional practice. Program standards are not new, but instead codify past contractual agreements based upon best practices and ensure the integrity of probation service delivery to the criminal justice and juvenile justice system. For general State aid block grant monies, program standards have retained DNA, Sex Offender Registration Act, eJusticeNY, and Integrated Probation Registrant System requirements from past years to promote public safety and ensure sound probation management. Probation state aid is no longer based upon detailed regulatory criteria specifying eligible reimbursement expenditures so that departments now will have greater latitude to utilize monies for probation operations. The singular regulatory restriction mirrors State law. For ISP State aid block grant monies, program standards are consistent with respect to key program operational expectations governing screening, initial and full assessment, advocacy, case planning, referral, and monitoring consistent with existing ISP operational guidelines, policies, and agency regulations and the application is now incorporated within the annual state aid application process. For ESSO State aid block grant monies, the program standards have been reduced to essential program components critical for enhanced supervision of high-risk sex offenders. Unlike past years, no longer are departments restricted in the amount of monies which can be spent for certain program activities, including those related to specialized caseload, field work, polygraph testing, and retaking or extradition of a SORA Level II or III sex offender under probation supervision. Additionally, specialized ESSO monies previously earmarked for polygraph testing and retaking and extradition of offenders have now been included in total distribution. This will optimize flexibility in utilization of such ESSO monies for program performance in this area. For JRISC grant monies, program standards have retained prior year contractual core service delivery expectations based upon evidence-based practices. JRISC monies may be spent as departments determine appropriate to effectuate program services. For ISP, ESSO, and J-RISC State aid block grant monies, the application has now been incorporated within the annual state aid application process and will not require detailed budgetary information for such specialized monies. No longer will there be a need to seek State approval with respect to changes in local ISP, ESSO, or J-RISC budgets. Further, to receive monies there will be a simplified voucher process with less documentation necessitated and due to the block grant distribution, instead of separate quarterly program vouchers previously required, a probation department will submit one voucher on a quarterly basis covering all funded division programmatic services.

4. Costs:

This regulation will not result in increased costs. Greater flexibility in utilization of probation state aid should improve fiscal efficiencies and program operations, and reduce State and local costs associated with contractual processing.

a. This regulation will not impose a cost on probation departments. In prior years departments would apply to DPCA for re-imbursement after expenses were incurred. This regulation will allow for a single application for funding prior to incurring expenses and will likely result in savings to a probation department by reducing staff effort in securing reimbursement.

b. Although DCJS must approve each plan, it is anticipated that this approval can be accomplished using existing staff and resources. Therefore no additional costs will be incurred. As noted above, it is anticipated that the costs to each local government may be reduced through the streamlined funding plan.

c. This cost analysis is based on the prior experience of former DPCA employees in consultation with DCJS.

5. Local government mandates:

The regulatory changes do not impose any new mandates upon probation departments with respect to probation state aid funding. In prior years probation departments seeking State funding were required to apply to DPCA. This regulation will require that the application be made to DCJS.

6. Paperwork:

No additional paperwork is necessary for implementation of these regulatory changes.

7. Duplication:

These amendments do not duplicate any State or Federal law or regulation.

8. Alternatives:

Because Chapter 56 of the laws of 2010 and Executive Law Section 246 establishes that state aid block grant funding shall be pursuant to DCJS rules and regulations no alternative to this rule is authorized.

9. Federal standards:

There are no federal standards governing probation state aid.

10. Compliance schedule:

This regulation is similar to prior year state aid application procedures with respect to state aid probation monies. Dissemination of the new regulation to local probation departments will enable such departments to comply with the regulation and apply for State funds without delay.

Regulatory Flexibility Analysis

1. Effect of Rule:

This new rule Part sets forth parameters governing probation state aid block grant distribution.

The regulatory changes will better assist probation departments in funding and managing their own probation operations. They will afford relief to probation departments by streamlining state aid plan application procedures with respect to provision of State financial assistance to local governments for probation programming to achieve fiscal efficiencies and provide greater flexibility in usage of state aid monies consistent with Chapters 50 and 56 of the Laws of 2010 and state aid block grant provisions. Changes will expedite receipt of grant monies as once approved there is no need to enter into formal contractual processing.

The amendments do not affect small business.

2. Compliance Requirements:

In order to comply with this rule, a local probation department will be required to apply to the Division of Criminal Justice Services prior to receiving State financial assistance. This regulation is similar to prior year state aid application procedures with respect to state aid probation monies and the reporting, record keeping and compliance requirements are similar to those of prior years. This regulation has no affect on small businesses.

3. Professional Services:

No professional services are required to comply with this regulation.

4. Compliance Cost:

The regulatory changes will not result in probation departments incurring any compliance costs. The regulatory amendments mirror prior year application procedures with respect to state aid probation monies, yet will provide local probation departments mandate relief with respect to the manner which they can distribute state monies for probation management operations consistent with other statutory provisions.

5. Economic and Technological Feasibility:

There are no economic or technological issues or problems arising from the proposed rule. A probation department will be able to apply for State financial assistance pursuant to this rule using existing staff and technology.

6. Minimizing Adverse Impacts:

DCJS foresees that these regulatory amendments will have no adverse impact on any local government. As noted in more detail below, the former DPCA, now the Office of Probation and Correctional Alternatives within DCJS pursuant to Chapter 56 of the Laws of 2010, collaborated with jurisdictions across the state, including rural, suburban, and urban counties, and probation professional associations in soliciting feedback as to regulatory changes in order to provide probation mandate relief. As a result of the 2010 enactment of probation state aid block grant funding, the proposed regulation was designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, and good professional practice.

As the probation state aid block grant rule does not have any impact upon small business, the regulatory changes have no negative impact upon small business operations.

7. Small Business and Local Government Participation:

Pursuant to Executive Order No. 17, the former DPCA prepared initial

Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, DPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (urban, suburban, and rural counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. DPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience.

There was considerable interest by some probation professionals across the state from rural, urban, and suburban jurisdictions, which gained legislative and Executive support, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grants to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget which was subsequently signed into law.

As this rule does not impact upon small businesses, there was no business involvement with respect to the regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments, which are located in rural areas, will be affected by the proposed rule.

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

The regulation imposes no new reporting, recordkeeping, other compliance requirements. This regulation is similar to prior year state aid application procedures with respect to state aid probation monies and the reporting, recordkeeping and compliance requirements are similar to those of prior years. No professional services will be necessary to comply with the regulation.

3. Costs:

The new regulatory Part will not result in increased costs.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on any jurisdiction, including rural areas. As noted in more detail below, the former Division of Probation and Correctional Alternatives (DPCA), now the Office of Probation and Correctional Alternatives within DCJS, collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in soliciting feedback as to agency regulations in order to provide sound probation mandate relief. The new statutory and appropriation language with respect to probation state aid block grant is consistent with recent suggestions raised by many probation departments and communicated by the Council of Probation Administrators, the statewide professional association of probation administrators. The regulatory amendments have been designed to streamline application procedures, reduce program standards to core components, and provide greater flexibility as to local probation department service delivery consistent with law, public safety, and good professional practice.

5. Rural area participation:

Pursuant to Executive Order No. 17, the former DPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally DPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. DPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. There was considerable interest by some probation professionals across the state from rural, urban, and suburban jurisdictions, which gained legislative and Executive support, for legislation which would change the distribution of probation state aid from reimbursed expenditures to probation State aid block grant to achieve greater fiscal efficiencies and provide greater flexibility in probation management operations. This block grant concept was incorporated in the 2010 Public Protection appropriation portion of the Executive Budget which was subsequently signed into law. The proposed regulation which implements the new statutory provisions will achieve greater fiscal efficiencies and provide greater flexibility in probation management operations.

Job Impact Statement

The emergency regulation will have no adverse effect on private or public jobs or employment opportunities. The revisions are technical and procedural in nature and consistent with new State law probation State aid block grant language.

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-48-10-00010-E

Filing No. 1238

Filing Date: 2010-12-06

Effective Date: 2010-12-06

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

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; and L. 2010, ch. 59

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

The emergency rule is necessary because it establishes the application process, standards for application evaluation and procedures for businesses claiming the tax credit under this Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Excelsior Jobs Program.

Purpose: To create the process by which businesses may apply for and receive the tax credits provided by the Excelsior Jobs Program.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the ''Program''). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the ''Department''); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified from the empire zones program if admitted into the Excelsior Jobs Program; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. To be a participant in the program, an applicant must be operating predominantly in a strategic industry and meet the respective job requirements for strategic industries or be a regionally significant project. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. When determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; or a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

14) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

15) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

16) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at http://www.esd.ny.gov/BusinessPrograms/Excelsior.html.

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. EDV-48-10-00010-P, Issue of December 1, 2010. The emergency rule will expire February 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown that some predict could become a double dip recession or worse. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program

be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development (''DED'') estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Minority and Women Business Enterprise Program

I.D. No. EDV-39-10-00021-A

Filing No. 1253

Filing Date: 2010-12-07

Effective Date: 2010-12-22

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

Action taken: Repeal of Parts 140-144; and addition of new Parts 140-145 to Title 5 NYCRR.

Statutory authority: L. 2010, ch. 175; and Executive Law, sections 313(2), (2-a) and 313-a

Subject: Minority and Women Business Enterprise Program.

Purpose: Implement the 2010 Business Diversification Act and provide MWBEs with a fair opportunity to compete for contracts in New York State.

Substance of final rule: The proposed regulation makes extensive changes to the existing regulations governing the Division of Minority and Women's Business Development (''DMWBD''). For the purposes of clarity, the regulation repeals existing Parts 140 to 144 of 5 NYCRR and replaces them with new Parts 140 to 145. New Part 144 dealing with statewide certification makes only minor modifications to the previous

Part 144, including, but not limited to, deleting old Section 144.3 which is no longer applicable and adding a new section to address acceptance municipal certifications on a fast track basis as well as articulating the Division's new annual reporting requirement.

The following is a brief summary of the substantive changes made in the new Parts 140-144.

1) The regulation adds several new definitions to Part 140, including the definitions of the terms ''chief diversity officer'', ''diversity practices'', ''joint venture'' ''lessee'', ''personal net worth'', ''significant business presence'', ''small business'' ,"substantially fails'', ''mentor-protege agreement'', ''value added'' and ''2010 disparity study.'' Importantly, the regulation amends the definition of ''minority-owned business enterprise'' and ''woman owned business enterprise'' to include the requirements that these entities are owned, operated and controlled by individuals whose net worth does not exceed $3.5 million and are small businesses. It also amends the definition of ''minority group member'' to make clear it includes persons of Latin American origin and amends the definition of ''state contract'' to include expenditures made pursuant to a state contract, purchase order, invoice or non-personal services.

2) The regulation requires that the DMWBD Director provide all state agencies with a copy of the 2010 disparity study. In addition, all state agencies are required to submit to the Director agency goals for contracts made directly or indirectly to MBEs or WBEs in each of the categories referenced in the 2010 disparity study. The regulation then lists the percentage goals established by the 2010 disparity study per industry.

3) The regulation clarifies that if an agency in good faith determines that it cannot achieve the goals listed in the 2010 disparity study the agency shall develop agency specific goals expressed as a percentage of aggregate agency expenditures and a justification for such goals to submit to the Director. The regulation also provides agencies with a list of factors which may allow them to adjust agency specific goals.

4) The regulation next clarifies that the Director has discretion in his or her acceptance of agency goals plans and describes the agency goal plan submission procedure.

5) The regulation requires state agencies to include a summary of waivers received its compliance reports to the Director. Agency compliance reports shall now also include whether the agency has been required to prepare a remedial plan and to what extent the agency has complied with such plan. In addition, the regulation reiterates the statutory requirement that agencies in their annual report to the Governor and Legislature shall include certain MWBE related information.

6) The regulation creates state agency remedial plans and requires that state agencies that substantially fail to meet the goals supported by the disparity study (meaning they achieve less than 60%) shall be required to submit this plan to the Director. State agencies should consider maximizing discretionary awards to certified MWBEs as a way of reaching their goal. If the Director determines that the agency has failed to act in good faith to implement the remedial plan within one year, the Director will provide written notice of this finding and direct the following remedial actions to take place: 1) expand sufficient and effective solicitation efforts to MWBEs; 2) review of all procurement opportunities to determine if procurements can be unbundled into smaller quantities that will expand MWBE participation; 3) eliminate extended experience or capitalization requirements, or bonding requirements when feasible; and 4) identify specific expenditures as appropriate for MWBE participation. If the Director finds the agency has not implemented the remedial plan and followed his remedial actions, and there is no objective progress toward agency goals, the Director may require that some or all of the agency procurements be placed under the control of a different state agency.

7) The regulations add a section stating that agencies shall make a good faith effort to meet the maximum feasible portion of the agency's goals. It then delineates that the Director may consider criteria he or she determines relevant, as well as information the state agency submits, to document the agency's good faith efforts but he or she must consider: (1) whether there are certified minority- and women-owned business enterprises that could participate in the type of procurement opportunitites that the agency has to offer as prime contractors or subcontractors; (2) whether the State agency has attempted to unbundle State contracts and solicit bids from the certified minority- and women-owned businesses; (3) whether there are certified minority- and women owned business enterprises outside of the State agency's region that could participate in procurement opportunities; (4) whether the state agency has considered encouraging joint ventures, teaming agreements, partnerships, or other similar arrangements between prime contractors and minority and women owned business enterprises to participate in the State agency's procurement opportunities; (5) the number of opportunities that the State agency had for discretionary purchases, and the number of times the State agency did so; (6) whether the State agency developed selective bidder lists that included minority- and women-owned business enterprises; (7) the number of times that the State agency negotiated with minority- and women-owned businesses directly and the number of times and amounts the State agency awarded a discretionary contract to a certified business; and (8) any other information submitted by the State agency or other criteria that the director deems relevant to determining whether the State agency exercised good faith.

8) The regulation deletes old section 141.5 dealing with directory fees as it is antiquated. Currently, the directory is an online resource only which is available to the public free of charge.

9) The regulation requires that state agencies establish separate goals for participation of certified minority and women owned businesses enterprises on all state contracts, where appropriate, and shall consult with the 2010 disparity study when calculating the specific goals. Contractors shall be notified in procurement documents of the goals established on state contracts and state agencies must provide a link to the current list of certified MWBEs to each prospective contractor. The regulation goes on to state the factors an agency shall consider when setting goals, including potential subcontract opportunities available in a prime contract.

10) The regulation introduces the concept of diversity practices into the procurement process by stating that, in any contract awarded by a state agency based on best value only, that is a response to a rfp and/or a request for qualification, is anticipated to result in an award of $250,000 or more, and is not a contract for commodities or those otherwise based on lowest price, an agency shall determine whether it is practical, feasible and appropriate to assess the diversity practices of all contractors making submissions. The regulation articulates what factors should be considered by agencies in their diversity practice assessments and such assessment shall be used as one of the factors in determining the award of a contract.

11) The regulation next addresses the submission and review of utilization plans. It allows a state agency to accept a utilization plan when: (1) the State agency determines that the goals set forth in the solicitation or bid are to be provided by one or more MWBEs; (2) the contractor submits an alternative plan utilizing certified MWBEs equivalent to those set forth in the solicitation; (3) the utilization plan submitted by the contractor partially satisfies the goals set forth in the solicitation but is supported by the contractor's documented good faith efforts to submit a utilization plan as requested; (4) the contractor is a joint venture, teaming agreement, or other similar arrangement with a MWBE whose value or participation is equal to the percentage of the goals set forth in the solicitation; or (5) the contractor submits a mentor-protege agreement acceptable to the agency, which does not meet the goals set forth in the solicitation, but reflects an investment by the mentor in the protege roughly equal to the difference between the goal set forth in the solicitation and the percentage of value added participation provided by the protege.

12) The regulation now prohibits a state agency from granting automatic waivers of goal requirements on a state contract.

13) With respect to the disqualification of contractors, the regulation next enables a state agency to conclude a contractor is non-responsible (and therefore proceed with the next ranked bidder or proposal) if it determines, after giving the contractor a notice of deficiency, that the contractor has failed to submit an acceptable utilization plan or satisfactorily document its good faith efforts. Upon such finding, the regulation sets up a process for the contractor to

request a meeting with the State agency to discuss the determination before it becomes final. Final determination shall be reviewable by an Article 78 proceeding.

14) With respect to contractor compliance, the regulation now allows an agency to determine that a contractor is meeting its goals if the contractor itself is responsible for 100% of the contract performance or if the agency has verified that the goals are being achieved by subcontractors partnering in a joint venture.

15) With respect to issues surrounding contractor and state agency complaints, the regulation eliminates the existing arbitration process for disputes in these areas and replaces it with the administrative hearing process. The regulation adds the new enforcement penalty that a contractor who either fraudulently or intentionally misrepresents or displays willful or intentional disregard of the MWBE participation requirements in a contract, may be barred for up to one year on bidding on state contracts or up to five years (if a subsequent violation occurring within five years of the first violation).

16) The regulation requires that every contracting state agency include a provision in their contracts stating that a contractor who willfully and intentionally fails to comply with MWBE participation requirements shall be liable for liquidated damages.

17) The regulation next makes clear that if a state contract is entered into on an emergency basis or where an amendment or change order has been added to a state contract providing for total expenditures in excess of $25,000, the contracting agency may require the contractor to submit an EEO policy statement and comply with the post award requirements of the regulation during the life of the contract.

18) The regulation next clarifies that with respect to contractor compliance for EEO opportunities, contracting agencies are responsible for monitoring EEO compliance, and if a contractor fails to provide information requested by a contracting agency within 10 days of the request, this failure shall be deemed a breach of contract and trigger an administrative hearing.

19) With respect to EEO dispute resolution procedures, the regulation eliminates the existing arbitration process for disputes in these areas and replaces it with the administrative hearing process.

20) The regulation clarifies that MWBE certification lasts for three years (conforms to existing law).

21) The regulation creates a fast track process for New York municipal corporations parallel to that of the existing federal process.

22) The regulation requires the Division to submit an annual report to the Chief Diversity Officer on or before November 1.

23) The regulation requires the Division to distribute annually a written guidelines and best practices manual complying with the provisions of Article 15(a) of the Executive Law and calculating credits towards achieving agency MWBE goals to every State agency on or before December 15.

Final rule as compared with last published rule: Nonsubstantive changes were made in Parts 140, 141, 142, 143 and 144.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, New York State Department of Economic Development, 30 S. Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement. The changes made represent clarification of issues that do not impact the statements.

Assessment of Public Comment

The Department of Economic Development (''DED'') received 113 letters commenting on the proposed regulations. 72 were positive with no substantive comments. 40 contained numerous recommendations or questions. One letter was opposed to the statute, and therefore the regulations.

Below is a summary of recommendations or questions by subject matter, with DED's response and the edits that were made:

1. General

Comments: Since there is a shortage of MWBEs in New York, these regulations would hurt NY small businesses by driving contractors to use out of state certified MWBEs.

The term ''certified'' is inconsistently used throughout the regulation.

Response: Out of state firms comprise only 15% of the MWBE directory. DED feels strongly that the new regulations will be an incentive to the substantial pool of uncertified NYS MWBE's referenced in the disparity study that now are more likely to seek certification.

DED has edited the regulations to ensure the term certified MWBE is used when appropriate.

2. Definitions

Comments: Comments sought clarification of various definitions including: certified enterprise or business; state agency; state contract; significant business presence; subcontract; teaming agreement; minority group member; minority business enterprise; joint venture; and value added services.

Response: DED clarified the definition of ''certified enterprise or business'' The definition of ''state agency'' has been amended to correspond to statute. The definition of ''state contract'' has been amended to delete the reference to Article 116 of the State Finance Law. DED believes the definition of ''significant business presence'' is appropriate. The definition of ''subcontract'' is appropriate, as when one reads the language of the new statute in its totality, it becomes clear that the intent of the drafters was to expand the definition. DED has amended the definition of ''teaming agreement'' to clarify that the agreement is a utilization plan relationship, and if awarded, the team itself may be a joint venture or prime-subcontractor relationship. The definition of ''minority group member'' has been amended to replace ''Indian'' with ''Native American.'' DED did not change ''black'' to ''persons of African ancestry'' as that term is too broad and would expand the regulations beyond its desired scope. DED did not change the definition of ''minority business enterprise.'' The definitions of ''joint venture'', ''value added'', and ''teaming agreement'' have been clarified.

3. Diversity practices

Comments: Comment did not think a numerical score should be assigned for diversity practices. Comments questioned how DED would handle confidential financial information potentially violating federal law, and auditing of a company's gross revenues. Comments felt the matrix should have been subject to public comment and also questioned how the numerical guidelines will be applied.

A comment noted that agencies' evaluating gross revenues paid to MWBEs in the contractor's prior year of business activity was inappropriate. A comment noted that the inclusion of past and prospective diversity practices would be problematic during a bid challenge.

A comment questioned whether the metric for assessing joint ventures to track diversity practices, which focuses on gross revenue, meant gross revenue to the contractor or MWBEs.

A comment noted that with respect to diversity, the requirement that an agency must compare percentage of gross revenues involved using subcontractors. . . in the contractor's prior year of business activity, it is unclear whether only subcontracts to certified MWBEs count.

A comment noted that the diversity practice assessments pertaining to gross revenues paid to joint venture partners should be deleted because these payments are made directly to the joint venture, not a partner.

Response: DED left in the reference to a numerical matrix for assessing diversity practices because the assessment is only used when ''practical, feasible, and appropriate'' and it is not a grant of decisive points to a contractor simply because they are a minority or engage in diversity practices. Moreover, we have added an opportunity for contractors that believe that they should be exempt from a diversity practices assessment to do so.

The percentage of gross revenue awarded to MWBE's is not confidential information. Should any request of information be a violation of any law, it would not be practical, feasible, and appropriate.

DED would only necessitate an audit if circumstances arise that cast doubt on the veracity of submitted information. In such cases, DED would perform the audit.

The diversity matrix was not included in the regulations because it may change based on a variety of factors surrounding each procurement. The matrix will be provided in the solicitation by the state agency. Numerical guidelines may be applied on a case by case basis.

The evaluation of gross revenues paid to MWBEs is based on past and present diversity practices. The use of the term prospective in the definition refers to a contractor's current diversity practices moving forward.

DED has amended the regulations to reflect that the metric for assessing joint ventures to track diversity practices which focuses on gross revenue refers to the prime contractor's gross revenue.

The regulations reference comparing the percentage of gross revenue using subcontractors as opposed to certified MWBEs because DED expects national companies to bid on NY state contracts and does not want to make its diversity credit too narrow in scope.

DED has adjusted the regulations to reflect that gross revenues would be paid to joint ventures and teams, not their partners.

4. Workforce diversity requirements

Comments: A comment noted that the definition of affirmative action in the section of the regulations regarding general workforce diversity requirements of state agencies goes beyond the federal law and expertise of agencies to enforce.

A comment noted that the statutory language of Executive Law Section 312 in regards to discrimnation is broader than the language in the regulations.

Response: The regulation was amended to correct the impression that agencies should require contractors to maintain or establish affirmative action programs in connection with a contractor's work force not engaged in providing services under the State contract.

The regulation was amended to include the broader statutory language in regards to discrimination.

5. Non-responsive vs. non-responsible

Comments: Comments felt the regulation improperly confuses the terms non-responsible and non-responsive.

Response: DED has corrected the references as applicable.

6. Parent subsidiary arrangements/ joint ventures

Comments: A comment noted that the regulation is unclear with respect to parent-subsidiary relationships. It implies that the owners relied upon for certification must possess the technical experiences to operate the business and have actual day-to-day control. On the other hand, it indicates the Division may find an entity eligible for certification if day-to-day management is in the hands of non-minority or non-woman parties so long as ultimate control is held by minority group members.

Response: DED has adjusted the regulation to make clear that MWBEs must have adequate managerial experience or technical competence in the business seeking certification.

7. Damages

Comments: Comment noted that an agency's expenses for its program will not be ascertainable at the time of breach since the agency's overall costs for its MWBE program may greatly increase or decrease after a finding of a contractor's willful noncompliance and wondered how other appropriate damages will be determined.

Response: The intent was to give state agency's flexibility with respect to setting damages in contracts. The regulation has been amended to note that damages may be liquidated or set forth in contract.

8. Certification

Comments: Comments wondered why New York does not have reciprocity with other states for certification purposes; if vendor responsibility was part of the certification process; and what expedited processes were available for certification.

Response: Because state laws are not consistent in their requirements for MWBE programs and New York has very specific statutory requirements, reciprocity has not been granted with other states.

Vendor responsibility is an issue covered by state agencies awarding procurements on a case by case basis. It is not part of the MWBE certification process. The regulations have been amended to clarify this point.

Expedited processes are available for certification for DBE certified firms and New York municipal certified firms under sections 144.7 and 144.8 of the regulations.

9. Agency Goals

Comments: Comment wanted clarification regarding whether a minority woman owned business could satisfy an agency's goals for minority and women on the same contract.

Comment noted that there is an incorrect reference to an agency contract ''not certified'' instead of ''certified'' in the factors required to delineate an agency using agency specific goals.

Comment requested being able to exclude certain categories of expenditures (postage, utilities, preferred source purchases) from agency goals because there are no opportunities for MWBE participation on them.

Comment noted that goals related to agency leases should be attributable to OGS rather than the specific agency itself.

Comment noted that regulation no longer contains language stating that contracts with federal dollars containing goals are not included in MWBE goal participation requirements to the extent that duplication exists with state law.

Comment wondered how, if there is a finding that an agency failed to implement a remedial plan, the Director may require some or all of the agency procurement to be put under direction of another state agency if the agency is decentralized and has multiple locations.

Response: The regulations do not allow a minority woman owned business to satisfy goals for both minority and woman on the same contract.

DED has corrected the incorrect reference to firms ''not certified'' in the agency specific goals section.

The regulations allow for the exclusion of certain categories of expenditures except in the case of certain preferred source contracts.

DED agrees that state agency lease contract goals should be attributable to OGS.

The issue of how to treat contracts containing federal dollars is a legal question and not addressed in these regulations.

The issue of how the Director may remove procurement from an agency with multiple locations is one that will be addressed as the need arises.

10. Training

Comments: Comments wondered what training would be provided to state agencies on these regulations.

Response: DED wishes to emphasize that it will be conducting training with state agencies as its budget permits and shortly after the promulgation of the regulation.

11. Utilization plans

Comments: Comment noted that the regulation requirement of 2 days to post waivers of compliance or modifications to utilization plans was too short a time frame.

Comment noted that posting of utilization plans or waivers on agency's website within 10 days of agency approval should be changed to within 10 days of OSC contract approval.

Comment noted that the requirement that state agencies review utilization plans and accept or reject them within 20 days of receipt precludes agencies from making the assessment on the winning bidder's utilization plan, rather than having to access all bidders.

Response: DED has adjusted the regulation to provide for 10 days to post waivers of compliance or modifications to utilization plans.

The timeframe for posting utilization plans should be within 10 days of agency contract approval because the intent is to provide greater notice in cases where waivers were granted.

The requirement for an agency to review utilization plans within 20 days of receipt refers to plans submitted by the low bidder only.

12. Reporting requirements

Comments: Comments noted that the regulation specifies January 15 as first reporting date; and wondered if data was limited to the prior quarter.

Response: DED has adjusted the reporting timeframes in the regulation. They are now submitted quarterly. The four reporting quarters are April 1 - June 30 (1st quarter due July 15); July 1 - September 31 (2nd quarter due October 15); October 1 - December 31 (3rd quarter due January 15); and January 1 - March 31 (4th quarter due April 15).

13. Preferred sources

Comments: Comment indicated that it should be made clear that goals are not imposed on preferred source contracts.

Response: Goals may be imposed on certain preferred source contracts.

Negative comment

Comment: Comment indicates that this regulation will, in their opinion, increase costs 3 to 4 times in all areas of state other than New York City.

Response: DED notes that an unreasonable increase in costs would be grounds for a waiver for a contractor.

Education Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Special Education Programs and Services for Students With Disabilities

I.D. No. EDU-51-10-00011-P

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

Proposed Action: Amendment of sections 200.1 and 200.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), (2) and (20), 4402 and 4403(3)

Subject: Special Education Programs and Services for Students with Disabilities.

Purpose: To conform Commissioner's regulations to federal and State terminology changes.

Text of proposed rule:

1. Paragraphs (6), (7), and (8) of subdivision (zz) of section 200.1 of the Regulations of the Commissioner of Education are amended, effective March 30, 2011, as follows:

(6) Learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which manifests itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, as determined in accordance with section 200.4(j) of this Part. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing or motor disabilities, of [mental retardation] *an intellectual disability*, of emotional disturbance, or of environmental, cultural or economic disadvantage.

(7) [Mental retardation] *Intellectual disability* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(8) Multiple disabilities means concomitant impairments (such as [mental retardation] *intellectual disability*-blindness, [mental retardation] *intellectual disability*-orthopedic impairment, etc.), the combination of which cause such severe educational needs that they cannot be accommodated in a special education program solely for one of the impairments. The term does not include deaf-blindness.

2. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (i) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(b) the committee on special education or multidisciplinary team, upon receipt of consent, shall forward the student's name and other relevant information in a report to the Commissioner of Mental Health, Commissioner of [Mental Retardation and Developmental Disabilities] *the Office for People With Developmental Disabilities*, Commissioner of Social Services or Commissioner of Education or their designees. The committee on special education or multidisciplinary team shall determine which commissioner shall receive the report; and

3. Paragraph (4) of subdivision (i) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(4) The committee on special education or the multidisciplinary team shall forward additional and updated relevant information to the Commissioner of Mental Health, Commissioner of [Mental Retardation and Developmental Disabilities] *the Office for People With Developmental Disabilities*, Commissioner of the Office of Children and Family Services or Commissioner of Education, or their designees, upon the request for such information by such commissioner or designee, and upon obtaining appropriate consent.

4. Subparagraph (ii) of paragraph (3) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(ii) The CSE determines that its findings under this paragraph are not primarily the result of a visual, hearing, or motor disability; [mental retardation] *an intellectual disability*; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

5. Clause (f) of subparagraph (i) of paragraph (5) of subdivision (j) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

(f) the determination of the CSE concerning the effects of a visual, hearing, or motor disability; [mental retardation] *an intellectual disability*; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and

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

Data, views or arguments may be submitted to: James P. DeLorenzo, Statewide Coordinator of Special Education, State Education Department, State Education Building, Room 309, 89 Washington Avenue, Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 4402 establishes school district duties for the education of students with disabilities.

Education Law section 4403 establishes Department and school district responsibilities concerning education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt rules and regulations as the Commissioner deems in their best interests.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to be consistent with a recent terminology change in federal law, by replacing the term ''mental retardation'' with ''intellectual disability'' in the Commissioner's Regulations. On October 5, 2010, ''Rosa's Law'' (Public Law 111-256) was enacted to replace the term ''mental retardation'' with ''intellectual disability'' in federal statutes, including IDEA, the Elementary and Secondary Education Act (ESEA), the Higher Education Act and the Rehabilitation Act of 1973. While states are not required to replace the term ''mental retardation'' with ''intellectual disability,'' the Department has determined that replacing ''mental retardation'' with ''intellectual disability'' will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with this disability.

The proposed amendment also makes technical revisions to replace the term ''Commissioner of Mental Retardation and Developmental Disabilities'' with ''Commissioner of the Office for People With Developmental Disabilities'' to conform to a recent State statutory change of name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional program, service, duty or responsibility upon local governments.

Section 200.1, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes.

Section 200.4, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes; and makes a technical amendment to change the ''Commissioner of Mental Retardation and Developmental Disabilities'' to the ''Commissioner of the Office for People With Developmental Disabilities'' consistent with the Department's statutory name change.

6. PAPERWORK:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional paperwork requirements.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, but will ensure consistency with recent changes in terminology used in federal and State statutes.

8. ALTERNATIVES:

The Department conducted a multiple-state survey of disability classifications and sought input from the members of the Commissioner's Advisory Panel for Special Education Services when considering various alternatives to the term ''mental retardation.'' The Department determined that replacing ''mental retardation'' with ''intellectual disability'' will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with this disability.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and is not required by federal law or regulations, but will ensure consistency with a recent change in terminology used in federal statutes.

10. COMPLIANCE SCHEDULE:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any compliance requirements. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment replaces references in the Commissioner's Regulations to ''mental retardation'' with ''intellectual disability'', and replaces references to ''Commissioner of the Office of Mental Retardation and Developmental Disabilities'' to ''Commissioner of the Office of People With Developmental Disabilities'' in order to ensure consistency with recent changes to the terminology used in federal and State statutes. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

The proposed amendment applies to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State.

1. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. The proposed amendment replaces references in the Commissioner's Regulations to the term ''mental retardation'' with ''intellectual disability'' consistent with a recent terminology change in federal statutes, including IDEA, enacted by Public Law 111-256 (''Rosa's Law''); and replaces references to ''Commissioner of the Office of Mental Retardation and Developmental Disabilities'' to ''Commissioner of the Office of People With Developmental Disabilities'' to conform to a recent State statutory name change of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

2. PROFESSIONAL SERVICES:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional professional service requirements on local governments.

3. COMPLIANCE COSTS:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional costs on local governments.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any new technological requirements or costs on local governments.

5. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on local governments, but merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes to the terminology used in federal and State statutes.

Section 200.1, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes.

Section 200.4, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes; and makes a technical amendment to change references to the ''Commissioner of Mental Retardation and Developmental Disabilities'' to the ''Commissioner of the Office for People With Developmental Disabilities'' consistent with a recent State statutory name change of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

The Department conducted a multiple-state survey of disability classifications and sought input from the members of the Commissioner's Advisory Panel for Special Education Services when considering various alternatives to the term ''mental retardation.'' The Department determined that replacing ''mental retardation'' with ''intellectual disability'' will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with this disability.

6. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

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

The proposed amendment does not impose any additional compliance requirements or professional services requirements on entities in rural areas. The proposed amendment replaces references in the Commissioner's Regulations to the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes, including the Individuals with Disabilities Education Act (IDEA), enacted by Public Law 111-256 (''Rosa's Law''); and replaces references to ''Commissioner of the Office of Mental Retardation and Developmental Disabilities'' to ''Commissioner of the Office of People With Developmental Disabilities'' to conform to a recent State statutory name change of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

3. COSTS:

The proposed amendment merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes in the terminology used in federal and State statutes and does not impose any additional costs on entities in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on entities in rural areas, but merely replaces certain terms in the Commissioner's Regulations in order to ensure consistency with recent changes to the terminology used in federal and State statutes.

Section 200.1, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes.

Section 200.4, as amended, substitutes the term ''mental retardation'' with ''intellectual disability'' consistent with the terminology change in federal statutes; and makes a technical amendment to change references to the ''Commissioner of Mental Retardation and Developmental Disabilities'' to the ''Commissioner of the Office for People With Developmental Disabilities'' consistent with a recent State statutory name change of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

The Department conducted a multiple-state survey of disability classifications and sought input from the members of the Commissioner's Advisory Panel for Special Education Services when considering various alternatives to the term ''mental retardation.'' The Department determined that replacing ''mental retardation'' with ''intellectual disability'' will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with this disability.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment replaces references in the Commissioner's Regulations to the term "mental retardation" with "intellectual disability" and replaces references to ''Commissioner of the Office of Mental Retardation and Developmental Disabilities'' to ''Commissioner of the Office of People With Developmental Disabilities'' in order to ensure consistency with recent changes to the terminology used in federal and State statutes. The proposed amendment will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regents Standing Committees

I.D. No. EDU-51-10-00012-P

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

Proposed Action: Amendment of section 3.2(a) and (d)(6) of Title 8 NYCRR.

Statutory authority: Education Law, section 207

Subject: Regents standing committees.

Purpose: Change Adult Education and Workforce Development committee name to ''Adult Career and Continuing Education Services (ACCES)''.

Text of proposed rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective March 30, 2011, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

(1) . . .
(2) . . .
(3) . . .
(4) . . .
(5) . . .
(6) [Adult Education and Workforce Development] *Adult Career and Continuing Education Services (ACCES)*.

2. Paragraph (6) of subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective March 30, 2011, as follows:

(6) Committee on [Adult Education and Workforce Development] *Adult Career and Continuing Education Services (ACCES)*:

(i) . . .
(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .

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

Data, views or arguments may be submitted to: Kevin G. Smith, Deputy

Commissioner, Office of Adult Career and Continuing Education Services, Room 1606, One Commerce Plaza, Albany, NY 12234, (518) 474-2714

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Regents Rules relating to the Regents standing committees to a change in name of the Office of Adult Education and Workforce Development to Office of Adult Career and Continuing Education Services (ACCES).

3. NEEDS AND BENEFITS:

The Office of Adult Education and Workforce Development was established under a recent reorganization of the State Education Department that abolished the Office of Vocational Educational Services for Individuals with Disabilities (VESID), and transferred responsibility for adult education, workforce development, vocational rehabilitation and proprietary school supervision to the new Adult Education and Workforce Development committee, and transferred responsibility for special education to a new Office of P-12 Education.

The Office of Adult Education and Workforce Development intends to change its name to Office for Adult Career and Continuing Education Services (ACCES). The proposed amendment is needed to make a conforming change in the name of the Regents standing committee from Committee on Adult Education and Workforce Development to ''Committee on Adult Career and Continuing Education Services (ACCES).''

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment relates to the internal organization of the Board of Regents and merely changes the name of the Committee on Adult Education and Workforce Development to ''Committee on Adult Career and Continuing Education Services (ACCES),'' and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, record keeping or other paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs 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 steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Teacher Certification

I.D. No. EDU-51-10-00022-P

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

Proposed Action: Amendment of section 80-1.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1) and (2), 3001(2), 3004(1) and 3006(1)

Subject: Teacher Certification.

Purpose: Extends the time validity of provisional or initial certificates for those who have met all requirements except citizenship.

Text of proposed rule: Section 80-1.6 of the Regulations of the Commissioner of Education is amended, effective March 30, 2011, as follows:

Section 80-1.6 Extensions of time validity of certificates.

(a) Subject to the limitation provided in subdivision [(d)] *(e)* of this section, the time validity of an expired provisional, initial or transitional certificate may be extended for a period not to exceed two years from the expiration date of such certificate, except as provided in subdivisions (b) and (c) *and (d)* of this section, upon application by the holder of a teaching certificate:

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) [for a candidate who is not a citizen of the United States, who has applied for citizenship and whose application for citizenship has not been acted upon by the United States Immigration and Naturalization Service;]

(b) . . .

(c) . . .

(d) *The commissioner may extend the time validity of an expired provisional, or initial certificate beyond the extensions provided for in subdivisions (a) and (c) of this section, in increments of one additional year for a candidate who has applied for citizenship or permanent residency, and whose application for citizenship or permanent residency has not been acted upon by the U.S. Citizenship and Immigration Services (USCIS) until the USCIS acts upon such application. Such candidates must provide documentation satisfactory to the Department that they meet these requirements, and that they have completed all academic, testing and experience requirements for Permanent or Professional certification.*

(e) The commissioner will only extend the time validity of an expired provisional certificate under this section if the holder of such provisional certificate submits evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate, when a content specialty test(s) is required.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 474-3862, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, State Education Building Annex, 89 Washington Avenue, Room 979, Albany, NY 12234, (518) 408-1189

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority

to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above referenced statutes by establishing a means for individuals who hold an entry level certificate, and who have met all requirements for the terminal level of certification except U.S. citizenship or permanent residency to remain certified while awaiting a citizenship determination by the United States Citizenship and Immigration Service USCIS.

3. NEEDS AND BENEFITS:

The proposed amendment establishes a means for extending the time validity of Provisional or Initial certificates for those individuals who have met all academic, testing and experience requirements for Permanent or Professional certification, and are unable to receive such certification due to USCIS processing delays.

The proposed amendment is needed to maintain the employment of experienced teachers and is in the interest of the New York State public schools and students.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. A candidate seeking to extend the time validity of a Provisional, or Initial Certificate will be required to pay a $50 application fee.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

School districts and BOCES that wish to employ or continue to employ a teacher with a time extended certificate are not governed by any local mandates that would effect the issuance or maintenance of the time extended certificate.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. Candidates seeking a time extended Provisional or Initial Certificate must provide evidence that they have applied for U.S. citizenship or permanent residency and that the application has not yet been processed.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address extending the validity of entry level certificates.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

The purpose of the proposed amendment is to establish a means for extending the time validity of Provisional or Initial certificates for those individuals who have met all academic, testing and experience requirements for Permanent or Professional certification, and are unable to receive such certification due to USCIS processing delays of applications for U.S Citizenship or permanent residence.

The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire or maintain employment of a teacher whose certificate would otherwise have expired due to USCIS processing delays of applications for U.S. Citizenship or permanent residence.

2. Compliance requirements:

The purpose of the proposed amendment is to establish a means for extending the time validity of Provisional or Initial certificates for those individuals who have met all academic, testing and experience requirements for Permanent or Professional certification, and are unable to receive such certification due to USCIS processing delays of applications for U.S Citizenship or permanent residence. School districts and BOCES that wish to employ or continue to employ a teacher with a time extended certificate are not governed by any local mandates that would effect the issuance or maintenance of the time extended certificate.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a time extended Initial or Provisional certificate. However, the candidate will be required to pay an application fee of $50 for the time extended Initial or Provisional certificate.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of extending a Provisional or Initial Certificate for individuals who need to satisfy only the citizenship or permanent residency requirement for Permanent or Professional certification. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish a means for extending the time validity of Provisional or Initial certificates for those individuals who have met all academic, testing and experience requirements for Permanent or Professional certification, and are unable to receive such certification due to USCIS processing delays of applications for Permanent Residency or U.S. citizenship.

School districts and BOCES that wish to employ or continue to employ a teacher with a time extended certificate are not governed by any local mandates that would effect the issuance or maintenance of the time extended certificate.

The proposed amendment will not require regulated parties, including those located in rural areas, to hire professional services in order to comply.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing or maintaining employment of a teacher under a time extended Initial or Provisional certificate. However, the candidate will be required to pay an application fee of $50 for the time extended certificate.

4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

Job Impact Statement

The purpose of the proposed amendment is to establish a means for individuals who have met all academic, testing and experience requirements for Permanent or Professional certification to remain certified while they await processing of an application for U.S. citizenship or permanent residency by the USCIS.

The proposed amendment is needed to facilitate the Department's continuing ability to assist school districts in maintaining experienced faculty that have met all requirements for Permanent or Professional certification with the exception of United States citizenship. This proposal is intended to allow the extension of an Initial or Provisional certificate and therefore maintain teachers who risk losing certification because they are awaiting permanent residence status from the USCIS.

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

Office of General Services

NOTICE OF ADOPTION

Facility Use

I.D. No. GNS-35-10-00001-A
Filing No. 1239
Filing Date: 2010-12-03
Effective Date: 2010-12-22

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

Action taken: Amendment of sections 300-1.2 and 300-3.1 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; title III of the Americans with Disabilities Act (28 CFR 36.104)

Subject: Facility Use.

Purpose: To add the definitions of disability and service animals, and clarify that service animals will be permitted in State facilities.

Text or summary was published in the September 1, 2010 issue of the Register, I.D. No. GNS-35-10-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, NYS Office of General Services, 41st Fl. Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Federal Surplus Property

I.D. No. GNS-35-10-00015-A
Filing No. 1240
Filing Date: 2010-12-03
Effective Date: 2010-12-22

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

Action taken: Repeal of Part 298; and addition of new Part 298 to Title 9 NYCRR.

Statutory authority: Executive Law, section 200; Education Law, section 3712; 40 U.S.C., section 549 and 41 CFR 102-37

Subject: Federal surplus property.

Purpose: To be consistent with the text of the New York State Plan of Operation approved by the federal GSA on April 29, 2010.

Text or summary was published in the September 1, 2010 issue of the Register, I.D. No. GNS-35-10-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, NYS Office of General Services, 41st Fl. Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Partnering With Preferred Sources

I.D. No. GNS-36-10-00002-A
Filing No. 1241
Filing Date: 2010-12-03
Effective Date: 2010-12-22

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

Action taken: Repeal of section 250.18(c) of Title 9 NYCRR.

Statutory authority: Executive Law, section 200; and L. 2002, ch. 350, section 12

Subject: Partnering with Preferred Sources.

Purpose: To repeal the outdated and obsolete regulatory provision.

Text or summary was published in the September 8, 2010 issue of the Register, I.D. No. GNS-36-10-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, NYS Office of General Services, 41st Fl. Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Vendor Responsibility

I.D. No. GNS-36-10-00003-A
Filing No. 1242
Filing Date: 2010-12-03
Effective Date: 2010-12-22

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

Action taken: Repeal of section 250.21 of Title 9 NYCRR.

Statutory authority: Executive Law, section 200

Subject: Vendor Responsibility.

Purpose: To repeal the regulatory standards.

Text or summary was published in the September 8, 2010 issue of the Register, I.D. No. GNS-36-10-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Paula B. Hanlon, NYS Office of General Services, 41st Fl. Corning Tower, The Governor Nelson A. Rockefeller ESP, Albany, NY 12242, (518) 474-0571, email: paula.hanlon@ogs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Mt. Sinai-Queens Merged Rates

I.D. No. HLT-51-10-00001-E
Filing No. 1225
Filing Date: 2010-12-02
Effective Date: 2010-12-02

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

Action taken: Amendment of section 86-1.31 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

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

Specific reasons underlying the finding of necessity: Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority, effective for periods on and after December 1, 2009, to issue emergency regulations in order to compute hospital inpatient rates as authorized in accordance with the provisions of such subdivision 35.

Subject: Mt. Sinai-Queens Merged Rates.

Purpose: No longer require that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon.

Text of emergency rule: Paragraph (1) of subdivision (b) of section 86-1.31 is amended to read as follows:

(1) The commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for hospitals subject to mergers, acquisitions or consolidations [occurring on or after the year the rate is based upon,] provided such hospitals demonstrate through submission of a written proposal that the merger, acquisition or consolidation will result in an improvement to (i) cost effectiveness of service delivery, (ii) quality of care, and (iii) factors deemed appropriate by the commissioner. Such written proposal shall be submitted to the department sixty days prior to the requested effective date of the temporary rate adjustment. The temporary rate adjustment shall consist of the various *operating* rate components of [the surviving entity] *that portion of the facility originally associated with the surviving provider number and shall be in effect* for a specified period of time as approved by the commissioner. At the end of the specified timeframe, the hospital will be reimbursed in accordance with the statewide methodology set forth in this Subpart. *The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved as a result of the ongoing consolidation efforts and may also require that the hospital submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 1, 2011.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c (35) of the Public Health Law which authorizes emergency Commissioner regulations in accordance with the general emergency regulation criteria set forth in the State Administrative Procedure Act. In anticipation of the Federal Public Notice publication on December 1, 2010, with an effective date of December 2, 2010, it is critical that this regulation amending the temporary adjustments be processed on an emergency basis. Part 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York, Paragraph (1) of subdivision (b) of section 1.31 provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for hospitals subject to mergers, acquisitions or consolidations pursuant to the above section.

Legislative Objectives:

Part 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, Paragraph (1) of subdivision (b) of section 1.31 will be amended to eliminate the requirement that the merger, acquisition or consolidation needs to occur on or after the year the rate is based upon. The temporary rate adjustment will also be revised to consist of the operating rate components of that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the Commissioner. This regulation is necessary in order to provide needed relief to providers who meet the criteria.

The proposed regulation further amends Part 86-1.31 so that the Commissioner will establish benchmarks and goals that, as a condition of receiving such temporary rate adjustments, must be achieved by a hospital as a result of the ongoing consolidation efforts. Such hospitals must also submit periodic reports concerning the achieving of such benchmarks and goals as the Commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the Commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, hospitals with two campuses resulting from the recent closures of hospitals in their catchment area have recognized the need for change. This change can be the elimination of underutilized services or the consolidation of others. Hospitals can identify the persistent inefficiencies and resource limitations within their system so that scarce health care dollars are not at risk. Teaching programs can be integrated to better serve patients. The combination of two or more hospitals licensed under Article 28, where such a combination is consistent with the public need, would create a new, more economical entity and may result in the potential reduction of excess beds and/or improved service delivery. The additional reimbursement provided by this adjustment will support the resulting hospital in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. Hospitals are currently required to file annual certified cost reports and submit claim forms for Medicaid reimbursement. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

The estimated net aggregate increase in gross Medicaid expenditures attributable to this proposed initiative for State fiscal year 2010/2011 is $2.6 million, which on a full annual basis would increase to $7.9 million.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

Since meeting benchmarks and goals is required in order to receive this temporary rate adjustment, a hospital is required to submit periodic reports, as determined by the Commissioner, concerning the achievement of such benchmarks and goals.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for hospitals subject to mergers, acquisitions or consolidations for inpatient payment rates for rate periods on and after December 2, 2010.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

No health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Hospitals that receive the temporary rate adjustment under this regulation will be required to submit periodic reports demonstrating their progress against benchmarks and goals established by the Commissioner.

The rule will have no direct effect on local governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State plan amendment. The Notice further invited the public to review and comment on the related proposed State plan amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have populations of less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted which demonstrate the achievement of benchmarks and goals set by the Commissioner.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation eliminates the requirement that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon in such cases where a hospital receives a temporary adjustment to rates as a result of a merger, acquisition or consolidation. The proposed regulation has no implications for job opportunities.

NOTICE OF ADOPTION

Hospital Minimum Standards and Appropriateness Review

I.D. No. HLT-39-10-00004-A

Filing No. 1247

Filing Date: 2010-12-07

Effective Date: 2010-12-22

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

Action taken: Amendment of sections 405.6, 405.7, 405.19 and 708.5 of Title 10 NYCRR.

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

Subject: Hospital Minimum Standards and Appropriateness Review.

Purpose: To decrease look-back period for credentialing from 10 to 5 years; extend the physician coverage time for EDs from 20 to 30 minutes.

Text or summary was published in the September 29, 2010 issue of the Register, I.D. No. HLT-39-10-00004-P.

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

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

Assessment of Public Comment

The public comment period for this regulation ended on November 15, 2010. The Department received 2 comments.

One comment was from the Healthcare Association of New York State (HANYS) and was in support of the proposed changes.

A second comment was received from Memorial Sloan-Kettering Cancer Center and focused only on the credentialing and privileging portion of the regulation. It stated that credentialing and re-credentialing of medical staff was time consuming and required the involvement of several offices within the institution. The comment noted that current requirements are largely duplicative of what already exists in the National Practitioner Data Bank (NPDB). It was supportive of the proposal to require a 5 year look-back period to require hospitals to gather more current information not available through the NPDB, while reducing the administrative burden posed by the current 10 year look-back period.

Consequently, no changes were made to the proposed regulation.

Insurance Department

EMERGENCY RULE MAKING

Workers' Compensation Insurance – Independent Livery Driver Benefit Fund

I.D. No. INS-45-10-00005-E
Filing No. 1243
Filing Date: 2010-12-06
Effective Date: 2010-12-06

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

Action taken: Addition of Subpart 151-5 (Regulation 119) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 3451

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

Specific reasons underlying the finding of necessity: Chapter 392 of the Laws of 2008, parts of which became effective immediately, with other parts becoming effective on January 1, 2009 and January 1, 2010, enacts a new Article 6-G of the Executive Law, a new Section 18-c of the Workers Compensation Law, and a new Section 3451 of the Insurance Law. Article 6-G authorizes the creation of a new Independent Livery Driver Benefit Fund (the ''Fund'') to provide coverage to livery drivers dispatched by independent livery bases that are members of the Fund. Section 18-c sets forth criteria for the designation of a livery base as an independent livery base. Although the State Insurance Fund is authorized under Article 6-G to provide the insurance afforded therein, Section 3451 of the Insurance Law authorizes the Superintendent of Insurance to promulgate rules and regulations permitting insurers authorized to write workers' compensation and employers' liability insurance to provide coverage to the new independent livery driver benefit fund (''Fund'').

Insurers authorized to write workers' compensation and employers' liability insurance have expressed interest in writing policies of insurance affording coverage to the Fund. Providing the Fund with alternative choices may lower the costs that will be borne for the coverage and can provide other benefits to the Fund. This regulation was previously promulgated on an emergency basis on December 17, 2009, March 12, 2010, June 11, 2010, and September 8, 2010. The proposal was approved by the Governor's Office of Regulatory Reform on October 10. 2010 and published in the State Register on November 10, 2010. The 45-day public comment period will expire on December 27, 2010. Final action cannot be taken until the public comment period has ended.

Because the effective date of the relevant provision of the law was January 1, 2010, it is essential that this regulation, which establishes procedures that implement provisions of the law, be continued on an emergency basis. For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Workers' Compensation Insurance – Independent Livery Driver Benefit Fund.

Purpose: Authorizes workers' compensation and employers' liability insurers to provide coverage authorized by Executive Law Article 6-G.

Text of emergency rule: A new subpart 151-5 is added to read as follows:

Section 151-5.0 Purpose.

The purpose of this sub-part is to authorize workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G.

Section 151-5.1 Authorization of workers' compensation insurers' to write insurance pursuant to Executive Law Article 6-G

(a) Pursuant to Insurance Law section 3451, insurance companies authorized to write workers' compensation insurance and employers' liability insurance, as defined in Insurance Law section 1113(a)(15), are hereby authorized to write policies of insurance affording coverage in accordance with Executive Law Article 6-G.

(b) No policy or certificate thereunder providing for coverage pursuant to Executive Law Article 6-G shall be issued or issued for delivery in this State unless the forms have been filed with, and approved by, the superintendent in accordance with Insurance Law Article 23.

(c) No policy or certificate thereunder providing for coverage pursuant to Executive Law Article 6-G shall be issued or issued for delivery in this State unless the rates have been filed with the superintendent for prior approval in accordance with Article 23 of the Insurance Law and subpart 151-1 of this Part.

(d) Every policy and certificate thereunder providing for coverage pursuant to Executive Law Article 6-G issued or issued for delivery in this State shall provide coverage in accordance with the provisions of Executive Law Article 6-G.

(e) The policy shall be issued on a group basis to the Independent Livery Driver Benefit Fund and shall provide coverage to livery drivers dispatched by independent livery bases that are members of the Independent Livery Driver Benefit Fund established pursuant to Executive Law Article 6-G.

(f) A certificate issued under the group master policy shall be provided to each member independent livery base and contain all material terms and conditions of coverage with respect to a livery driver, unless the group master policy is incorporated by reference, and in which event, a copy of the master policy shall accompany the certificate or shall be promptly provided to a member independent livery base upon request.

(g) An insurer issuing or renewing the group policy shall maintain separate statistics tracking group loss and expense experience for the group program. The statistics shall be maintained in conformance with Part 243 of Title 11 of the New York Codes, Rules and Regulations (Regulation 152).

(h) Coverage disputes between insurers pursuant to Executive Law Article 6-G shall be subject to mandatory arbitration of controversies between insurers, pursuant to the provisions of section 5105 of the Insurance Law and section 65-4.11 of subpart 65-4 of this Title (Regulation 68-D).

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. INS-45-10-00005-P, Issue of November 10, 2010. The emergency rule will expire February 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of Part 151-5 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119) derives from Sections 201, 301, and 3451 of the Insurance Law, and Executive Law Article 6-G.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, and to prescribe regulations interpreting the Insurance Law.

Section 3451 of the Insurance Law (L.2008, c. 392, § 12), permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G.

Executive Law Article 6-G establishes clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishes the Independent Livery Driver Benefit Fund (''the Fund'') to provide independent contractor livery drivers workers' compensation benefits in certain circumstances where No-Fault automobile insurance does not provide sufficient coverage. Article 6-G permits the Fund to purchase insurance from the State Insurance Fund (''SIF'') or, if the Superintendent authorizes it by regulation, from an insurer licensed to write workers' compensation or employers' liability insurance.

2. Legislative objectives: Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishing the Fund to provide independent contractor livery drivers workers' compensation with benefits in certain circumstances where No-Fault automobile insurance does not provide sufficient coverage. Before passage of this law, the only recourse for independent contractor livery drivers was No-Fault automobile insurance. This resulted in delays in payment as No-Fault insurers ascertained whether livery drivers were independent contractors and eligible for coverage.

The law also permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G.

3. Needs and benefits: Pursuant to Insurance Law § 3451, the Superintendent may promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This regulation will ensure that the Fund has a choice of procuring coverage from either SIF or

an authorized insurer, which may provide savings to the Fund, and ultimately the livery bases that pay for the coverage.

4. Costs: No costs will be imposed by the proposed rule. Executive Law Article 6-G permits the Fund to purchase insurance from SIF or, if the Superintendent authorizes it by regulation, from an insurer licensed to write workers' compensation or employers' liability insurance. This rule authorizes workers' compensation and employees' liability insurers to provide coverage to the Fund for livery drivers dispatched out of independent livery bases pursuant to Insurance Law § 3451 and Executive Law Article 6-G. An insurer may, but is not required to, offer to provide coverage to the Fund. The Fund has a choice of procuring coverage from either SIF or an authorized insurer, which may provide savings to the Fund, and ultimately the livery bases that pay for the coverage.

5. Local government mandates: This rule has no impact on local governments.

6. Paperwork: This rule imposes no new paperwork on affected parties. An insurer would have to file rates and forms subject to the Superintendent's approval as it would for any other workers' compensation coverage, and designate an individual to maintain statistics in conformance with Part 243 of Title 11 of the New York Code, Rules and Regulations (Regulation 152).

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The only alternative was for the Superintendent not to authorize insurers to provide coverage to the Fund. In that case, only SIF would have been able to provide coverage. This regulation allows insurers to compete for the business of the Fund and may reduce the costs of insurance as a result.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: The rule does not impose a compliance schedule.

Regulatory Flexibility Analysis

1. Small businesses:

The rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The rule is directed at workers' compensation insurers authorized to do business in New York State, none of which falls within the definition of ''small business'' set forth in Section 102(8) of the State Administrative Procedure Act (''SAPA''). The Insurance Department has monitored Annual Statements and Reports on Examination of authorized workers' compensation insurers subject to this rule, and believes that none of the insurers falls within the definition of ''small business'', because there are none that are both independently owned and have fewer than one hundred employees.

Pursuant to Insurance Law § 3451, the Superintendent may promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This regulation authorizes a workers' compensation and employees' liability insurer to provide coverage of the Independent Livery Driver Benefit Fund (''the Fund'') for livery drivers dispatched out of independent livery bases pursuant to Insurance Law Section 3451 and Executive Law Article 6-G. This will give the Fund a choice of procuring coverage from either the State Insurance Fund or an insurer. Since livery bases pay for the coverage, this regulation may ultimately benefit them if the costs of insurance are reduced as a result.

2. Local governments:

The rule has no impact on local governments.

Rural Area Flexibility Analysis

Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and creating the Independent Livery Driver Benefit Fund (''the Fund'') to provide independent contractor livery drivers workers' compensation with benefits in certain circumstances were No-Fault automobile insurance does not provide sufficient coverage.

The law also permits the Superintendent to promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This rule authorize workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G.

Neither New York City, Nassau County nor Westchester County are rural areas.

The rule contains no provisions that create impacts unique to rural areas of the state.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule authorizes workers' compensation and employers' liability insurers to provide coverage as afforded under Executive Law Article 6-G. Participation by insurers is voluntary. For those insurers that choose to offer coverage, existing personnel should be able to perform this task.

There should be no region in New York that would experience an adverse impact on jobs and employment opportunities. This regulation should not have any impact on self-employment opportunities.

Department of Labor

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-51-10-00013-P

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

Proposed Action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Regulation 12 NYCRR § 800.3 is amended to add the following subdivision:

(dv) Cranes and Derricks in Construction; Final Rule-75 FR 47905-48177, August 9, 2010.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: michael.paglialonga@labor.ny.gov

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

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

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Long Island Power Authority

NOTICE OF WITHDRAWAL

Authority's Tariff

I.D. No. LPA-49-10-00015-W

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

Action taken: Notice of proposed rule making, I.D. No. LPA-49-10-00015-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 8, 2010.

Subject: The Authority's Tariff.

Reason(s) for withdrawal of the proposed rule: The Authority is reconsidering the proposed rule.

NOTICE OF WITHDRAWAL

Authority's Tariff

I.D. No. LPA-49-10-00017-W

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

Action taken: Notice of proposed rule making, I.D. No. LPA-49-10-00017-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 8, 2010.

Subject: The Authority's Tariff.

Reason(s) for withdrawal of the proposed rule: The Authority is reconsidering the proposed rule.

Division of the Lottery

EMERGENCY RULE MAKING

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

I.D. No. LTR-43-10-00008-E

Filing No. 1246

Filing Date: 2010-12-07

Effective Date: 2010-12-07

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Substance of emergency rule: The amendments revise the regulations for the operation of the LOTTO game. Due to the prolonged decline in popularity of the Lottery's former flagship game, the Lottery is relaunching LOTTO to make it more appealing to consumers, which should ultimately generate more revenue to the State for aid to education.

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

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

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

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

Technical amendments are also made throughout the proposed regulations.

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. LTR-43-10-00008-P, Issue of October 27, 2010. The emergency rule will expire February 4, 2011.

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Associate Attorney, New York Lottery, One Broadway Center, P.O. Box 7500 Schenectady, NY 12301-7500, (518) 388-3408, email: nylrules@lottery.ny.gov

Regulatory Impact Statement

1. Statutory authority: The new regulations for the New York Lottery's subscription program and the LOTTO game are proposed pursuant to Tax Law, Sections 1601, 1604 and 1612.

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

2. Legislative objectives: The purpose of operating Lottery games is to generate earnings for the support of education in the State. Repeal and replacement of these regulations will improve the Lottery's ability to generate earnings for education by increasing consumer interest in LOTTO games.

3. Needs and benefits: The LOTTO game has sustained competitive pressure from large jackpot lottery games, which has produced a decline in LOTTO revenues and a loss of player interest. A comparison of LOTTO revenues for 2004-05 to revenues for 2008-09 shows an annual decline of 12.9%. For the fiscal year ending on March 31, 2009, revenues declined to only $178,100,000 from earlier levels of over $356,000,000 a year. If the 12.9% annual decline in revenues continues through the fiscal year ending March 31, 2012, revenues for that year will total only $117,900,000. The aid to education from this game will also drop from an estimated $93,900,000 in FY 2008-09 to only $62,200,000 in the fiscal year ending on March 31, 2012.

Repeal and replacement of the LOTTO regulations will allow the Lottery to reverse this trend and continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who play lottery games. The new regulations allow the Lottery to offer additional versions of the LOTTO game. Pursuant to the new regulations, including an emergency regulation adopted on July 31, 2009, the Lottery has, as of September 15, 2009, introduced a variation of the LOTTO game called Sweet Million with more attractive odds of winning intended to generate renewed interest in LOTTO games. Because the new variation of the LOTTO game has more favorable odds of winning a first prize, revenues are expected to increase.

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

4. Costs:

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

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs; since current funds reserved for administrative expenses of operating lottery games are expected to be sufficient to support the new variation of the LOTTO game, including advertising expenses, point of sale material production costs, and the cost of printing play slips for the new game. The new variation of the LOTTO game will generate more earnings for aid to education, which will far exceed the minimal expenses necessary to operate the new game. More aid to education from the Lottery will have a positive effect on the State because less funds will then be required from other General Fund resources to aid education. Furthermore, if less funds are required from other General Fund resources to aid education, local governments will benefit because increased funding for local schools from Lottery earnings will ease local tax burdens. Local retailers will earn higher commissions as ticket sales increase, which may result in more employment opportunities.

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

5. Local government mandates: None. No local government is authorized or required to do any act, apply any effort, expend any funds, or use any other resources in connection with the operation of the LOTTO game or LOTTO game variations. All necessary actions will be carried out by the Lottery or licensed Lottery retailers who will be completely responsible for all aspects of game operations at the local retail level. The Lottery has no authority and no need to impose any mandate on any local government. Consequently, no provision of the rule imposes any burden on any local government in the State.

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

7. Duplication: None.

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

The alternative to amending the LOTTO regulations is to not address the declining revenues for the existing LOTTO game and forfeit the investment already made by the Lottery in the game. The annual LOTTO sales decline of 12.9% will likely continue, and the State will lose millions of dollars in revenue. The failure to proceed will also result in lost aid to education that is anticipated to be earned following introduction of a new variation of the LOTTO game.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

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

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

Job Impact Statement

The proposed repeal and replacement of 21 NYCRR sections 2804.14 and 2804.15 and Part 2817 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State. The repeal and replacement of the regulations is sought to relaunch the New York Lottery's LOTTO game to generate more revenue for the State for aid to education.

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

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Private Service Bureaus

I.D. No. MTV-51-10-00006-P

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

Proposed Action: Amendment of Part 77 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 395

Subject: Private Service Bureaus.

Purpose: To require Private Service Bureaus who have websites to post a disclaimer on such website.

Text of proposed rule: Paragraphs (1) and (2) of subdivision (b) of section 77.1 are amended to read as follows:

(1) Original applications for a license to conduct a private service bureau may be obtained [at any Motor Vehicles district office] *by contacting the Private Service Bureau Unit at 6 Empire State Plaza, Partner and Document Management Unit, Room 322P, Albany, NY 12228*.

(2) Original [application] *applications* must be filed at the [district office of the] Department of Motor Vehicles, *6 Empire State Plaza, Partner and Document Management Unit, Room 322P, Albany, NY 12228*.

Subdivision (d), (e) and (h) of section 77.3 are amended to read as follows:

(d) Renewal applications for a license to conduct a private service bureau may be obtained [at any Motor Vehicle district office] *by contacting the Private Service Bureau Unit at 6 Empire State Plaza, Partner and Document Management Unit, Room 322P, Albany, NY 12228*.

(e) Renewal applications must be filed at the [district office of the] Department of Motor Vehicles, [serving the county in which the private service is located] *6 Empire State Plaza, Partner and Document Management, Room 322P Albany, NY 12228*.

(h) The renewal fee is $25 *per year for a two year renewal*. Licenses expire midnight, June 30th of [each] *the second* year. Applications for renewals should be filed at least 30 days prior to June 30th. If the renewal application is approved, a new certificate of license will be issued.

Subdivision (c) of section 77.5 is amended to read as follows:

(c) Issue receipts in carbon *or computer generated* duplicate, the original to be given to the customer at the time the transaction is made, and the carbon or computer generated duplicate retained by the private service bureau.

A new subdivision (f) is added to section 77.7 to read as follows:

(f) DISCLAIMER

In any case where a private service bureau maintains a website that offers services or transactions that an applicant could obtain or conduct directly via the Department's own website, the private service bureau must include the following language by means of a statement on its website on any pages that refer to licensing, registration or title transactions performed by the New York State Department of Motor Vehicles in a noticeably distinct manner and in bold type of a size equal to at least twenty-four point type:

NOTICE

THIS TRANSACTION OR SERVICE IS ALSO AVAILABLE, AT NO ADDITIONAL CHARGE, DIRECTLY FROM THE OFFICIAL DEPARTMENT OF MOTOR VEHICLES WEBSITE AT WWW.NYSDMV.COM.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, DMV, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: hbazi@dmv.state.ny.us

Data, views or arguments may be submitted to: Sean J. Martin, Esq., DMV, 6 Empire State Plaza, Rm. 526, Albany, New York 12228, (518) 486-3131, email: smart2@dmv.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Vehicle and Traffic Law section 215(a) provides that the Commissioner may enact and amend rules and regulations which shall control and regulate the exercise of the powers of the department and the performance of the duties of officers, agents and other employees thereof. Section 395 of such Law provides that private service bureaus licensed by the Commissioner shall be subject to the reasonable regulations of the Commissioner concerning the business conducted by such licensees.

2. Legislative Objectives: Section 395 of the Vehicle and Traffic Law authorizes the Department of Motor Vehicles (DMV) to regulate private service bureaus (PSBs), which assist persons in securing driver's licenses, registrations and titles. A PSB is permitted to assess a fee, which is not capped by statute or regulation, for its services.

The Legislature has granted the Commissioner the authority to regulate PSBs, to protect those consumers who use their services and to preserve the integrity of the DMV document application process. DMV's regulations provide minimum standards in relation to record keeping, employee standards and advertising.

In accordance with the objective of protecting the public, this regulation insures that the public is aware that driver licenses, registrations and titles that may be obtained on-line from a PSB may also be obtained for no additional fee on the DMV Website. The customer need only pay the statutory fee for such document. Thus, the public can make an informed choice about whether to engage a PSB or to use the DMV Website to perform the transaction.

3. Needs and Benefits: Section 395 of the Vehicle and Traffic Law authorizes the Department of Motor Vehicles (DMV) to regulate private service bureaus (PSBs), which assist persons in securing driver's licenses, registrations and titles. A PSB is permitted to assess a fee, which is not capped by statute or regulation, for its services. PSBs are primarily used by individuals and by dealers. Several PSBs have established websites to facilitate their customers' access to PSB functions.

The Department of Motor Vehicles (DMV) also has a website that permits an individual to perform licensing, registration and title transactions on line. DMV only charges the statutory fee for such documents, whereas the PSB charges an additional service fee. This amendment is beneficial to consumers, because it informs the public about the option of performing certain motor vehicle transactions on line for no additional service fee.

The regulation also makes some technical amendments to conform to Vehicle and Traffic Law section 395: Each registration renewal period is for two years. The statute permits a fee of $25.00 for each year of the renewal period, therefore a two year renewal fee is $50.00.

4. Costs: This regulation imposes no cost upon the Department of Motor Vehicles or local governments.

It is expected that merely adding a statement concerning the availability of the DMV Website for transacting business with the Department would add minimal costs to a private service bureau's advertising expenditures. The PSBs could lose some revenue as the result of this regulation if a customer chooses to perform an on-line transaction with DMV instead of with the PSB. Since DMV cannot calculate how many customers would opt to use the DMV Website, we are unable to calculate the lost revenue for any given PSB. In addition, DMV does not know how many of the 170 PSBs maintain websites.

5. Local Government Mandates: There are no new mandates imposed upon local governments.

6. Paperwork: This proposal requires PSBs to post the disclaimer on their websites. The actual posting of the disclaimer involves minimal work or cost for the PSBs.

7. Duplication: This proposal does not duplicate or conflict with any State or federal rule.

8. Alternatives: The Department is unable to identify any alternative ways in which to accomplish the policy goal of providing notice to private service bureau customers. The proposed rule was distributed to a representative group of ten PSBs in order to survey the industry's position on the proposal. We received responses from four PSBs; three were positive and one was critical. We took the negative comments into consideration and made revisions to the original proposal in an attempt to accommodate the concerns raised. One PSB noted that not all services provided by some PSBs may also be done via the Department's Website. The original language set forth a disclaimer stating that ''…all services provided by this Private Service Bureau for a fee may be obtained via the DMV Website for no fee''. We changed that language to state that only license, registration and titling services provided by the Private Service Bureau may be obtained via the DMV Website for no fee. DMV carefully considered all comments when finalizing this proposed rule. A no action alternative was considered, but it was rejected in light of the regulation's consumer benefits.

9. Federal Standards: The proposal does not implicate any federal standards.

10. Compliance Schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: The approximately 170 Public Service Bureaus (PSBs) in New York State are small businesses. The regulation enhances consumer protection by requiring those PSBs that operate websites to post a disclaimer on their websites that notifies customers that licenses, registrations and titles that may be obtained on line from a PSB may also be obtained for no additional service fee on the DMV website. The customer need only pay DMV the statutory fee for such transaction. The proposal does not affect local governments.

2. Compliance requirements: Those PSBs which maintain a website or engage in internet advertising of their services must add a disclaimer to such website or advertising which states that DMV services related to licenses, registrations and titles are available via the official DMV website for no additional service fee.

3. Professional services: This regulation would not require PSBs to obtain new professional services beyond any that they may currently use.

4. Compliance costs: It is not expected that adding the required disclaimer to their website or advertising text would create a burdensome expense for PSBs; PSBs that create and maintain their own websites would merely add the new language to such sites. PSBs that contract with website companies could incur minor additional costs for the new language, depending on their contracts with the entities which maintain the websites for the PSBs. The PSBs could lose some revenue as the result of this regulation if a customer chooses to perform an on line transaction with

DMV instead of with the PSB. Since DMV cannot calculate how many customers would opt to use the DMV website, we are unable to calculate the lost revenue for any given PSB.

5. Economic and technological feasibility: This proposal will not impose any new technological requirements on PSBs because they already maintain websites. Placing the disclaimer on the website constitutes a minor technological addition.

6. Minimizing adverse impact: As explained in the Regulatory Impact Statement's ''Alternatives'' section, DMV did not consider any alternative methods of bringing about the desired change since this clearly represented the best course of action. The Department understands that this proposal may result in some lost revenue to the PSBs because some customers may choose to perform their transactions on the DMV website. However, we concluded that the cost to the PSBs is outweighed by the benefit to the customers, i.e., having the choice of performing DMV transactions for no additional service fee.

7. Small business and local government participation: The proposed rule was distributed to a representative group of ten PSBs in order to survey the industry on the proposal and obtain comments. We received responses from four PSBs; three were positive and one was critical. We took the negative comments into consideration and made revisions to the original proposal in an attempt to accommodate the concerns raised. The original language set forth a disclaimer stating that ''…all services provided by this Private Service Bureau for a fee may be obtained via the DMV website for no fee''. We changed that language in the instant proposal to state that license, registration and titling services provided by the Private Service Bureau may be obtained via the DMV website for no fee. This was done based on a comment by the one PSB offering a negative response, to the effect that not all services provided by some PSBs may also be done via the Department's website. DMV carefully considered all comments when finalizing this proposed rule.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed rule because it will have no adverse or disproportionate impact on rural areas of the State.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse impact on job development in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Inspection of Stretch Limousines

I.D. No. MTV-51-10-00008-P

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

Proposed Action: This rule is proposed pursuant to SAPA § 207(3), 5-Year Review of Existing Rules. Amendment of section 79.20 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (c), 302(a) and (e)

Subject: Inspection of stretch limousines.

Purpose: To require DOT inspections of vehicles that have been modified or ''stretched''.

Text of proposed rule: Section 79.20 is amended by adding a new subdivision (f) to read as follows:

(f)(1) All motor vehicles that provide school transportation, regulated passenger transportation, and municipal passenger transportation, as defined in 17 NYCRR 720.0, are subject to New York State Department of Transportation periodic inspection requirements, and, as provided in Section 79.2(d)(3) of this Part, are exempt from the New York State Department of Motor Vehicles periodic inspection requirements.

(2) If a passenger car, multipurpose passenger vehicle, or truck is presented for inspection, and such vehicle has been altered (a vehicle commonly referred to as a ''stretch limousine'') so as to have an extended chassis, or a lengthened wheel base, or an elongated seating area, and in the case of a truck, has been modified to transport passengers in addition to having been altered, the inspection station shall refuse to perform the inspection. The inspection station shall not charge the motorist for the inspection, and shall provide the motorist with instructions about how to comply with New York State Department of Transportation periodic inspection requirements.

(3) The provisions of paragraph two of this subdivision shall not apply if the New York State Department of Transportation has determined that the vehicle is not subject to its jurisdiction and has issued an ''Exemption to NYSDOT Inspection Form Letter.'' If an altered vehicle, as set forth in paragraph one of this subdivision, is presented for inspection and the motorist provides a copy of the ''Exemption to NYSDOT Inspection Form Letter'' for such vehicle, the inspection station shall verify that the vehicle identified in the letter is the same as the vehicle being presented for inspection, that all entry blanks in the letter have been completed, and that the letter has been signed by an employee of the Department of Transportation. If the letter meets these requirements, the inspection station shall accept the vehicle for inspection.

Text of proposed rule and any required statements and analyses may be obtained from: Monica J. Staats, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 301(a) of such law provides that the Commissioner shall require an annual motor vehicle safety inspection. Section 301(c) of such law authorizes the Commissioner to establish standards for motor vehicle safety inspections. Section 302(a) of such law provides that it is the duty of the Commissioner to administer Article 5 of such law, ''Periodic Inspection of Motor Vehicles.'' Section 302(e) of such law empowers the Commissioner to make reasonable rules and regulations for the administration of Article 5 of such law. Section 140 of the Transportation Law authorizes the Commissioner of Transportation to conduct safety inspections of certain motor vehicles.

2. Legislative objectives: This proposal accords with the objectives set forth in Article 5 of the Vehicle and Traffic Law and section 140 of the Transportation Law, in relation to the inspection of motor vehicles. Pursuant to this statutory authority, the Commissioners of the Department of Motor Vehicles (DMV) and the Department of Transportation (DOT) have promulgated regulations regarding the inspection of motor vehicles, in 15 NYCRR 79 and 17 NYCRR 720, respectively. The purpose of these statutes and regulations is to protect the motoring public by insuring that motor vehicles are subject to periodic safety inspections. The DOT regulations in Part 720 focus on safety inspections for buses and other vehicles that carry passengers.

The purpose of this regulation is to insure that stretch limousines are subject to a DOT inspection so that they pose no danger to the motoring public. Stretch limousines are automobiles that have been structurally lengthened to provide more seating and legroom for their passengers. Stretch limousines that have a seating capacity of 10 or more passengers fall within the purview of DOT, because they are classified as buses under 17 NYCRR 720.1(b), and should be subject to the stringent inspection requirements applicable to all buses. Currently, such limousines should be inspected by DOT, but many bypass DOT's stringent inspection. This proposal provides a mechanism to insure that such limousines are inspected by DOT. Thus, this proposal accords with the legislative objective of enhancing highway safety by requiring a comprehensive inspection of motor vehicles that transport passengers.

3. Needs and benefits: The purpose of this regulation is to insure that stretch limousines that carry 10 or more passengers are subject to DOT's safety inspection, as is already required by law. This proposal is, in part, a response to Veto No. 345 of 2006, wherein the Governor vetoed a bill pertaining to the registration of stretch limousines, because the bill's mandates imposed an undue burden on DMV. DMV and DOT, however, recognized the laudatory intent of the legislation, i.e., to establish a scheme to insure the structural safety of stretch limousines. Therefore, the two agencies reviewed current state and

federal law, examined their safety inspection procedures and concluded that procedures must be implemented to insure that stretch limousines that carry 10 or more passengers undergo DOT's biannual safety inspection. Under the current regulatory scheme, such stretched limousines are subject to the DOT inspection but, in fact, many of them are inspected at a public inspection station licensed by DMV. Limousine owners do not submit their vehicles to the DOT inspection, either because they are unaware of the law or because they wish to avoid DOT's thorough safety inspection. This regulation will insure that stretched limousines that carry 10 or more passengers are inspected by DOT.

Federal regulations, at 49 CFR 567.7, provide that a vehicle that is altered prior to its first sale to a consumer must conform to federal motor vehicle safety standards. In one of its rulemakings to promulgate this provision, the National Highway Traffic Safety Administration (NHTSA) commented:

''Because the operations performed by vehicle alterers could affect a vehicle's compliance with applicable Federal motor vehicle safety, bumper, and theft prevention standards, and potentially introduce safety-related defects into the vehicle, NHTSA has identified alterers as having the same duties and responsibilities as vehicle manufacturers, and has accordingly regulated them as such. The statutes that authorize NHTSA to prescribe the manner and form in which manufacturers are to certify compliance with applicable safety, bumper, and theft prevention standards apply equally to vehicle alterers.'' (64 FR 38593)

Thus, NHTSA determined that altered vehicles must be structurally sound in order to operate on our highways However, if a vehicle is altered or stretched after the initial sale, then the federal standards do not apply.

The current state law provides that, if the center panel of a motor vehicle exceeds 100 inches, then the owner must self-certify that such vehicle meets applicable federal standards(Vehicle and Traffic Law sections 385(3)(f) and 401(1)(b)). Clearly, this provision has no real teeth in terms of insuring the safety of the vehicles, primarily because there are no federal standards for vehicles that are altered after the initial sale. In addition, DMV's current safety inspection criteria, set forth in 15 NYCRR 79 do not establish standards for the structural integrity of altered or stretched motor vehicles. Because DOT already has regulations (17 NYCRR 720) to inspect vehicles that carry 10 or more passengers, both agencies agreed that DOT should be inspecting all stretch limousines. DOT inspectors have the expertise to determine if the stretch limousines are structurally sound. DOT inspectors are aware that improperly constructed stretch limousines may have structurally unsound chassis and may have braking systems that cannot accommodate the added weight of the vehicle. Thus, this proposal is critical to insure the safety of the vehicles' passengers. The agencies determined that the only way to guarantee that stretch limousines are inspected by DOT is to require the public inspection stations to refer such vehicles to DOT for inspection.

This proposal has several other ancillary benefits. DOT will not inspect a vehicle if it is not properly registered. Thus, DOT will not inspect a vehicle if it is improperly registered in the passenger class, for example; consequently, the owner of the rejected vehicle will have to return to DMV and register such vehicle as a bus or livery, as appropriate. In addition, the vehicle will have to carry the appropriate insurance for such class of vehicle. DMV knows anecdotally that many stretch limousines are not properly registered and do not carry sufficient liability insurance. Finally, persons who operate buses, as defined Article 19-A of the VTL and/or which transport 15 or more passengers, must hold a commercial driver's license (CDL). The requirements for obtaining a CDL are much more rigorous than those for obtaining a non-CDL, and the sanctions against CDL holders are more severe than those imposed against non-CDL holders. DOT will not inspect a vehicle if the operator does not hold the proper class of license. Thus, this will insure that the operators of stretch limousines hold the proper class of driver's license.

4. Costs:

a. Cost to regulated parties and customers: There is minimal cost to the inspection industry. Inspectors will have to assess whether the vehicle is stretched and should be referred to DOT for an inspection. If the vehicle is not altered or it is exempt from the DOT inspection, then the inspection station will conduct its routine safety inspection.

The limousine industry will also incur minimal costs. Currently, limousines are generally inspected at DMV licensed stations. However, limousine companies that understand that their stretch limousines are actually buses and are subject to the DOT inspection currently have such limousines inspected at DOT. The limousines that have a carrying capacity of 10 or more passengers will be inspected by DOT twice each year. There is no charge for such inspection, however, the operator will be required to apply to DOT for operating authority if they have not already met the requirement to do so. There is a one-time $50 fee to process the application. There is no charge for the subsequent biannual inspections conducted by DOT. Stretch limousines subject to DOT's inspection will no longer be pay DMV's inspection fees, which vary according to the weight of the vehicle and the area of the state in which the vehicle is inspected.

b. Costs to the agency and local governments: There is no cost to DMV. There are additional costs for DOT because DOT will be required to inspect additional vehicles. Since neither DMV nor DOT tracks the number of motor vehicles that are stretched, there is no reliable estimate of the additional workload for DOT. There is no cost to local governments.

5. Local government mandates: There are no local government mandates.

6. Paperwork: There are no new paperwork requirements. The amendment does require inspection stations to verify a DOT exemption letter, which explains that the subject vehicle is not within DOT's jurisdiction.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: DMV canvassed 29 organizations, individuals, businesses and agencies that could be affected by the proposed rulemaking. These included associations and individuals that represent inspection stations, repair shops and dealers. We also invited two representatives from the limousine industry to comment.

DMV received two comments. The New York State Association of Service Stations and Repair Shops, Inc. expressed concern that inspectors would be required to make a judgment about whether a particular limousine had been modified or came from the factory with an extended body. The burden is on the inspector to assess whether or not to inspect the vehicle. The Association requested that ''this amendment be clarified to indicate that all efforts will be made by DOT and DMV to inform those individuals who perform these modifications and those who utilize them as a business to be notified of their obligations under the inspection law.'' DMV maintains that alterations of this nature are quite apparent and obvious to even the casual observer and that a certified inspector will be able to identify a stretch limousine. Like other items subject to a safety inspection, an inspector often has to use judgment to ascertain compliance. In addition, the proposed rule provides that DOT will issue a letter exempting certain limousines from the DOT inspection and such letter will give the inspection stations guidance. Finally, DMV and DOT will conduct an educational campaign to inform the limousine industry about the inspection requirements.

The owner of A-1 Limo Depot also responded to our solicitation for comments. During his 18 years in business, he has observed stretch limousines that have improperly welded chassis, insufficient braking systems, improper lighting and poorly maintained front ends. In light of these safety concerns, he expresses support for requiring altered limousines to comply with DOT's safety regulations.

In developing this proposal over the past two years, DMV and DOT have spent numerous hours evaluating the pros and cons of this rulemaking. A no action alternative was considered, particularly in light of the extra workload for DOT inspectors. However, the two agencies concluded that the safety benefits of this regulation outweighed its costs to the state or to any regulated parties.

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

10. Compliance schedule: The Department would begin compliance immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The Department estimates that approximately 95% of the inspection stations in New York State are considered small businesses. There are approximately 11,000 (about 7,600 of which are active) licensed inspection stations in the Upstate Region of the State, and 4,400 (about 3,800 of which are active) in the New York Metropolitan Area (NYMA). The Department estimates that there are about 1,000 limousine companies that are affected by this rule.

2. Compliance requirements: All public inspection stations will have to ascertain whether a stretch limousine is subject to the Department of Motor Vehicles' or Department of Transportation's inspection requirements. DOT inspects motor vehicles that transport more than 10 passengers. The stations will also have to verify the validity of the DOT letter that exempts a vehicle from the DOT inspection.

Limousine service companies will be required to submit limousines that transport more than 10 passengers to DOT for a safety inspection.

3. Professional services: No professional services are required.

4. Compliance costs: As explained in the Regulatory Impact Statement, under current law, limousines that transport more than 10 passengers undergo DOT's safety inspection. However, many limousine companies have their vehicles inspected at public inspection stations. This proposal will require stations to refer such vehicles to DOT for an inspection. There is no charge for such inspection, however the operator will be required to apply to DOT for operating authority if they have not already met the requirement to do so. There is a one time $50.00 fee to process the application. There is no charge for the subsequent biannual inspections conducted by DOT. Stretch limousines subject to DOT's inspection will no longer be pay DMV's inspection fees, which vary according to the weight of the vehicle and the area of the state in which the vehicle is inspected.

5. Economic and technological feasibility: Since this proposed rule merely provides a mechanism to enforce the current safety inspection rules related to motor vehicles carrying more than 10 passengers, it is both economically and technologically feasible for the inspection and limousine industries.

6. Minimizing adverse impact: As explained below, DMV canvassed a broad range of interested parties and attempted to address their concerns.

7. Small business and local government participation: DMV canvassed 29 organizations, individuals, businesses and agencies that could be affected by the proposed rulemaking. These included associations and individuals that represent inspection stations, repair shops and dealers. We also invited two representatives from the limousine industry to comment.

DMV received two comments. The New York State Association of Service Stations and Repair Shops, Inc. expressed concern that inspectors would be required to make a judgment about whether a particular limousine had been modified or came from the factory with an extended body. The burden is on the inspector to assess whether or not to inspect the vehicle. The Association requested that ''this amendment be clarified to indicate that all efforts will be made by DOT and DMV to inform those individuals who perform these modifications and those who utilize them as a business to be notified of their obligations under the inspection law.'' DMV maintains that a vehicle that is altered is quite apparent and obvious to even the casual observer and a certified inspector will be able to identify a stretch limousine. Like other items subject to a safety inspection, an inspector often has to use judgment to ascertain compliance. In addition, the proposed rule provides that DOT will issue a letter exempting certain limousines from the DOT inspection and such letter will give the inspection stations guidance. Finally, DMV and DOT will conduct an educational campaign to inform the limousine industry about the inspection requirements.

The owner of A-1 Limo Depot also responded to our solicitation for comments. During his 18 years in business, he has observed stretch limousines that have improperly welded chassis, insufficient braking systems, improper lighting and poorly maintained front ends. In light of these safety concerns, he expresses support for requiring altered limousines to comply with DOT's safety regulations.

In developing this proposal over the past two years, DMV and DOT have spent numerous hours evaluating the pros and cons of this rulemaking. Although DMV and DOT considered taking no action, particularly in light of the extra workload for DOT inspectors, the two agencies concluded that the safety benefits of this regulation outweighed its costs to the state or to any regulated parties.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fee for Driver's Manual

I.D. No. MTV-51-10-00010-P

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

Proposed Action: Amendment of Part 160 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 215(a); and Public Officers Law, section 87(1)(b)

Subject: Fee for Driver's Manual.

Purpose: The Department proposes to charge certain entities $1 for the Driver's Manual.

Text of proposed rule: Paragraph (3) of subdivision (b) of section 160.1 is amended to read as follows:

(3) Manual means a type of record, which may be in any printed format, produced by the Department of Motor Vehicles specifically to provide instruction and/or reference material to a selected public and/or departmental employees[.]*; provided, however, a driver's manual shall mean the manual produced by the Department of Motor Vehicles specifically to provide instruction to an applicant for a learner's permit pursuant to subdivision 3 of section 502 of the Vehicle and Traffic Law.*

Subdivision (a) of section 160.8 is amended and a new subdivision (b) is added to read as follows:

160.8(a) As prescribed by section 202 of the Vehicle and Traffic Law, the fee for a single search shall be $10 and the fee for copies or records searched shall be one dollar per page (a page being one of two sides of material), except that the fee for a copy of an accident report shall be $15.00 plus the $10 search fee. Notwithstanding the foregoing, there shall be no fee for a search for a publication or a manual, and there shall be no fee for a copy of a publication except where a fee is provided by statute. A manual*, other than a driver's manual,* shall be provided free of charge upon the request of a selected public or an employee for whom the publication was produced, but a fee of seven cents per page (a page being one of two sides of material) shall be charged upon the request of any other person.

(b) Driver's Manual. The fee for a driver's manual shall be $1.00 for for any person or entity other than an applicant for a driver's license who obtains a manual at a Department of Motor Vehicles' office or a person or entity that is exempt from the payment of fees pursuant to subdivision one of section 202 of the Vehicle and Traffic Law.

Text of proposed rule and any required statements and analyses may be obtained from: Monica J. Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 486-3131, email: monica.staats@dmv.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 502(3) of the VTL requires the Commissioner of the Department of Motor Vehicles to provide an applicant for a learner's permit with a copy of the Department's driver's manual which contains the laws relating to traffic, explanations of traffic signs and symbols and other information as the Commissioner shall prescribe.

2. Legislative Objectives: Section 502(3) of the VTL directs the Department to provide a copy of the driver's manual to permit applicants so as to assist new drivers in learning about the rules of the road and other highway safety matters. This proposed regulation would comply with the above legislative requirement by continuing the provision of the manual to permit applicants for free. However, due to the high cost of producing and distributing the manuals, this proposal would allow DMV to recoup some of the costs of publication, shipment and storage by charging other persons or entities $1.00 per copy of the manual, which is a relatively small fee easily affordable by the vast majority of purchasers.

3. Needs and Benefits: The Department of Motor Vehicles is required by law to provide a driver's manual to all applicants for a learner's permit free of charge. Although under no statutory obligation to do so, the Department also issues such manuals to school districts, driving schools, libraries and American Automobile Association (AAA) offices for no fee, as a courtesy to these entities. The cost for printing the manuals in the current two year printing cycle is approximately $347,000.00. In addition, there are associated shipping and storage costs borne by the Department in order to provide the manuals to their intended recipients. Permitting the Department to charge the non-public entities a small fee for the manuals will help defray the Department's costs in producing, shipping and storing the manuals.

Further, as the entire manual is provided on DMV's public website, the Department will accrue the additional benefit of attracting more customers to the website, thereby furthering the aims of the Department's ''Greening DMV'' initiative, a program intended to reduce the consumption of paper by the Department and its customers.

The Department understands that charging a fee for the manual will impose an (albeit small) expense on hundreds of private entities that receive the manual. Therefore, the Department will only charge one dollar for each manual, which is a fair cost for helping to defray the Department's costs in providing the manual. In addition, in light of the fiscal plight facing many political subdivisions such as school districts, the Department will not charge such entities any fee for the manuals. This exemption is also consistent with the VTL section 202(10, which exempts public bodies from fees for documents to be used for a public purpose.

As the State faces serious financial constraints, steps both large and small are necessary to reduce spending. The proposed amendment represents one such step to reduce spending by defraying the costs of producing this statutorily mandated publication.

4. Costs:

a. To regulated parties: Non-public entities, such a driving schools and AAA offices which order the manuals from DMV for their customers shall pay a $1.00 fee for each manual. The cost for such entities will depend entirely upon on how many manuals they choose to provide to their customers. In addition, the driver's manual is available on the Department's website free of charge. Thus, such entities may download the manual at no cost to themselves.

b. To the State the agency and local governments: There are no costs to the State, DMV or to local governments, as the fee will be waived for school districts and other governmental entities which obtain the manuals from DMV. The savings to DMV as the result of this proposed regulation will depend upon how many manuals are purchased by the non-public entities receiving them. Currently, DMV distributes about 472,000 manuals a year to non-public entities. Even if such entities continue to receive half of that number of manuals, DMV would collect approximately $236,000 from such entities.

c. Source: DMV's Budget Office.

5. Local government mandates: There are no new mandates imposed upon local governments because the fee for the manual is waived for local governments.

6. Paperwork: This proposal imposes no new paperwork requirements upon regulated parties.

7. Duplication: This proposal does not duplicate any law, regulation or procedure.

8. Alternatives: There are no known alternatives for recouping some of the costs for providing these statutorily mandated publications, other than charging the nominal fee as proposed. A no action alternative was considered, but in light of the state's fiscal problems, charging a minimal fee for the manual outweighed the minor burden imposed upon the commercial/private entities that will pay for the manual.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance schedule: Upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: The Department of Motor Vehicles (DMV) provides multiple copies of the driver's manual to several hundred entities throughout the State, including bulk quantities to larger organizations, such as AAA. These manuals are then distributed by these entities to driver license applicants and are used for study in preparation for the written license test. The organizations that obtain the manuals from DMV shall be assessed a one dollar fee for each manual. About half of the 500 entities receiving multiple copies are non-public organizations, and many of these are small businesses, mostly driving schools and some livery companies. The other half of the entities receiving the manuals consists of school districts or arms of local government, which will not be assessed a fee.

2. Compliance requirements: Those non-public entities that wish to continue to provide the manuals to their customers may choose to pass the minimal fee on to their customers, or such entities may absorb the fee. In addition, the driver's manual is available on-line on the DMV website at no cost.

3. Professional services: This regulation would not require recipients of the manuals to obtain new professional services.

4. Compliance costs: The costs to recipients will depend on how many manuals they wish to receive from DMV. Again, no fee will be charged to local government entities or school districts.

5. Economic and technological feasibility: This proposal will not impose any new technological requirements on recipients.

6. Minimizing adverse impact: As explained in the Regulatory Impact Statement's ''Alternatives'' section, DMV did not consider any alternative methods of bringing about the desired change since this method clearly represents the best course of action in recouping some of the Department's costs in providing these manuals. In addition, the driver's manual is available on-line on the DMV website for no fee.

7. Small business and local government participation: Since this regulation does not negatively impact local governments and because the impact on small businesses is negligible, participation was not deemed necessary.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed rule because it will have no adverse or disproportionate impact on rural areas of the State.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse impact on job development in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Relicensing After Revocation Action

I.D. No. MTV-51-10-00023-P

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

Proposed Action: Amendment of Part 136 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 510(6)(a) and 1193(2)(c)

Subject: Relicensing after revocation action.

Purpose: Enhances the criteria for re-licensing after revocation.

Text of proposed rule: Subdivision (a) and paragraphs (1), (3) and (6) of subdivision (b) of section 136.1 are amended to read as follows:

(a) Intent. Section 510 of the Vehicle and Traffic Law provides that a license may be issued after revocation in the discretion of the commissioner. In exercising such discretion and in keeping with his responsibility to provide meaningful safeguards for the general public who are users of the highways, it is the purpose of the commissioner to utilize departmental driver improvement programs in order to rehabilitate problem drivers through the use of education and explanation. It is the further purpose of the commissioner to take disciplinary action in order to force a change in the attitude and driving habits of problem drivers, where *the Department's* review [of the applicant's total record] indicates that such action is necessary for the protection of the applicant and the public alike. This Part is intended to implement such purposes by establishing criteria to identify individual problem drivers, the application of which shall result in a presumption, in certain cases, that the involved driver would present a potential danger to himself or other users of the highway if allowed to be licensed or relicensed.

(1) Problem driver. A problem driver is an [operator or] applicant for a driver's license *or privilege* who [is presumed to be a present potential hazard to himself or others while operating a motor vehicle upon the highways, through past violation of the laws, rules and regulations governing the operation of a motor vehicle or through deliberate or inadvertent driver actions.] *has had a series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of the commissioner or his or her designated agent, upon review of the applicant's entire driving history, establishes that the person would be an unusual and immediate risk upon the highways. The commissioner or his or her*

designated agent shall set forth in writing the basis for the determination that an applicant is a problem driver.

(3) History of abuse of alcohol or drugs. A history of abuse of alcohol or drugs shall consist of a record of two or more incidents, within a 10 year period, of operating a motor vehicle while under the influence of alcoholic beverages and/or drugs *or of refusing to submit to a chemical test not arising out of the same incident, whether such incident was committed within or outside of this state*. [Such incident shall include a finding by a departmental hearing officer of refusal to submit to a chemical test.]

[(6) Total Record. The total record shall consist of any disability, any history of abuse of alcohol or drugs and all of those safety factors in a three-year period from the date of application to the date of the incident, as such terms are defined in this subdivision.]

Section 136.4 is amended by renumbering subdivisions (b) and (c), by amending subdivisions (a) and (d) and by adding a new subdivision (b) and to read as follows:

(a) An application for a driver's license shall be denied [after a review of the total record] if:

(1) A disability, as defined in section 136.1(b)(2) of this Part, is found, unless evidence shall be presented to satisfy the commissioner, that such individual may safely operate a motor vehicle; and/or

(2) There is a history of abuse of alcohol or drugs as defined in section 136.1(b)(3) of this part, with insufficient evidence of rehabilitative effort; and/or

(3) There is a combination of safety factors, as defined in Section 136.1(b)(6) of this part, resulting in 25 or more negative units, as set forth in section 136.6(a) of this Part.

(b) An application for a driver's license shall be denied if a review of the entire driving history provides evidence that the applicant constitutes a problem driver, as defined in section 136.1(b)(1) of this Part. If an application is denied pursuant to this paragraph, no application shall be considered for a minimum of one year from the date of denial.

[(b)] *(c)* In any situation in which the commissioner would propose to deny an application pursuant to the provisions of this section, the grounds for the proposed denial shall be sent to the applicant, who shall be provided with an opportunity to respond. The applicant's response shall be considered before a determination is made. Failure to respond within the period specified by the commissioner shall result in denial of the application.

[(c)] *(d)* While it is the Commissioner's general policy to deny an application based on those elements cited in (a) *and (b)* of this section, the commissioner shall not be foreclosed from consideration of unusual, extenuating or compelling circumstances which may be presented [to him] *for review*, which form a valid basis [for him] to deviate from [his] *the* general policy, as set forth above, in the exercise of the discretionary authority granted [to him] under section 510 of the Vehicle and Traffic Law. If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be stated in writing and recorded.

Subdivision (b) of section 136.5 is amended to read as follows:

(b) Notwithstanding any other provision of this Part, the Commissioner may deny an application where the revocation sought to be terminated was imposed as a result of a conviction for a *violation* of [homicide or criminally negligent homicide] *section 125.10, 125.12, 125.13, 125.14, 125.15, 125.20, 125.22, 125.25, 125.26 or 125.27 of the Penal Law* arising out of the operation of a motor vehicle, or a conviction for a violation of Section 1192 of the Vehicle and Traffic Law which resulted in a death or serious injury, as defined in Section 10.00 of the Penal Law. The ground for such denial shall be set forth in writing and a copy shall be made available to the applicant.

Paragraphs (a) and (d) of section 136.6 are amended to read as follows:

There shall be assigned to each safety factor a negative unit as follows:

Safety Factor	Assigned Negative Units	
	Over one year to three years of application	Within one year of application
(1) for each reportable accident of record with a finding by the referee of gross negligence in the operation of a motor vehicle in a manner showing a reckless disregard for the life and property of others.	-5	-8
(2) for each reportable accident of record with conviction involvement or with a finding by the referee of a violation of the Vehicle and Traffic Law	-3	-4
(3) for the first and second speeding conviction of record*	-3	-4
(4) for the third and subsequent speeding conviction*	-5	-8
(5) for reckless driving*, speed contest or passing a stopped school bus*	-5	-8
(6) for each conviction of record for leaving the scene of a personal injury accident of record	-8	-11
(7) for each alcohol related offense of record as follows:		
(i) conviction for violation of subdivision (1) of Section 1192 of the Vehicle and Traffic Law:		
first offense	-5	-8
second offense	-8	-11
third offense	-11	-14
(ii) conviction for violation of subdivision (2), (2-a), (3), (4), or (4-a) of section 1192 of the Vehicle and Traffic Law:		
first offense	-8	-11
second or subsequent offense	-11	-14
(iii) chemical test refusal	-6	-11
(8) for each conviction of homicide, criminally negligent homicide, or assault arising out of the operation of a motor vehicle	-11	-14
(9)(i) for each incident of driving during a period of alcohol-related license suspension or revocation	-10	-12
(ii) for each other incident of driving during a period of license suspension or revocation	-8	-10
(10) for each conviction or finding by the Commissioner's referee of a violation of section 392 of the Vehicle and Traffic Law	-3	-4
(11) for each other conviction of record for a moving violation	-2	-3

*For each speeding violation of 25 miles per hour or more over the posted speed limit, add one point.

(d) In any case where two or more safety factors which are not independent of each other arise out of a single incident, only one of these safety factors shall be taken into consideration [in a review of the total record]. The safety factor which shall be taken into consideration in these cases shall be the safety factor having the greater weight, except that where two safety factors are of equal weight, either one may be taken into consideration.

Examples:

(1) Where an accident and a conviction for reckless driving arise out of the same incident, only the reckless driving conviction, which is the safety factor having the greater weight, is considered [in a review of the total record], because these safety factors are not independent of each other.

(2) Where a [first] conviction of any subdivision of Section 1192 of the Vehicle and Traffic Law and a finding of a chemical test refusal arise out of the same incident, only one of these two safety factors having equal weight is considered [in a review of the total record], because these safety factors are not independent of each other.

(3) Where a person is convicted of reckless driving and the incident occurred during a period of license revocation, both of these safety factors shall be taken into consideration [in a review of the total record] because these safety factors are independent of each other.

Section 136.6 is amended by adding a new subdivision (e) to read as follows:

(e) Where a person is convicted of or adjudicated for an offense committed outside of this state, and where such offense has been made part of the person's New York State driving record, such offense shall carry the equivalent safety factor assigned under subdivision (a) of this section, as if the offense was committed in this state.

Text of proposed rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 486-3131, email: monica.staats@dmv.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 510(6)(a) of such law provides that where a license is mandatorily revoked, such license shall not be restored except in the discretion of the Commissioner. Section 1193(2)(c) of such law provides that when a license is revoked as the result of alcohol-related conviction, no new license shall be issued after the expiration of the minimum revocation period, except in the discretion of the Commissioner.

2. Legislative objectives: This proposal is consistent with the legislative objective of insuring that drivers whose licenses have been revoked are re-licensed only when they satisfy certain requirements established by the Commissioner. The criteria set forth in Part 136 are designed to permit re-licensure of motorists who no longer pose a danger on our highways. This proposal accords with these legislative objectives by strengthening the criteria used to evaluate whether a driver should be re-licensed.

3. Needs and benefits: The opening paragraph of Part 136 describes its purpose, in part, to: ''…identify individual problem drivers, the application of which shall result in a presumption, in certain cases, that the involved driver would present a potential danger to himself or other users of the highway if allowed to be licensed or relicensed.''

In accordance with this purpose, Part 136 provides that if an individual's license is revoked, he or she may be re-licensed only upon demonstrating that he or she does not pose a danger to the motoring public. This proposal is both necessary and beneficial because it strengthens the Department's criteria for evaluating whether a driver should be re-licensed. The proposed regulation would add four criteria to the evaluation process. First, the current regulation provides that an applicant shall not be re-licensed if such applicant has a history of abuse of alcohol or drugs with insufficient proof of rehabilitation. This refers to a person who has committed two or more alcohol/drug related incidents within the preceding 10 years. When evaluating such history, the Department currently only considers alcohol/drug related incidents that are committed within New York State. Since out of state offenses involving alcohol/drug abuse are equally serious, this proposal will permit the Department to consider such offenses in evaluating an applicant's history. Many serious out of state offenses are reported to the Department and are recorded on the driving record. Although these out of state offenses are often considered in calculating the appropriate license sanction for an alcohol/drug offender, they are not considered when evaluating an applicant's history of abuse. It only makes sense to use such information to fully evaluate an applicant's history of abuse.

This proposed rule would also use out of state offenses when calculating negative units in section 136.6. In this section, the Department assigns negative units to various safety factors, as defined in section 136.1(b)(5). If a person has 25 or more negative units, such person is deemed a highway safety risk and is denied re-licensure. Currently, out of state offenses are not included in the negative unit calculation, even though such offenses are reported to the Department by other states and recorded on the driving record. Under this proposal, the Department would only consider out of state offenses, for negative unit purposes, that are recorded on one's record, including alcohol and drug offenses, and in the cases of commercial driver license holders, chemical test refusals and other serious violations, such as excessive speed or reckless driving. Again, this will give the Department a much broader and accurate picture of an applicant's driving history.

This amendment would also expand the negative unit scheme to include speed contests and passing a school bus, due to the serious nature of these violations.

Finally, this proposed rule would address the matter of the problem driver, which as amended, refers to an applicant for a driver's license who ''has a series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of the commissioner or his or her designated agent, upon review of the applicant's entire driving history, establishes that the person would be an unusual and immediate risk upon the highways.'' Although the regulation currently defines a problem driver, the Department is not authorized to take action against such a driver. Under the proposed rule, an applicant who is otherwise qualified for re-licensure under Part 136 could be denied re-licensure if, for example, such applicant had been involved in a fatal accident and had several accidents and convictions on his or her record. The Department would only use this ''problem driver'' provision in exceptional cases where an applicant's cumulative driving record indicates a serious highway risk.

These proposals will benefit the motoring public because they will assist the Department in its ability to screen applicants for re-licensure. The Department will be able to more accurately determine whether an individual, based upon his or her entire record, including out of state convictions/findings, is qualified to hold a New York State license.

4. Costs: There are no costs to consumers, state agencies or to local governments. In order to implement these changes, the Department's Information Technology staff will make minimal changes to the negative unit system. The Department's Driver Improvement Bureau annually processes the approximately 35,000 applications for re-licensure. This proposal will add minimal changes to its workload, because the amendments are consistent with current procedures and protocols.

5. Local government mandates: This proposal does not impose any mandates upon local governments.

6. Paperwork: This proposal does not impose any additional paperwork or recordkeeping requirements upon the Department.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department examined several ways to strengthen the re-licensing criteria set forth in Part 136. For example, we considered significantly expanding the negative unit configuration, but this proposal was deemed too costly, complicated and difficult to implement. We also considered constituting an internal Department panel that would review the applications of certain problem drivers. Again, this proved too time-consuming, burdensome and complicated. Instead, we developed a concise definition of problem driver that would enable designated staff to flag potentially problem drivers whose entire record would be evaluated to assess the applicant's risk to highway safety. The Department determined that this process was necessary to give our reviewers discretion to reject an application that might otherwise be approved under Part 136 criteria, but when reviewed in its entirety indicates that an applicant poses a threat to public safety.

A no action alternative was considered but not adopted, because the Department believes that steps must be taken to strengthen the criteria used to evaluate drivers applying for re-licensure.

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

10. Compliance schedule: Compliance shall commence immediately upon adoption of this regulation and shall apply to applications received on or after its effective date.

Regulatory Flexibility Analysis

A RFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal, because it will have no adverse impact on existing jobs or job development in the State.

Office for People with Developmental Disabilites

NOTICE OF ADOPTION

Amendments to the Supervised Residential Habilitation Efficiency Adjustment for IRAs and CRs

I.D. No. PDD-41-10-00025-A
Filing No. 1252
Filing Date: 2010-12-07
Effective Date: 2010-12-22

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

Action taken: Amendment of sections 635-10.5 and 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Amendments to the supervised residential habilitation efficiency adjustment for IRAs and CRs.

Purpose: To allow OPWDD to waive all or a portion of two components of reductions in reimbursement in specific circumstances.

Text of final rule: Subparagraph 635-10.5(b)(18)(ii) is amended by the addition of a new clause (d) as follows:

(d) The commissioner at his or her discretion may waive all or a portion of the NPS reduction as described in subclause (a)(1) of this subparagraph and/or the Administrative reduction as described in subclause (a)(2) of this subparagraph for a provider upon the provider demonstrating that the imposition of the reduction(s) would jeopardize the continued operation of the IRA(s) and/or Community Residence(s).

Paragraph 671.7(a)(11) is amended by the addition of a new subparagraph (iv) as follows:

(iv) The commissioner at his or her discretion may waive all or a portion of the NPS reduction as described in clause (i)(a) of this subparagraph and/or the Administrative reduction as described in clause (i)(b) of this subparagraph for a provider upon the provider demonstrating that the imposition the reduction(s) would jeopardize the continued operation of the IRA(s) and/or Community Residence(s).

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 635-10.5 and 671.7.

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

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

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

The text of the regulations was amended to correct a minor typographical error. This change does not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

OPWDD received one comment on the proposed regulations from the Executive Director of a provider which primarily serves individuals with cerebral palsy and related disabilities. A high proportion of these individuals are non-ambulatory.

COMMENT: The Executive Director asserted that the reductions imposed by the supervised residential habilitation efficiency adjustment disproportionately affect providers which focus on providing services to individuals with physical disabilities. He stated that because of the disproportionate impact, the implementation of the efficiency adjustment will force the provider to cut services. He advocates a different standard for qualifying for the waiver of the reduction(s). He proposes that the regulation be changed so that providers which can demonstrate a need acceptable to OPWDD can qualify for a waiver. The emergency/proposed regulations limited the ability to access a waiver to providers that demonstrate that the imposition of the reduction(s) would jeopardize the continued operation of the IRA(s) and/or Community Residence(s).

RESPONSE: OPWDD disagrees. It is OPWDD's opinion that the proposed regulation affords the necessary protections to providers of service and therefore, to the individuals that they support. Also, the regulation has to contain a standard for OPWDD's decision-making, so that OPWDD does not have unfettered discretion in deciding whether to grant a waiver. "Showing a need acceptable to OPWDD" would still leave OPWDD with total discretion on how to decide requests for waivers. The regulation is unchanged.

Public Service Commission

NOTICE OF ADOPTION

Approving Central Hudson Gas and Electric Corporation's Petition for Rehearing, Subject to Conditions

I.D. No. PSC-32-10-00011-A
Filing Date: 2010-12-03
Effective Date: 2010-12-03

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

Action taken: On 11/18/10, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's petition for rehearing, subject to conditions.

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

Subject: Approving Central Hudson Gas and Electric Corporation's petition for rehearing, subject to conditions.

Purpose: To approve Central Hudson Gas and Electric Corporation's petition for rehearing, subject to conditions.

Substance of final rule: The Commission, on November 18, 2010, adopted an order authorizing Niagara Mohawk Power Corporation d/b/a National Grid and Central Hudson Gas and Electric Corporation to implement the Energy Efficiency Portfolio Standard (EEPS) programs to be administered by OPower, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA26)

NOTICE OF ADOPTION

Authorizing NYSERDA to Conduct Future Main Tier Solicitations for RPS Main Tier Resources

I.D. No. PSC-35-10-00021-A
Filing Date: 2010-12-03
Effective Date: 2010-12-03

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

Action taken: On 11/18/10, the PSC adopted an order, authorizing the New York State Energy Research and Development Authority (NYSERDA) to conduct future Main Tier solicitations for Renewable Portfolio Standard (RPS) Main Tier resources.

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

Subject: Authorizing NYSERDA to conduct future Main Tier solicitations for RPS Main Tier resources.

Purpose: To authorize NYSERDA to conduct future Main Tier solicitations for RPS Main Tier resources.

Substance of final rule: The Commission, on November 18, 2010, adopted an order, authorizing the New York State Energy Research and

Development Authority (NYSERDA) to conduct future Main Tier solicitations for Renewable Portfolio Standard (RPS) Main Tier resources, after consultation with Staff of the Department of Public Service prior to each solicitation, without further authorization for solicitations by the Commission. Such authorization shall allow NYSERDA to conduct as many solicitations per year as NYSERDA deems necessary to implement the RPS Program, provided that at a minimum one solicitation per year shall be conducted, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(03-E-0188SA25)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorization to Transfer an Easement and Utility Infrastructure

I.D. No. PSC-51-10-00015-P

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

Proposed Action: The Public Service Commission is considering the authorization to transfer an easement from Consolidated Edison to Central Hudson and for Central Hudson to transfer utility infrastructure being built at the Con Edison East FishKill substation.

Statutory authority: Public Service Law, sections 2, 68, 69 and 70

Subject: Authorization to transfer an easement and utility infrastructure.

Purpose: To decide whether to approve the transfer of an easement and utility infrastructure.

Substance of proposed rule: By joint petition dated November 4, 2010, Consolidated Edison Company of New York, Inc. (Con Edison) and Central Hudson Gas and Electric Corporation (Central Hudson) seek for Con Edison to grant an easement to Central Hudson of property located at Con Edison's East Fishkill Substation and for Central Hudson to transfer to Con Edison utility infrastructure being built at the Substation. The Commission is considering whether to approve, reject or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0553SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Energy Efficiency Programs Administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp

I.D. No. PSC-51-10-00016-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 November 19, 2010 petition for continued recovery of energy efficiency program portfolio costs filed by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp. in Case 07-M-0548.

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

Subject: Energy efficiency programs administered by New York State Electric & Gas Corp. and Rochester Gas and Electric Corp.

Purpose: To clarify cost recovery requirements for energy efficiency programs.

Substance of proposed rule: The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's petition submitted on November 19, 2010 seeking confirmation that the utilities are appropriately recovering certain energy efficiency program portfolio costs associated with programs the utilities are administering as part of the Energy Efficiency Portfolio Standard (EEPS) proceeding in Cases 07-M-0548 et al. The utilities submitted the petition in response to the Commission's June 24, 2010 order in the EEPS proceeding. The Commission may make a determination about EEPS program cost recovery for these utilities and/or for other New York 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.

(07-M-0548SP29)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pipeline Upgrade and Interconnection Project

I.D. No. PSC-51-10-00017-P

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

Proposed Action: The Commission is considering a request from Corning Natural Gas Corporation to adopt an alternative approach to upgrading a particular pipeline (line 15) and interconnection project.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Pipeline upgrade and interconnection project.

Purpose: To modify the existing schedule for a pipeline upgrade and interconnection project.

Substance of proposed rule: The Commission is considering a request from Corning Natural Gas Corporation to adopt an alternative approach to upgrading a particular pipeline (line 15) and interconnection project. The Commission may adopt, reject, or modify, in whole or in part, the request.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-1137SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Commission Proceeding Concerning Three-Phase Electric Service by All Major Electric Utilities

I.D. No. PSC-51-10-00018-P

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

Proposed Action: The Commission is initiating a proceeding to investigate the consistency of providing three-phase service by all New York State major electric utilities.

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

Subject: Commission proceeding concerning three-phase electric service by all major electric utilities.

Purpose: Investigate the consistency of the tariff provisions for three-phase electric service for all major electric utilities.

Substance of proposed rule: The Public Service Commission (Commission) is initiating a proceeding to investigate the consistency of three-phase tariff provisions for all major electric utilities. The Commission, in its Order issued November 19, 2010 in Cases 10-E-0129 and 10-E-0592, approved a petition of Central Hudson Gas and Electric Corporation (Central Hudson) proposing to charge customers that Central Hudson determines require three-phase service an additional fee equal to the Central Hudson's incremental costs to provide three-phase service, and initiated a proceeding to maintain uniformity concerning the provision of three-phase service by the major electric utilities in New York State. The Commission directed the major electric utilities to submit proposals in compliance with what was approved for Central Hudson or explain why they should not so comply or propose an alternative modification. The Commission may grant, deny or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

Data, views or arguments may be submitted to: Jaclyn A. 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-0592SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Meter Reading – No Access Charge

I.D. No. PSC-51-10-00019-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Orange and Rockland Utilities, Inc. to make various changes in its rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 2.

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

Subject: Meter reading – No Access Charge.

Purpose: To specify the amount of its no access charge for non-residential meter reading.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to revise its electric tariff schedule to specify the amount of its no access charge for non-residential meter reading. The proposed filing has an effective date of March 1, 2011.

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-0605SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-51-10-00020-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 by FTC Residential Companies I, LP and II, LP to submeter electricity at 40-22 College Point Blvd., Flushing, NY.

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 FTC Residential Companies I and II, LP to submeter electricity at 40-22 College Point Blvd., Flushing, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by FTC Residential Company I, LP and FTC Residential Company II, LP to submeter electricity at 40-22 College Point Boulevard, Flushing, 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-0606SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Modify Billing Categories and the Application of Partial Payments

I.D. No. PSC-51-10-00021-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 a November 1, 2010 petition of Verizon New York, Inc. pertaining to billing categories and partial payments.

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

Subject: To modify billing categories and the application of partial payments.

Purpose: Consideration of petition of Verizon New York, Inc. to modify billing categories and the application of partial payments.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a November 1, 2010 petition of Verizon New York, Inc. (Verizon) to waive certain requirements (in particular Title 16 NYCRR §§ 606.4 and 606.5 as modified by July 1, 1992 Settlement Agreement, as amended, pertaining to Billing Categories and Partial Payments) to reduce the number of payment allocation categories from four to two. Also, Verizon requests a waiver to allow it to apply partial payments to all past due charges before applying any payments to current charges. The Commission may apply its decision to Verizon or other jurisdictional companies.

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-C-0609SP1)

Department of State

AMENDED NOTICE OF ADOPTION

Efficient Utilization of Energy Expended in the Construction, Use and Occupancy of Buildings

I.D. No. DOS-02-10-00011-AA

Filing No. 1236

Filing Date: 2010-12-03

Effective Date: 2010-12-28

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

Action taken: Amendment of section 1240.1 of Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on September 14, 2010, to be effective December 28, 2010, File No. 950. The notice of adoption, I.D. No. DOS-02-10-00011-A, was published in the September 29, 2010 issue of the *State Register*.

Statutory authority: Energy Law, section 11-103(2)

Subject: Efficient utilization of energy expended in the construction, use and occupancy of buildings.

Purpose: To amend the State Energy Conservation Construction Code to assure that it effectuates the purposes of Energy Law Article 11.

Text of amended rule: Subdivision (a) of section 1240.1 of Title 19 NYCRR is amended to read as follows:

(a) [2007] *2010* ECCCNYS. Requirements for the design of building envelopes for adequate thermal resistance and low air leakage and for the design and selection of mechanical, electrical, service water-heating and illumination systems and equipment which enables effective use of energy in new building construction are set forth in a publication entitled Energy Conservation Construction Code of New York State, publication date: August [2007] *2010*, published by the International Code Council, Inc. [Copies of said] *Said* publication (hereinafter referred to as the [2007] *2010* ECCCNYS) *is incorporated herein by reference. Copies of the 2010 ECCNYS* may be obtained from the publisher at the following address:

International Code Council, Inc.
500 New Jersey Avenue, NW, 6th Floor
Washington, D.C. 20001

Said publication is available for public inspection and copying at:

New York State, Department of State
[Codes Division]
99 Washington Avenue
Albany, NY 12231-0001

Subdivision (b) of section 1240.1 of Title 19 NYCRR is amended to read as follows:

(b) Referenced standards. Certain published standards are denoted in the [2007] *2010* ECCCNYS as incorporated by reference into [this Part. Except as otherwise provided in subdivision (c) of this section, such] *19 NYCRR Part 1240. Such* standards are incorporated by reference into this Part *1240*. Such standards are identified in the [2007] *2010* ECCCNYS, and the names and addresses of the publishers of such standards from which copies of such standards may be obtained are specified in the [2007] *2010* ECCCNYS. Such standards are available for public inspection and copying at the office of the New York State Department of State specified in subdivision (a) of this section.

Subdivision (c) of section 1240.1 of Title 19 NYCRR is repealed.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in section 1240.1(a), (b) and (c).

Text of amended rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Revised Regulatory Impact Statement

This rule amends a previously adopted rule that amended the State Energy Conservation Construction Code (the ''Energy Code'') by amending subdivision (a) of section 1240.1 and paragraph (1) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and repealing paragraph (2) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Notice of Adoption of the previously adopted rule was published in the State Register on September 29, 2010. The effective date of the previously adopted rule is December 28, 2010.

The previously adopted rule made non-substantive changes to the rule text as originally proposed. The non-substantive changes made to the rule text between the publication of the Notice of Proposed Rule Making and the filing of the Notice of Adoption of the previously adopted rule are described in the ''Statement Explaining Why Revised Regulatory Impact Statement is not Required'' attached to and published with that Notice of Adoption.

This rule makes the following non-substantive changes to the previously adopted rule: The previously adopted rule amended subdivision (a) of section 1240.1, amended paragraph (1) of subdivision (b) of section 1240.1, and repealed paragraph (2) of subdivision (b) of section 1240.1. However, subdivision (b) of section 1240.1 was amended in a prior rule making (the ''2008 rule making''). Subdivision (b) of section 1240.1, as amended by the 2008 rule making, was rewritten as subdivision (b), with no separate paragraphs, and as a new subdivision (c). The provisions intended to be amended by the rule adopted in September 2010 were subdivision (a), which was correctly identified in the rule adopted in September 2010, and subdivision (b), which was incorrectly identified as ''paragraph (1) of subdivision (b)'' in the rule adopted in September 2010. The provision intended to be repealed by the rule adopted in September 2010 was subdivision (c) of section 1240.1, which was incorrectly identified as ''paragraph (2) of subdivision (b)'' in the rule adopted in September 2010. This rule amends the rule that was adopted in September 2010 by correctly identifying subdivision (b) as one of the provisions being amended, and by correctly identifying subdivision (c) as the provision to be repealed.

None of the changes affects the issues addressed in the Regulatory Impact Statement and, therefore, a Revised Regulatory Impact Statement is not required.

Revised Regulatory Flexibility Analysis

This rule amends a previously adopted rule that amended the State Energy Conservation Construction Code (the ''Energy Code'') by amending subdivision (a) of section 1240.1 and paragraph (1) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and repealing paragraph (2) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Notice of Adoption of the previously adopted rule was published in the State Register on September 29, 2010. The effective date of the previously adopted rule is December 28, 2010.

The previously adopted rule made non-substantive changes to the rule text as originally proposed. The non-substantive changes made to the rule text between the publication of the Notice of Proposed Rule Making and

the filing of the Notice of Adoption of the previously adopted rule are described in the ''Statement Explaining Why Revised Regulatory Impact Statement is not Required'' attached to and published with that Notice of Adoption.

This rule makes the following non-substantive changes to the previously adopted rule: The previously adopted rule amended subdivision (a) of section 1240.1, amended paragraph (1) of subdivision (b) of section 1240.1, and repealed paragraph (2) of subdivision (b) of section 1240.1. However, subdivision (b) of section 1240.1 was amended in a prior rule making (the ''2008 rule making''). Subdivision (b) of section 1240.1, as amended by the 2008 rule making, was rewritten as subdivision (b), with no separate paragraphs, and as a new subdivision (c). The provisions intended to be amended by the rule adopted in September 2010 were subdivision (a), which was correctly identified in the rule adopted in September 2010, and subdivision (b), which was incorrectly identified as ''paragraph (1) of subdivision (b)'' in the rule adopted in September 2010. The provision intended to be repealed by the rule adopted in September 2010 was subdivision (c) of section 1240.1, which was incorrectly identified as ''paragraph (2) of subdivision (b)'' in the rule adopted in September 2010. This rule amends the rule that was adopted in September 2010 by correctly identifying subdivision (b) as one of the provisions being amended, and by correctly identifying subdivision (c) as the provision to be repealed.

None of the changes affects the issues addressed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments and, therefore, a Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Revised Rural Area Flexibility Analysis

This rule amends a previously adopted rule that amended the State Energy Conservation Construction Code (the ''Energy Code'') by amending subdivision (a) of section 1240.1 and paragraph (1) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and repealing paragraph (2) of subdivision (b) of section 1240.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Notice of Adoption of the previously adopted rule was published in the State Register on September 29, 2010. The effective date of the previously adopted rule is December 28, 2010.

The previously adopted rule made non-substantive changes to the rule text as originally proposed. The non-substantive changes made to the rule text between the publication of the Notice of Proposed Rule Making and the filing of the Notice of Adoption of the previously adopted rule are described in the ''Statement Explaining Why Revised Regulatory Impact Statement is not Required'' attached to and published with that Notice of Adoption.

This rule makes the following non-substantive changes to the previously adopted rule: The previously adopted rule amended subdivision (a) of section 1240.1, amended paragraph (1) of subdivision (b) of section 1240.1, and repealed paragraph (2) of subdivision (b) of section 1240.1. However, subdivision (b) of section 1240.1 was amended in a prior rule making (the ''2008 rule making''). Subdivision (b) of section 1240.1, as amended by the 2008 rule making, was rewritten as subdivision (b), with no separate paragraphs, and as a new subdivision (c). The provisions intended to be amended by the rule adopted in September 2010 were subdivision (a), which was correctly identified in the rule adopted in September 2010, and subdivision (b), which was incorrectly identified as ''paragraph (1) of subdivision (b)'' in the rule adopted in September 2010. The provision intended to be repealed by the rule adopted in September 2010 was subdivision (c) of section 1240.1, which was incorrectly identified as ''paragraph (2) of subdivision (b)'' in the rule adopted in September 2010. This rule amends the rule that was adopted in September 2010 by correctly identifying subdivision (b) as one of the provisions being amended, and by correctly identifying subdivision (c) as the provision to be repealed.

None of the changes affects the issues addressed in the Rural Area Flexibility Analysis and, therefore, a Revised Rural Area Flexibility Analysis is not required.

Revised Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the previously adopted rule (as amended by this Amended Notice of Adoption) that the previously adopted rule (as amended by this Amended Notice of Adoption) will not have a substantial adverse impact on jobs and employment opportunities.

The previously adopted rule (as amended by this Amended Notice of Adoption) amends the State Energy Conservation Construction Code (the ''State Energy Code'') to make the State Energy Code (1) a building energy code that is based on the 2009 edition of the International Energy Conservation Code (the ''2009 IECC''), a model code developed and published by the International Code Council (''ICC''), and (2) a building energy code that equals or exceeds the 2009 IECC for residential buildings and a building energy code that equals or exceeds the 2007 edition of ASHRAE-90.1 (the ''2007 ASHRAE 90.1''), a standard published by the American Society Of Heating and Refrigeration and Air Conditioning Engineers, for commercial buildings. Both the 2009 IECC and the 2007 ASHRAE 90.1 incorporate more current technology in the area of energy conservation. In addition, as a performance-based, rather than a prescriptive, code, the 2009 IECC provides for alternative methods of achieving code compliance, thereby allowing regulated parties to choose the most cost effective method. As a consequence, the Department of State and the State Fire Prevention and Building Code Council conclude that regulations based upon the 2009 IECC will provide a greater incentive for the construction of new buildings and the rehabilitation of existing buildings than exists with the current State Energy Code. Therefore, this amendment will not have a substantial adverse impact on jobs and employment opportunities within New York. In fact, the proposed amendment may result in an increase in employment opportunities for those involved in testing and inspecting buildings for compliance with the building air sealing requirements of the amended State Energy Code.

AMENDED NOTICE OF ADOPTION

Standards for the Construction and Maintenance of Buildings and Structures and for Protection from the Hazards of Fire (New York State Uniform Fire Prevention and Building Code)

I.D. No. DOS-02-10-00012-AA

Filing No. 1237

Filing Date: 2010-12-03

Effective Date: 2010-12-28

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

Action taken: Repeal of Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227 and 1228; and addition of new Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227 and 1228 to Title 19 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on September 14, 2010, to be effective December 28, 2010, File No. 949. The notice of adoption, I.D. No. DOS-02-10-00012-A, was published in the September 29, 2010 issue of the *State Register*.

Statutory authority: Executive Law, sections 377 and 378

Subject: Standards for the construction and maintenance of buildings and structures and for protection from the hazards of fire (the New York State Uniform Fire Prevention and Building Code).

Purpose: To amend the New York State Uniform Fire Prevention and Building Code to assure that it effectuates the purposes of Article 18 of the Executive Law and the specific objectives and standards set forth in such Article.

Substance of amended rule: Section 377 of the Executive Law directs the State Fire Prevention and Building Code Council (the ''Code Council'') to review the entire New York State Uniform Fire Prevention and Building Code (the ''Uniform Code'') from time to time to assure that it effectuates the purposes of the Law, and authorizes the Code Council to amend the Uniform Code from time to time to achieve that end. This rule repeals the existing version of the Uniform Code (which is now found in 19 NYCRR Parts 1220 to 1228, inclusive, and in the publications incorporated by reference in Parts 1220 to 1227, inclusive) and replaces it with a new version of the Uniform Code, contained in new 19 NYCRR Parts 1220 to 1228, inclusive, and the new publications incorporated by reference in new Parts 1220 to 1227, inclusive.

The new version of the Uniform Code includes eight components: the Residential Code, the Building Code, the Fire Code, the Plumbing Code, the Mechanical Code, the Fuel Gas Code, the Property Maintenance Code, and the Existing Building Code.

The Residential Code addresses one-and two-family dwellings and townhouses not more than three stories in height with a separate means of egress and their accessory structures.

The Building Code establishes life safety construction requirements for assembly, business, educational, factory industrial, high hazard, institutional, mercantile, multi-family residential, storage and utility and miscellaneous buildings.

The Fire Code provides requirements for life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings.

The Plumbing Code, Mechanical Code and Fuel Gas Code addresses the erection, installation, alteration, repairs, relocation, replacement, addi-

tion to, use or maintenance of plumbing systems, mechanical systems and fuel gas systems.

The Property Maintenance Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the occupancy and maintenance of structures and premises.

The Existing Building Code provides minimum requirements to safeguard public safety, health and general welfare insofar as they are affected by the repair, alteration, change of occupancy, addition and relocations of existing buildings.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in sections 1220.1, 1221.1, 1222.1, 1223.1, 1224.1, 1225.1, 1226.1 and 1227.1.

Text of amended rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Additional matter required by statute: At its meeting held at Albany, New York on December 1, 2010, the Code Council found and determined that making this rule amending the previously adopted rule effective on December 28, 2010 (the date on which the previously adopted rule would have become effective) is necessary to protect health, safety and security.

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

This rule amends a previously adopted rule that amended the State Uniform Fire Prevention and Building Code (the ''Uniform Code'') by repealing Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, and 1228 and adding new Parts 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227 and 1228 to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Notice of Adoption of the previously adopted rule was published in the State Register on September 29, 2010. The effective date of the previously adopted rule is December 28, 2010.

The previously adopted rule incorporates by reference a number of publications, including the 2010 editions of the following publications (collectively, the ''Code Books''): the Residential Code of New York State (the ''2010 RCNYS''), the Building Code of New York State (the ''2010 BCNYS''), the Plumbing Code of New York State (the ''2010 PCNYS''), the Mechanical Code of New York State (the ''2007 MCNYS''), the Fire Code of New York State (the ''2007 FCNYS''), the Property Maintenance Code of New York State (the ''2010 PMCNYS''), and the Existing Building Code of New York State (the ''2010 EBCNYS'').

The previously adopted rule made non-substantive changes to the rule text as originally proposed, including non-substantive changes to the Code Books. The non-substantive changes made to the rule text between the publication of the Notice of Proposed Rule Making and the filing of the Notice of Adoption of the previously adopted rule are described in the ''Statement Explaining Why Revised Regulatory Impact Statement is not Required'' attached to and published with that Notice of Adoption.

This rule makes non-substantive changes to the previously adopted rule, including certain additional non-substantive changes to the Code Books. The non-substantive changes made to the rule text since publication of the Notice of Adoption of the previously adopted rule include the following:

(1) 19 NYCRR sections 1220.1(c)(2), (3) and (4) were renumbered as sections 1220.1(c)(3), (4) and (5), and a new section 1220.1(c)(2) was added. New section 1220.1(c)(2) amends and restates 2010 RCNYS section 313.4, relating to the installation, operation and maintenance of carbon monoxide alarms, to clarify its meaning.

(2) Former 19 NYCRR section 1220.1(c)(4), renumbered as section 1220.1(c)(5), was amended to add the word ''Section'' to Section J102 in Appendix J of the 2010 RCNYS.

(3) New 19 NYCRR section 1220.1(c)(6) was added to add Section RAJ704.4 to Appendix J of the 2010 RCNYS. Section RAJ704.4 relates to bed and breakfast dwellings, and is substantially similar to a provision contained in the currently effective edition of the RCNYS. Section RAJ704.4 was inadvertently omitted from the draft of the 2010 RCNYS that existed when the Notice of Proposed Rule Making was published.

(4) New 19 NYCRR section 1220.1(c)(7) was added to correct certain cross-references in Sections AJ401.3, AJ501.3, AJ601.5, AJ803.2, AJ901.3 and AJ1001.4 in Appendix J of the 2010 RCNYS.

(5) New 19 NYCRR section 1221.1(c) was added to correct a typographical error in Table 508.2 of the 2010 BCNYS and to add the text of footnote ''e'' to Table 508.3.3 of the 2010 BCNYS.

(6) 19 NYCRR section 1225.1(c) was amended to correct a misnumbering of the paragraphs in that subdivision; to combine paragraphs (1) and (2) into a single paragraph (1) that makes further clarifications to Section 610 of the 2010 FCNYS; to add a new paragraph (2) that corrects typographical errors in Section 1028.8.2 of the 2010 FCNYS; and to add a new paragraph (3) that corrects typographical errors in Section 1029.7 of the 2010 FCNYS.

None of the non-substantive changes made to the previously adopted rule by this rule affects the issues addressed in the Regulatory Impact Statement. Therefore, a revised Regulatory Impact Statement is not required.

Revised Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the previously adopted rule, as amended by this Amended Notice of Adoption, that it will not have a substantial adverse impact on jobs and employment opportunities.

The previously adopted rule, as amended by this Amended Notice of Adoption, repeals the current version of the State Uniform Fire Prevention and Building Code (the "Uniform Code"), and add a new version of the Uniform Code. The current version of the Uniform Code, which is found in 19 NYCRR Parts 1220 to 1228, inclusive, and the publications incorporated by reference in 19 NYCRR Parts 1220 to 1227, inclusive, went into effect January 1, 2008 and is based on the 2003 editions of the International Residential Code, International Building Code, International Plumbing Code, International Mechanical Code, International Fuel Gas Code, International Fire Code, International Property Maintenance Code, and International Existing Building Code, as developed by the International Code Council (ICC). The new version of the Uniform Code will be based on the 2006 editions of corresponding international codes as developed by the ICC.

The International Codes incorporate the most current technology in the areas of building construction and fire prevention. To maintain this currency, the International Codes are updated every three years. As a consequence, the Department of State concludes that this update, which is based upon the newer (2006) versions of the International Codes, will provide a greater incentive to construction of new buildings and rehabilitation of existing buildings than exists with the current Uniform Code. Therefore, the rule, as amended by this Amended Notice of Adoption, will not have a substantial adverse impact on jobs and employment opportunities within New York.

State University of New York

NOTICE OF ADOPTION

Amendments to the Traffic Regulations of the University at Albany, State University of New York

I.D. No. SUN-41-10-00002-A

Filing No. 1251

Filing Date: 2010-12-07

Effective Date: 2011-01-01

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

Action taken: Amendment of section 561.2 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Amendments to the traffic regulations of the University at Albany, State University of New York.

Purpose: To update traffic regulations due to construction and planned construction of new buildings and green spaces.

Text or summary was published in the October 13, 2010 issue of the Register, I.D. No. SUN-41-10-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Janet M. Thayer, Associate Counsel, University at Albany, 1400 Washington Avenue, UNH 104, Albany, NY 12222, (518) 956-8050, email: jthayer@uamail.albany.edu

Assessment of Public Comment

The agency received no public comment.