

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.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Separate Units for Suspension, Demotion or Displacement (Layoff Units)

I.D. No. CVS-28-10-00004-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 72.1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 80(5) and 80-a(4)

Subject: Separate units for suspension, demotion or displacement (layoff units).

Purpose: To designate the Authorities Budget Office (ABO) as a separate layoff unit within the Department of State.

Text of proposed rule: RESOLVED, That within Section 72.1 of Chapter V of the Regulations of the Department of Civil Service (President's Regulations), an unnumbered paragraph is hereby added to read as follows:

*In the Department of State
Authorities Budget Office*

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, 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, 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.

Consensus Rule Making Determination

The Public Authorities Reform Act (Chapter 506 of the Laws of 2009) established the Authorities Budget Office (ABO) as autonomous entity within the Department of State (DOS).

Sections 80(5) and 80-a(4) of the Civil Service Law authorize the President of the State Civil Service Commission, as head of the Department of Civil Service, to designate separate units for suspension, demotion or displacement (layoff units). In the absence of this amendment, the ABO will remain part of the DOS layoff unit for purposes of reductions in force under the State Civil Service Law. Designating the ABO as a separate layoff unit within DOS or ABO minimizes the impact of potential layoffs at either DOS or ABO and improves re-employment opportunities for DOS and ABO employees. This proposal was initiated by the ABO and DOS administrations and was reviewed and authorized by the Department of Civil Service Staffing Services Division. The Governor's Office of Employee Relations (GOER) does not oppose this proposal.

As no person or entity is likely to object to the rule as written, the proposal is being advanced as a consensus rule.

Job Impact Statement

By modifying Title 4 of the NYCRR to establish the Authorities Budget Office (ABO) as a separate unit for suspension, demotion or displacement (layoff unit) within the Department of State (DOS), this rule will positively impact jobs or employment opportunities for subject employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notification to Designated Offenders

I.D. No. CJS-28-10-00005-P

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

Proposed Action: Addition of section 6191.3(f) and (g) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 995-c(4)

Subject: Notification to designated offenders.

Purpose: To address the procedures for notifying designated offenders who are not subject to incarceration or probation supervision.

Text of proposed rule: 1. Two new subdivisions (f) and (g) are added to section 6191.3 of Title 9 NYCRR to read as follows:

(f) *Any designated offender who is not subject to incarceration or probation supervision as a result of a conviction for a designated offense, as well as any other designated offender who currently owes a sample but is not under sentence, may be notified by any court official, police officer, peace officer, or other public servant that he or she is required to provide a DNA sample to determine identification characteristics specific to such person and for inclusion in the State DNA identification index.*

(g) *The notification to a designated offender provided for in this section that such designated offender is required to provide a DNA sample may be communicated to such designated offender verbally and need not be in writing.*

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413, email: natasha.harvin@dcjs.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: Executive Law sections 837(13) and 995-c(4).

2. Legislative objectives: The State DNA Databank is established pursuant to Executive Law § 995-c. Subdivision (4) of § 995-c requires the commissioner of the Division of Criminal Justice Services, in consultation with the Commission on Forensic Science, the Commissioner of Health, the Division of Parole, the Division of Probation and Correctional Alternatives, and the Department of Correctional Services, to promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section. Part 6191 of Title 9 NYCRR was promulgated to meet this requirement. The proposed rule amends section 6191.3 to address the procedures for notifying offenders who are not subject to incarceration or probation supervision, or who currently owe a sample but are not under sentence.

3. Needs and benefits: Part 6191 was first promulgated in 1996 and amended in 2000. It addresses notification of designated offenders who are under probation or parole supervision or who are committed to a local correctional facility, the Department of Correctional Services, or the Office of Children and Family Services of their obligation to provide a DNA sample. When the databank first became operational, designated offenders were limited to serious and violent felonies for which incarceration or probation supervision were the only options. Over the years, however, the Databank has been expanded to include more offenders. As a result, many designated offenders are now convicted of relatively low level misdemeanor offenses-- such as petit larceny, for example-- for which neither a sentence of incarceration nor probation supervision is required. These offenders may instead be sentenced to a fine or conditional discharge and have no further contact with probation or correctional officials. Thus, the individuals and entities typically responsible for notifying offenders of their duty to provide a sample, such as local probation officers and local correctional facilities, have no interaction with these offenders, and therefore, they will not inform them of their statutory duty to provide a sample. The proposed rule would amend section 6191.3 to provide that offenders who are statutorily required to provide a sample, but from whom a sample has not been taken, can be notified by any court official, police officer, peace officer, or other public servant of their obligation to provide a DNA sample. Such notification is important because at least one court has ruled that a designated offender who has been given notice pursuant to Part 6191 of his or her obligation to provide a DNA sample and refuses to do so may face prosecution for obstructing governmental administration in the second degree (see *People v. Chalmers*, 21 Misc.3d 953 [Albany City Court 2008]). Some district attorneys have expressed reluctance to charge an offender who was not subject to incarceration or probation supervision, and who therefore was not provided notification pursuant to Part 6191, with obstructing governmental administration.

4. Costs:

a) Costs to regulated parties for the implementation of 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: None.

c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the fact the proposal does not impose mandates or other requirements on any party. It merely provides authorization for any court official, police officer, peace officer, or other public servant

to notify a designated offender of his or her obligation to provide a DNA sample.

5. Local government mandates: There are no new mandates imposed by the rule upon any local government.

6. Paperwork: There is no new paperwork required by the proposal.

7. Duplication: No other legal requirements of the state and federal governments, duplicate, overlap, or conflict with the rule.

8. Alternatives: The Commissioner considered not amending section 6191.3. However, this alternative was rejected because it is believed that amending section 6191.3 will facilitate the collection of DNA samples from designated offenders who are legally required to provide a sample but who are not incarcerated or under probation supervision.

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

10. Compliance schedule: Regulated parties are expected to be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The State DNA Databank is established pursuant to Executive Law § 995-c. Subdivision (4) of § 995-c requires the commissioner of the Division of Criminal Justice Services, in consultation with the Commission on Forensic Science, the Commissioner of Health, the Division of Parole, the Division of Probation and Correctional Alternatives, and the Department of Correctional Services, to promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section. Part 6191 of Title 9 NYCRR was promulgated in 1996 and amended in 2000 to meet this requirement. It currently addresses notification of designated offenders who are under probation or parole supervision or who are committed to a local correctional facility, the Department of Correctional Services, or the Office of Children and Family Services of their obligation to provide a DNA sample. When the databank first became operational, designated offenders were limited to serious and violent felonies for which incarceration or probation supervision were the only options. Over the years, however, the Databank has been expanded to include more offenders. As a result, many designated offenders are now convicted of relatively low level misdemeanor offenses-- such as petit larceny, for example-- for which neither a sentence of incarceration nor probation supervision is required. These offenders may instead be sentenced to a fine or conditional discharge and have no further contact with probation or correctional officials. The proposed rule would amend section 6191.3 to provide that such offenders may be notified by any court official, police officer, peace officer, or other public servant. Such notification is important because at least one court has ruled that a designated offender who has been given notice pursuant to Part 6191 of his or her obligation to provide a DNA sample and refuses to do so may face prosecution for obstructing governmental administration in the second degree.

The proposed rule does not apply to small businesses.

2. Compliance requirements: The rule imposes no mandates on local governments.

3. Professional services: No professional services will be needed to comply with the proposed rule.

4. Compliance costs: None. The cost analysis is based on the fact the proposal does not impose mandates or other requirements on any party. It merely provides authorization for any court official, police officer, peace officer, or other public servant to notify a designated offender of his or her obligation to provide a DNA sample.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: The rule imposes no mandates on local governments. It merely provides authorization for any court official, police officer, peace officer, or other public servant to notify a designated offender of his or her obligation to provide a DNA sample. It is therefore expected that there will be no adverse impact on local governments.

7. Small business and local government participation: The Commission on Forensic Science and reviewed this proposal. These entities include among their members two representatives of local government laboratories and two county district attorneys. These members provided comment and input regarding the proposed rule.

Rural Area Flexibility Analysis

The proposal does not impose mandates or other requirements on any party. It merely provides authorization for any court official, police officer, peace officer, or other public servant to notify a designated offender of his or her obligation to provide a DNA sample. It is therefore expected that there will be no adverse impact on rural areas, or reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

The proposed rule provides authorization for any court official, police officer, peace officer, or other public servant to notify a designated offender of his or her obligation to provide a DNA sample. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Education Department

EMERGENCY RULE MAKING

School and School District Accountability**I.D. No.** EDU-26-10-00008-E**Filing No.** 698**Filing Date:** 2010-06-29**Effective Date:** 2010-06-29

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

Action taken: Amendment of section 100.2(p)(1) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2), (20), 309(not subdivided) and 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: On June 9, 2010, Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDE), informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act OF 2001 (NCLB), Public Law section 107-110, to include in the students with disabilities (SWD) subgroup, students who had previously been identified as SWD during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

The purpose of the proposed amendment is to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

Emergency adoption of these regulations is necessary for the preservation of the general welfare in order to immediately conform the Commissioner's Regulations with New York State's approved amended accountability plan by including in the students with disabilities (SWD) subgroup, students no longer identified as SWD but who had been so identified during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress, and thereby provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at its September 13-14, 2010 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: School and School District Accountability.

Purpose: To conform the Commissioner's Regulations with New York's approved amended NCLB accountability plan.

Text of emergency rule: Subparagraph (i) of paragraph (1) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective June 29, 2010 as follows:

(i) Accountability groups shall mean, for each public school,

school district and charter school, those groups of students for each grade level or annual high school cohort, as described in paragraph (16) of this subdivision comprised of: all students; students from major racial and ethnic groups, as set forth in subparagraph (bb)(2)(v) of this section; students with disabilities, as defined in section 200.1 of this Title, *including, beginning with the 2009-2010 school year, students no longer identified as students with disabilities but who had been so identified during the preceding one or two school years*; students with limited English proficiency, as defined in Part 154 of this Title, including, beginning with the 2006-2007 school year, a student previously identified as a limited English proficient student during the preceding one or two school years; and economically disadvantaged students, as identified pursuant to section 1113(a)(5) of the NCLB, 20 U.S.C. section 6316(a)(5) (Public Law, section 107-110, section 1113(a)(5), 115 STAT, 1469; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234). The school district accountability groups for each grade level will include all students enrolled in a public school in the district or placed out of the district for educational services by the district committee on special education or a district official.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-26-10-00008-P, Issue of June 30, 2010. The emergency rule will expire September 26, 2010.

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

Regulatory Impact Statement**STATUTORY AUTHORITY:**

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

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

Education Law section 210 authorizes the Regents to register domestic and foreign institutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and the professions in the State.

Education Law section 215 provides the Commissioner with the authority to require schools and school districts to submit reports containing such information as the Commissioner shall prescribe.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or any statute relating to education, and shall be responsible for executing all educational policies determined by the Regents. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3713(1) and (2) authorizes the State and school districts to accept federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with federal agencies to implement such law.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes, and is necessary to establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the federal No Child Left Behind Act of 2001 (NCLB), Public Law section 107-110, relating to academic standards and school/district accountability.

NEEDS AND BENEFITS:

Commissioner's Regulations section 100.2(p)(1)(i) has been amended to establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the NCLB relating to academic standards and school and school district accountability. The State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state in enabling all children to meet the State's academic achievement standards.

On June 9, 2010, Thelma Melendez de Santa Ana, Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDE), informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan to include in the students with disabilities subgroup, students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. The proposed amendment will not impose any costs on the State, the State Education Department or LEAs beyond those imposed by State and federal statutes.

LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

PAPERWORK:

The proposed amendment does not impose any additional reporting, forms or other paperwork requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and federal rules or requirements. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

ALTERNATIVES:

There were no significant alternatives to the proposed amendment and none were considered. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funding under Title I of the ESEA, as amended.

It is anticipated that regulated parties may achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small businesses:

The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the United States Department of Education, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year. The proposed amendment applies to school districts and charter schools.

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 further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local government:

EFFECT OF RULE:

The proposed amendment applies to school districts and charter schools.

COMPLIANCE REQUIREMENTS:

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on the State, the State Education Department or LEAs beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

Commissioner's Regulations section 100.2(p)(1)(i) has been amended to establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the NCLB relating to academic standards and school and school district accountability. The State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

NCLB section 1111(b)(2) requires each state that receives funds to

demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state in enabling all children to meet the State's academic achievement standards.

The proposed amendment will not impose any additional program, service, duty, responsibility or costs beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform to the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment have been solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of the proposed amendment have been provided to each charter school to give them an opportunity to participate in this proposed rule making. Copies of the proposed amendment have also been provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

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

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

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform to the Commissioner's Regulations to New York State's amended accountability plan, as approved by the United States Department of Education (USDE), to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress (AYP). Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.

COSTS:

The proposed amendment will not impose any costs on the State, the State Education Department or local educational agencies (LEAs) beyond those imposed by State and federal statutes.

The proposed amendment is necessary to conform to the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating AYP.

MINIMIZING ADVERSE IMPACT:

Commissioner's Regulations section 100.2(p)(1)(i) has been amended to establish criteria and procedures to ensure State and local educational agency compliance with the provisions of the No Child Left Behind Act of 2001 (NCLB) relating to academic standards and school and school district accountability. The State and LEAs are required to comply with the NCLB as a condition to their receipt of federal funds under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all

LEAs, public elementary schools and public high schools make AYP. Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state in enabling all children to meet the State's academic achievement standards.

The proposed amendment will not impose any additional program, service, duty, responsibility or costs beyond those imposed by State and federal statutes. The proposed amendment is necessary to conform to the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students. Because these Federal and State requirements are uniformly applicable State-wide to school districts and charter schools, it was not possible to prescribe lesser requirements for rural areas or to exempt them from such requirements.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment have been solicited from the Department's Rural Advisory Committee, whose membership includes schools located in rural areas. In addition, copies of the proposed amendment will be provided to each charter school. Copies of the proposed amendment have also been provided to the State Committee of Practitioners (COP), which consists of teachers, parents, district and building-level administrators, members of local school boards, and pupil personnel services staff, who are representative of all constituencies from various geographical locations across the State. The COP includes teachers and paraprofessionals from around the State representing a variety of grade levels and subject areas, directors of teacher-preparation institutions, officials and educators representing the New York City Board of Education, several other urban and rural school systems, nonpublic schools, parent advocacy groups, teacher union representatives and community-based organizations.

Job Impact Statement

The proposed amendment is necessary to conform to the Commissioner's Regulations to New York State's amended accountability plan, as approved by the United States Department of Education, to allow inclusion in the students with disabilities subgroup, those students who had previously been identified as students with disabilities during the preceding one or two school years, for purposes of calculating Adequate Yearly Progress. Adoption of the proposed amendment will provide a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year.

The proposed amendment applies to school districts, boards of cooperative educational services (BOCES) and charter schools. Local educational agencies, including school districts, BOCES and charter schools, are required to comply with the requirements of the NCLB as a condition to their receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended.

The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**EMERGENCY
RULE MAKING**

Limited Permits for LMSWs and LCSWs and Experience, Supervision, and Endorsement Requirements for Licensure as a LCSW in NY

I.D. No. EDU-28-10-00007-E

Filing No. 701

Filing Date: 2010-06-29

Effective Date: 2010-06-29

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

Action taken: Amendment of sections 74.3, 74.4, 74.5, 74.6 and 74.7; and addition of section 74.9 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 212(3), 6501(not subdivided), 6504(not subdivided), 6506(6), 6507(2)(a), 6508(1), 7704(2)(c), 7705(1) and 7706(1) through (5)

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

Specific reasons underlying the finding of necessity: The proposed amendments clarify the requirements for licensure as a licensed clinical social worker (LCSW), for the practice of clinical social work by a licensed master social worker (LMSW), and for the insurance privilege available to certain LCSWs. Legislation enacted in 2002 defined the scopes of practice for LMSWs and LCSWs and the requirements for licensure. The legislation also restricted the practice of these professions to those licensed or otherwise authorized to practice. The implementation of the law has been challenging, due to exemptions in law and the unique situation of licensure in one profession (LMSW) leading to licensure in another profession (LCSW) when additional requirements are satisfied.

When this law was enacted, it provided an exemption from licensure for individuals in certain programs until January 1, 2010. This date was subsequently changed to June 1, 2010 and then to June 9, 2010. The effect of the expiration of the exemption has been to require public and private agencies, including state government, to ensure an adequate supply of qualified, licensed professionals. However, the stringent standards of New York's licensing requirements have limited the ability of agencies to provide acceptable supervised experience for those seeking licensure as LCSWs. Therefore, agencies are at risk of not having sufficient staff to provide essential health services to individuals, families and communities. While part of the problem may be addressed only through legislation, the proposed amendments will, in conjunction with pending legislation, play a significant part in addressing this serious problem.

When the emergency regulations become effective, the State Board for Social Work will be able to approve the experience of hundreds of applicants for licensure as a LCSW whose files have had to be held because they did not meet the existing requirements for licensure. It is also anticipated that hundreds of other LMSWs, who have not completed sufficient supervised experience to meet the requirements established in the existing regulations, will now submit applications as their experience will satisfy the more flexible requirements established in this emergency action.

An emergency action is necessary for the preservation of the general welfare in order to expedite the processing of applications for licensure as an LCSW in New York by enabling applicants to obtain advance approval of the settings for their experience and of their supervision arrangements and by providing clarity regarding acceptable settings and supervisors for licensure. By reducing the number of hours of experience and the hours of supervision required for licensure as a LCSW, the proposed amendment will produce more qualified social workers to address the social work needs of residents of the State of New York.

Subject: Limited permits for LMSWs and LCSWs and experience, supervision and endorsement requirements for licensure as a LCSW in NY.

Purpose: To expedite the processing of applications for licensure and to provide clarity regarding acceptable supervised experience.

Substance of emergency rule: The Commissioner of Education proposes to promulgate regulations, relating to licensure as a licensed master social worker (LMSW) and a licensed clinical social worker (LCSW), limited permits for applicants in these professions, the practice of clinical social work by a LMSW under supervision, the requirements for insurance reimbursement pursuant to the Insurance Law, the supervised practice of licensed master social work by certain social workers, and the endorsement of a license as a LCSW in another jurisdiction for practice in New York State. The following is a summary of the substance of the regulations.

Supervised experience for licensure as a LCSW

Section 74.3(a) requires an applicant to complete three years of full-time, supervised experience in diagnosis, psychotherapy and assessment-based treatment planning, or the part-time equivalent, over a period of at least 36 months and not more than six years, in accordance with the requirements of section 74.6. The full-time experience shall consist of not less than 2,000 client contact hours.

Section 74.3(a)(1) requires that experience completed in New York must be completed as a Licensed Master Social Worker (LMSW) or permit holder, except in limited circumstances, and provides that experience in another jurisdiction may be accepted if completed in an authorized setting under a qualified supervisor, as determined by the department.

Section 74.3(a)(2) requires an applicant to complete the experience in an acceptable setting, as defined in subdivision (a) of section 74.6.

Section 74(a)(3) requires an applicant to complete the experience under a qualified supervisor, as defined in paragraph (2) of subdivision (c) of section 74.6.

Section 74.3(a)(4) requires the supervisor to retain records of the applicant's supervised experience and to submit documentation of the supervised experience on forms prescribed by the department. The department may request clarification of the supervisor's qualifications or the authority of the setting to provide professional services. If the supervisor

is deceased or not available, a licensed colleague may submit verification of the applicant's experience.

Limited Permit for LMSW and LCSW applicant

Section 74.4(a)(1) is amended to clarify that the applicant for a permit to practice licensed master social work must meet the moral character and education requirements to be eligible for a permit.

Section 74.4(a)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6.

Section 74.4(a)(3) is amended to clarify that the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Section 74.4(b)(1) is amended to clarify that the applicant for a permit to practice licensed clinical social work must meet the moral character requirements, in addition to clinical education and supervised experience requirements, to be eligible for a permit.

Section 74.4(b)(2) is amended to clarify that the permit is issued for a specific setting, as defined in subdivision (a) of section 74.6, and may not be issued for a private practice owned or operated by the applicant.

Section 74.4(b)(3) is amended to clarify that the supervision of a LCSW permit holder must meet the requirements in subdivision (c) of section 74.6. In addition, the supervisor shall be responsible for appropriate oversight of services provided by the permit holder and no supervisor shall supervise more than five permit holders at one time.

Authorization qualifying certain LCSW for insurance reimbursement

Section 74.5(a) is amended to increase the application fee from \$85 to \$100 and to clarify that a licensed clinical social worker must meet the requirements in section 3221(l)(4)(d) or 4303(n) of the Insurance Law to qualify for insurance reimbursement.

Section 74.5(c) is amended to clarify that the LCSW must complete 2,400 client contact hours of psychotherapy experience over a period of not less than three years. The amendment requires the experience to be after licensure as a LCSW and requires no less than 400 client contact hours in any one year for the experience to be acceptable.

Section 74.5(c)(1) defines an acceptable setting for experience toward the psychotherapy privilege, which may include a private practice owned or operated by the applicant, who is licensed as a LCSW and authorized to practice psychotherapy.

Section 74.5(c)(2) requires the LCSW to submit for review and approval by the State Board for Social Work a plan for supervised experience that meets the requirements for the privilege. The plan shall be submitted to the State Board for Social Work before the applicant starts the experience for the privilege. Section 74.5(c)(2)(i) requires the plan to specify individual or group consultation of no less than two hours a month or enrollment in a program authorized to provide psychotherapy that is offered by an institution of higher education or a psychotherapy institute chartered by the Board of Regents. The amendment eliminates peer supervision for the privilege.

The amendment to 74.5(c)(2)(ii) clarifies that a qualified supervisor includes a LCSW who holds the privilege or the equivalent as determined by the department, a licensed psychologist competent in psychotherapy, or a licensed physician who is qualified to practice psychiatry, as determined by the department.

Supervision of certain qualified individuals providing clinical social work services

Section 74.6 is amended to clarify the supervision required for a LMSW or other qualified individual to practice clinical social work under supervision, in a setting acceptable to the Department.

Section 74.6(a)(i) defines an acceptable setting for the supervised practice of licensed clinical social work as including a professional business entity authorized to provide services in licensed clinical social work, a sole proprietorship or professional partnership owned by licensees who provide services that are within the scope of practice of licensed clinical social work, a hospital or clinic authorized under the Public Health law, a program or facility authorized under the Mental Hygiene law, a program or facility authorized under federal law or an entity defined as exempt or otherwise authorized to provide services that are within the scope of licensed clinical social work.

Section 74.6(a)(2) defines a qualified individual authorized to provide licensed clinical social work services under supervision as a LMSW, an individual with a limited permit to practice licensed clinical social work in New York, or an individual otherwise authorized to provide clinical social work services in a setting acceptable to the department and under appropriate supervision.

Section 74.6(b) allows a qualified individual to submit to the State Board for Social Work a plan for supervised experience in New York toward licensure as a LCSW for review and approval. The plan shall include a copy of documentation establishing that the agency or setting is an acceptable setting, as defined in section 74.6(a); a copy of the license of the qualified supervisor, as defined in section 74.6(c); a plan for supervision

of the qualified individual accompanied by an attestation by the supervisor that he or she is responsible for services provided by the qualified individual; and, if a third-party is supervising the qualified individual, an affirmation from a designated representative of the setting that the setting is authorized to provide clinical social work services and the setting will ensure appropriate supervision of the qualified individual who is providing such services.

Section 74.6(c) is amended to clarify the supervision of a qualified individual seeking licensure as a LCSW to include at least 100 hours of in-person individual or group supervision, distributed appropriately over the period of the supervised experience. In addition, the qualified individual shall be under the general supervision of a qualified supervisor who shall review the qualified individual's diagnosis and treatment of each client, discuss the cases, provide oversight to the qualified individual in developing skills as a licensed clinical social worker, and regularly review and evaluate the professional work of the qualified individual.

There are no changes to section 74.6(c)(2), which requires the supervisor to be licensed and registered as a licensed clinical social worker, licensed psychologist or physician who is competent as a psychiatrist, in the determination of the department.

Section 74.6(d) defines the supervision of a LMSW who is providing clinical social work services under supervision but who is not using the experience to satisfy the experience requirements for licensure as a LCSW.

Section 74.6(d)(1) defines the supervision to be contact between the LMSW and supervisor during which the LMSW apprises the supervisor of the diagnosis and treatment of each client; the LMSW's cases are discussed; the supervisor provides the LMSW with oversight and guidance in diagnosing and treatment clients; the supervisor regularly reviews and evaluates the professional work of the LMSW; and the supervisor provides at least two hours per month of in-person individual or group clinical supervision.

Section 74.6(d)(2) requires the supervisor to meet the definition of a qualified supervisor in section 74.6(c)(2).

Section 74.6(e) requires the supervisor to maintain records of client contact hours in diagnosis, psychotherapy and assessment-based treatment planning and supervision hours provided to the qualified individual and to produce a log of hours, if requested.

Supervision of certain social workers providing licensed master social work services

The title of section 74.7 is amended and section 74.7 is amended to authorize a person with a bachelor of social work or master of social work degree, acceptable to the department, to perform activities and services within the scope of practice of a licensed master social worker as defined in paragraphs (a) and (b) of subdivision (1) of section 7701 of the Education Law, under the supervision of a LMSW or LCSW. The amendment clarifies that nothing in this section authorizes the use of the title "LMSW" or "LCSW" or the practice of licensed clinical social work, as defined in the Education Law.

Endorsement of certain LCSW applicants

A new section 74.9 is added to the Regulations of the Commissioner of Education to establish requirements for endorsement of a license to practice licensed clinical social work issued by another jurisdiction. The applicant must demonstrate licensure in good standing as a LCSW in another jurisdiction(s) and at least 10 years of practice in the 15 years preceding the application, submit the application and fee established in law for licensure and initial registration, and complete coursework in the identification and reporting of suspected child abuse or neglect.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 26, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (3) of section 212 of the Education Law authorizes the Commissioner of Education to charge a fee for permits in regulation.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

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

Paragraph (6) of section 6506 of the Education Law authorizes the Board of Regents to indorse a license issued by a licensing board of another state or country upon the applicant fulfilling the requirements.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law

authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraph (c) of subdivision (2) of section 7704 of the Education Law establishes the experience requirements for licensure as a clinical social worker.

Section 7705 of the Education Law authorizes the department to issue a limited permit for a period of not more than twelve months to practice licensed clinical social work or licensed master social work to an applicant who has met all requirements for licensure except those relating to the examination and provided that the individual is under the general supervision of a licensed master social work or a licensed clinical social worker.

Subdivision (2) of Section 7706 of the Education Law provides that nothing shall prevent an individual possessing a baccalaureate of social work degree or its equivalent from performing social work services under supervision by a licensed master social worker or a licensed clinical social worker, in accordance with the Commissioner's regulations.

Subdivision (3) of section 7706 of the Education Law provides that nothing shall prevent a licensed master social worker from performing clinical social work services in a facility setting and under supervision in accordance with the Commissioner's regulations.

Subparagraphs (A) and (D) of paragraph (4) of subsection (l) of section 3221 of the Insurance Law and subsections (i) and (n) of section 4303 of the Insurance Law authorize licensed clinical social workers with satisfactory experience to qualify for reimbursements under certain group health insurance policies for psychotherapy services, in accordance with the Commissioner's regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of these sections of the Education Law by clarifying existing experience and limited permit requirements for licensure as a licensed master social worker and licensed clinical social worker, by clarifying experience requirements for the insurance privilege available to certain LCSWs, and by establishing requirements for the endorsement of a license issued in another jurisdiction.

3. NEEDS AND BENEFITS:

Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement of 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes his or her master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(1)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy. However, the current regulations allow experience completed before licensure to be submitted and this amendment clarifies the intent of the law that experience must be after licensure as an LCSW over a period of not less than three years. Under the proposed amendment, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Commissioner's regulations establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as a LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of an LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

4. COSTS:

(a) Costs to State government: The proposed regulations will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 154 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment establishes requirements for licensure as a licensed master social worker or licensed clinical social worker. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed regulation will increase the cost of the application for the insurance privilege available to certain licensed clinical social workers from \$85 to \$100. The proposed regulation will not impose any other costs on applicants for the licenses

over and above those imposed by Article 154 of the Education Law. The proposed regulation simply clarifies the standards for acceptable experience and the issuance of limited permits, and provides an option for endorsement of a professional license for certain applicants seeking licensure in New York.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 154 of the Education Law by establishing experience and supervision requirements that individuals must meet to be licensed as a licensed master social worker and licensed clinical social worker. Therefore, the proposed regulation does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

Applicants seeking licensure as a licensed clinical social worker will be required to submit to the department verification of their supervised experience to meet the licensure requirement. The applicant's licensed supervisor(s) will also be required to maintain documentation of the applicant's supervised practice and hours of supervision and will be responsible for submitting a copy of such documentation to the Department upon its request. Applicants seeking authorization for insurance reimbursement and individuals seeking licensure as a clinical social worker will also be required to submit for review and approval by the State Board for Social Work, a plan for supervised experience before the applicant commences its supervised experience requirement.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There was discussion about changing requirements for licensure and practice through an amendment to Article 154 of the Education Law, but it was determined that the changes included in the proposed regulations are within the authority of the State Education Department and that the promulgation of such regulations would be the more efficient way to achieve the clarifications necessary to ensure an adequate supply of qualified licensed master social workers and licensed clinical social workers.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of master social workers and clinical social workers, the subject of the proposed amendment.

10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to clarify existing requirements for limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and the experience and supervision requirements for licensure as a LCSW in New York and for the insurance privilege available to certain LCSWs. The proposed amendment will expedite the processing of applications for licensure as a LCSW in New York State, provide clarity regarding acceptable supervised experience for licensure as a LCSW to ensure public protection, and establish requirements for the endorsement of certain out-of-state licensed clinical social workers. The proposed amendment affects individuals seeking licensure as a LMSW or LCSW or applying for the insurance privilege, and will have no effect on small businesses and does not regulate local governments.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to applicants seeking licensure as a licensed master social worker ("LMSW") or licensed clinical social worker ("LCSW") in New York State. The proposed amendment seeks to change New York State licensure requirements to conform to current practice in these professions, to expand opportunities for applicants to meet the experience requirement under qualified supervisors, and allow for the endorsement of licenses issued in other jurisdictions for qualified licensed clinical social workers seeking to become licensed in New York State. Applicants for licensure in these fields include individuals located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

Section 7704(2) of the Education Law requires an applicant seeking

licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The proposed amendments to the regulations require an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement for 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The proposed amendment to section 74.3 of the Commissioner's regulations clarifies the experience requirements for licensure as a LCSW in New York. The amendments require an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes their master's degree. The amendment requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The proposed amendment requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The proposed amendment also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the amendment strengthens the requirement that the supervisor is responsible for the services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the proposed amendment.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(l)(4)(D) or 4303(n) of the Insurance Law. The proposed amendments increase the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy. The proposal also specifies that experience must be after licensure as an LCSW over a period of not less than three years. Under the proposed amendment, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the proposed amendment also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The amendment also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This amendment eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The proposed amendments to section 74.6 of the Regulations of the Commissioner of Education establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are

authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The proposed amendments to section 74.7 of the Commissioner's regulations provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the amendment clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The proposed amendment adds a new section 74.9 to allow the Department to endorse for practice in New York the license of a LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an acceptable school, post-degree supervised clinical experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

3. COSTS:

The proposed amendment increases the fee for licensed clinical social workers seeking authorization to qualify for insurance reimbursement from \$85 to \$100.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment revises the experience and limited permit provisions and establishes new endorsement requirements for the licensure of clinical social workers in New York State. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public.

Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Social Work and from statewide professional associations whose memberships include individuals who live or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to clarify existing requirements for limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and experience and supervision requirements for licensure as a LCSW in New York and for the insurance privilege available to certain LCSWs. The proposed amendment will expedite the processing of applications for licensure as a LCSW in New York State, will provide clarity regarding acceptable supervised experience for licensure as a LCSW and for the insurance privilege to ensure public protection, and will establish requirements for the endorsement of certain out-of-state licensed clinical social workers.

Because it is evident from the nature of the proposed regulation 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.

NOTICE OF ADOPTION

Requirements for Mental Health Counselors, Marriage and Family Therapists, Creative Arts Therapists and Psychoanalysts

I.D. No. EDU-13-10-00006-A

Filing No. 702

Filing Date: 2010-06-29

Effective Date: 2010-07-14

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

Action taken: Amendment of Subparts 79-9, 79-10, 79-11 and 79-12 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501(not subdivided), 6504 (not subdivided), 6506(6), 6507(2)(a), 6508(1), 8402(3)(c), 8403(3)(c), 8404(3)(c), 8405(3)(c) and 8409(1)

Subject: Requirements for mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts.

Purpose: Implement requirements of Article 163 of the Education Law and establishes endorsement provisions.

Text or summary was published in the March 31, 2010 issue of the Register, I.D. No. EDU-13-10-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, Office of Counsel, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 31, 2010, the State Education Department received comments about the proposed amendments. The following is a summary of the comments and the response of the Education Department.

COMMENT: Some commentors indicated their support for the proposed regulations as they relate to the four professions, as they will provide increased access to qualified supervisors for permit holders and better access to care for consumers.

RESPONSE: The Department received more than 25 similar comments and agrees that the proposed amendments will increase access to qualified supervisors for applicants and provide better access to care for consumers.

COMMENT: The New York Mental Health Counselors Association believes that some licensed mental health counselors only provide supervision, so the limit of five permit holders under one supervisor is unnecessary. The New York State Conference of Local Mental Hygiene Directors (NYSCLMHD) believes the regulations should provide a waiver of the limit on five permit holders under one supervisor to address situations in which additional, qualified supervisors are not available.

RESPONSE: The proposed regulation implements the Department's current policy that supervision of more than five permit holders may result in inadequate supervision and places the public at risk. The supervisor is responsible for the review of the applicant's assessment, evaluation and treatment of each client under his or her general supervision and must provide oversight, guidance and direction to the applicant in developing skills. Expanding the supervisor's responsibility to more than five permit holders would raise concerns about public protection. In situations in which an additional supervisor may be necessary, the applicant may submit a permit application for additional supervisors. In the event a supervisor will be absent for extended leave, it would be necessary for the employer to designate a new supervisor.

COMMENT: The proposal to limit the licensee to supervising no more than five permit holders could affect the ability of a licensee to supervise students who are completing an internship as part of the education program for licensure.

RESPONSE: The restriction on the number of permit holders is not related to the supervision of students practicing under the exemption in 8410(3) of the Education Law and completing an internship as part of the education program leading to licensure. When the Department registers an education program leading to licensure, the review of the program's application includes assurances of appropriate supervision of interns.

COMMENT: The proposal to eliminate the requirement for three years of licensed experience in order to supervise a permit holder in creative arts therapy will lower professional standards and allow unqualified persons to supervise.

RESPONSE: The Department disagrees with the comment. The Education Law and Part 29 of the Regents Rules define as unprofessional conduct by a licensee the performance of activities in which the licensee knows he or she is not competent by education, training or experience. While the proposed amendment eliminates the requirement of three years of licensed experience prior to supervising a permit holder, it requires the supervisor to determine if he or she is competent to supervise.

COMMENT: The proposed amendment would allow a person with a bachelor's degree in music therapy to supervise an applicant for licensure who has a master's degree and this presents an ethical concern because the bachelor's level practitioner cannot provide guidance around vital topics as it is outside his/her scope of practice.

RESPONSE: The regulations adopted in January 2005 define a qualified supervisor as a person with a bachelor's or higher degree in creative arts therapy, who had three years of experience in the practice of the profession who was licensed or authorized to practice creative arts therapy. The Licensed Creative Arts Therapist is responsible for providing supervision only if qualified by education, training and experience.

COMMENT: Why are registered nurses allowed to supervise the practice of creative arts therapy when their education does not compare or equal the training of mental health counselors and creative arts therapists?

RESPONSE: Section 8410 of the Education Law defines a qualified, registered professional nurse or a nurse practitioner as able to practice mental health counseling or creative arts therapy, but does not authorize the use of any restricted title.

COMMENT: In light of the current economic situation, is there anything that can be done to change or eliminate the time constraints of the limited permit in creative arts therapy?

RESPONSE: Section 8409 of the Education Law states a permit in creative arts therapy is valid for one year and may be renewed for one additional year, at the discretion of the Department. The length of the permit cannot be extended without a legislative amendment.

COMMENT: Please take into consideration new graduates in fields like music therapy, where wages are low and it is not possible to take on the additional, considerable experiences caused by these regulations.

RESPONSE: The requirements for licensure are established in law and cannot be changed in regulation.

COMMENT: The regulations allow a physician's assistant, registered professional nurse or nurse practitioner to supervise a permit holder in marriage and family therapy. This is not allowed in other states or by the standards of the American Association of Marriage and Family Therapy, so there is a perception that licensed marriage and family therapists in New York are inferior and this hinders mobility between jurisdictions.

RESPONSE: Section 8410(1) of the Education Law allows other licensed professionals, including those identified in the comment, to practice marriage and family therapy and to supervise the practice of marriage and family therapy, if qualified. The Department disagrees with the assertion that a license issued in New York is inferior or that the standards of AAMFT should be adopted, as they do not conform to the Education Law, which defines qualified practitioners and competency in the practice and supervision of the licensed professions.

COMMENT: The White Institute is concerned that the proposed amendment only requires 750 hours of direct patient contact in fulfillment of the experience requirements for licensure as a psychoanalyst. The White Institute requested an amendment to require a minimum of 1,250 hours of direct patient contact as part of the 1,500 hours required for licensure.

RESPONSE: The Department disagrees. The proposed amendment establishes the minimum experience required for licensure. A setting may provide more direct experience for the applicant.

COMMENT: The White Institute proposes that the regulation be amended to require that 250 of the required direct client contact hours include the provision of psychoanalytic psychotherapy to patients, at a frequency of one or two hours weekly, in addition to at least 1,000 hours of supervised psychoanalysis with patients.

RESPONSE: The Department does not believe it is necessary to specify in regulation the frequency of sessions with patients. It is the responsibility of the applicant's supervisor to ensure appropriate, supervised experience in the practice of psychoanalysis for entry to professional practice as a licensee. Therefore, no change in the regulation is needed.

COMMENT: The White Institute believes that section 79-12.3(c)(1)(iii) should be amended to clarify that "administrative case supervision, administrative supervision, and case management" do not constitute acceptable clinical supervision for licensure as a psychoanalyst.

RESPONSE: The level of detail suggested is not appropriate or

necessary for the regulation. The licensed supervisor is responsible for providing appropriate clinical supervision of the permit holder or student to ensure appropriate training for entry into the profession.

COMMENT: The New York Coalition of Creative Arts Therapists (NYCCAT) was only recently able to schedule a workshop on the proposed regulations to inform students about licensure in the profession, and request that the comment period be extended until after the information session.

RESPONSE: The Office of the Professions appreciates the concern about disseminating information to students, applicants, practitioners, and employers about the licensure and practice of creative arts therapy. The proposed amendments were published in accordance with the State Administrative Procedures Act (SAPA) and published on the web (www.op.nysed.gov). Therefore, the Department will not extend the comment period. However, OP is willing to meet with associations and others to provide information about licensure and the practice of creative arts therapy.

COMMENT: It is impossible to obtain licensure as a mental health counselor due to misinterpretation of licensure laws and ignorance of the scope of practice for licensed mental health counselors. If the Education Department allows the Office of Mental Health's proposed 599.10 regulations and corporate practice changes to take place, without including licensed mental health counselor's ability to diagnose, it will be impossible for new SUNY graduates to practice in New York State hospitals and clinics.

RESPONSE: This comment is not related to the proposed amendment.

COMMENT: The enactment of legislation in the Assembly (A8897) and Senate (S5921) would provide clarifications that allow persons to practice in accordance with the law and to provide services to patients.

RESPONSE: This comment is not related to the proposed amendment.

NOTICE OF ADOPTION

Schools Under Registration Review (SURR) and Persistently Lowest-Achieving (PLA) Schools

I.D. No. EDU-15-10-00014-A

Filing No. 699

Filing Date: 2010-06-29

Effective Date: 2010-07-14

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

Action taken: Amendment of section 100.2(p)(9), (10) and (11) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), (2) and (20), 309(not subdivided) and 3713(1) and (2)

Subject: Schools Under Registration Review (SURR) and Persistently Lowest-Achieving (PLA) Schools.

Purpose: To merge the processes for determining SURR and PLA schools.

Text of final rule: Since publication of a Notice of Proposed Rule Making in the State Register on April 14, 2010, nonsubstantial revisions were made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith. The following is a summary of the revised proposed rule.

The State Education Department proposes to amend paragraphs (9), (10) and (11) of subdivision (p) of section 100.2 of the Regulations of the Commissioner of Education, effective July 14, 2010, to conform Commissioner's Regulations regarding the identification of schools for registration review (SURR) with United States Department of Education (USED) requirements to identify schools as persistently lowest-achieving (PLA) in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants (SIG) and other Federal funding opportunities and to require schools identified as SURRs to implement intervention strategies based upon School Improvement Grant guidelines issued by USED in January 2010. The purpose of the proposed rule is to strengthen the SURR process by merging it with the process to identify PLA schools in order to increase the percentage of schools that successfully implement an intervention strategy that results in the school being removed from PLA

status or that results in the school being replaced by a new school in Good Standing.

The substantive amendments to the regulations are as follows:

Section 100.2(p)(9) is amended to indicate that, beginning with the 2010-2011 school year, a school that is identified as PLA shall be placed under preliminary registration review; and to set forth the academic indicators used to identify a school as PLA. More specifically, the amended regulations:

(1) Modify the definition of a SURR school so that potential SURR schools will be those that are PLA, rather than those that are farthest from State standards.

(2) Conform the SURR definition of PLA with the Federal definition of the term.

(3) Consider as potential SURR schools, non-Title I elementary schools and Non-Title I eligible secondary schools that perform at levels that would make them PLA.

(4) Ensure that existing schools that implement a turnaround or transformation model remain SURR until academic performance improves or the schools are closed and restarted or replaced.

(5) Provide the Commissioner with flexibility to identify alternative high schools, special act schools, schools in Community School District 75, non-Title I elementary schools or non Title-I eligible secondary schools for registration review. If such schools are Title I schools or Title I eligible secondary schools, they would also be considered PLA for Federal program purposes.

Section 100.2(p)(10) is amended to set forth the actions that are to be taken when a school has been placed under registration review. More specifically, the amended regulations:

(1) Integrate support for SURR schools with support provided to schools that are PLA and eliminate any duplication in planning requirements and technical assistance and monitoring.

(2) Set forth requirements for districts to implement an intervention, as approved by the Commissioner, including the following: turnaround model, restart model, school closure model, transformation model; and to develop a new restructuring plan or update an existing restructuring plan to describe the implementation of the intervention, in accordance with a timeline prescribed by the Commissioner.

(3) Remove the requirement for a resource, planning and program audit of the district and the school; and replace it with a joint intervention team, appointed by the Commissioner, to assist a district in the selection of an intervention.

(4) Provide a SURR with three rather than two academic years to show progress prior to the Commissioner recommending that its registration be revoked.

Section 100.2(p)(11) is amended to set forth actions a SURR must take to be removed from registration review. More specifically, the amended regulations:

(1) Base removal decisions on the academic indicators used to identify a school as PLA.

(2) Permit current SURR schools that do not meet the PLA definition to continue implementation of its existing restructuring plan; and require current SURR schools that meet the PLA definition to implement intervention requirements.

(3) Require that a SURR school that will phase out or close shall meet the requirements of an intervention prescribed by the Commissioner.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.2(p)(10).

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 1223, (518) 473-8296, email: legal@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on April 14, 2010, the following nonsubstantial revisions were made to the proposed rule:

Section 100.2(p)(10) was revised to conform the numbering of subparagraphs, clauses, subclauses, items and subitems to the Department of State's numbering system for State agency rules.

Section 100.2(p)(10)(iv)(a)(2) was revised to replace the term "education management organization" with "educational partnership organization" in order to reflect the proper term for such organization, as set forth in the recently enacted Education Law section 211-e, as added by Chapter 103 of the Laws of 2010.

The above revisions do not require any further changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on April 14, 2010, nonsubstantial revisions were made to the proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government.

Revised Rural Area Flexibility Analysis

Since publication of the Notice of Proposed Rule Making in the State Register on April 14, 2010, nonsubstantial revisions were made to the proposed rule, as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revisions do not require any further changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on April 14, 2010, nonsubstantial revisions were made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule is necessary to conform Commissioner's Regulations regarding the identification of schools for registration review (SURR) with United States Department of Education (USED) requirements to identify schools as Persistently Lowest-Achieving (PLA) in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants and other Federal funding opportunities and to require schools identified as SURRs to implement intervention strategies based upon School Improvement Grant guidelines issued by USED in January 2010. As a condition for their receipt of federal funding under Title I of the Elementary and Secondary Education Act (ESEA), as amended, the State and Local Educational Agencies (LEAs), including school districts, are required to comply with both the requirements of section 1003(g) of the ESEA and the flexibilities for the SIG program provided through the Consolidated Appropriations Act of 2010. The proposed rule applies to public schools that have been registered pursuant to Section 100.2(p) of Commissioner's Regulations. The purpose of the proposed amendment is to strengthen the SURR process by merging it with the process to identify PLA schools in order to increase the percentage of schools that successfully implement an intervention strategy that results in the school being removed from PLA status or that results in the school being replaced by a new school in Good Standing.

The proposed rule, as revised, will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised proposed rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 14, 2010, the State Education Department received the following comments:

1. COMMENT:

Given the State's solid history of turning around Schools Under Registration Review (SURR), there is no justification for linking the SURR program to the federal Title I School Improvement Grant (SIG) intervention models, without any guarantee of funding and in the absence of research to show that SIG models work. The proposed rule should be revised to allow use of locally developed strategies in the development of school improvement plans. If an identified school chooses to apply for SIG funding, the requirement to use one of the models would apply. If SIG funding is not available, the school would not be required to use one of the SIG interventions, but would need to comply with current SURR requirements. This change would allow the merger of the list of SURR schools and the list of Persistently Lowest Achieving (PLA) schools, without adopting an unfunded mandate to implement one of the federal models.

DEPARTMENT RESPONSE:

The Department disagrees. While these regulations build upon the State's solid history of turning around SURR schools, they are intended to ensure that more than a series of incremental improvements are made. With the assistance of a Joint Intervention Team, LEAs have considerable flexibility in choosing a model and determining the specifics of how the chosen model will be implemented locally.

This regulatory change is necessary to conform with United States Department of Education (USDE) requirements to identify schools as PLA in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants (SIG) and other Federal funding opportunities. As a condition for their receipt of federal funding under Title I of the Elementary and Secondary Education Act (ESEA), as amended, the State and LEAs, including school districts, are required to comply with both the requirements of section 1003(g) of the ESEA and the flexibilities for the SIG program provided through the Consolidated Appropriations Act of 2010. Each eligible local educational agency (LEA) that is able to fully and effectively implement one of the four intervention

models will have access to federal SIG funds to support the implementation of the models. We therefore anticipate that the majority of funding for these initiatives will be provided by ESEA section 1003(g) and thus do not consider this to be an unfunded mandate.

2. COMMENT:

The proposed rule should be revised to clarify that the selection of the intervention model is subject to Commissioner's Regulation § 100.11 relating to school-based planning.

DEPARTMENT RESPONSE:

The suggested revision is unnecessary. Section 100.2(p)(6)(iv)(d) of the Commissioner's regulations states that each improvement, corrective action and restructuring plan, and each updated plan, shall be developed, to the extent appropriate, consistent with section 100.11.

3. COMMENT:

The proposed rule should be revised to clarify the intervention models under which a principal may be removed.

DEPARTMENT RESPONSE:

The suggested revision is unnecessary. The proposed rule specifies that implementation of the Turnaround and Transformation models may include, but are not limited to replacement of the principal.

4. COMMENT:

The proposed rule circumvents the collective bargaining process with respect to terms and conditions of employment. Decisions regarding removal of a principal must be decided and deliberated at the local level and not mandated by the State.

DEPARTMENT RESPONSE:

The Department disagrees. The proposed rule does not circumvent the collective bargaining process. Implementation of the Turnaround and Transformation models may include, but are not limited to the replacement of the principal. For purposes of this regulation, school districts that elect to implement the Turnaround or Transformation models may choose to submit to the Commissioner a plan that does not include the removal of the principal. The Commissioner will then review the plan and determine whether or not it should be approved. LEAs should be aware that, while the Commissioner may approve a turnaround or transformation plan (for SURR/PLA purposes) in which a principal is not removed, certain federal programs may require removal of the principal as a condition of funding.

5. COMMENT:

The proposed rule should be revised to require an assessment of what were the factors contributing to a school's low performance, require action to be taken based on that assessment, and hold all those who contributed to the performance accountable. It is unfair to provide for removal of a Principal in response to a school's low performance without a full determination at the local level of what is the true cause of a school's performance. Failure to conduct a root cause analysis to determine who or what is to blame will only allow a school's poor performance to continue over time. Instead of providing assistance in the selection and implementation of an intervention model, the joint intervention team's function should be to conduct an analysis of what led to a school's low performance. Furthermore, policies regarding the placement of students are a factor in a school's performance, and these policies are set by the Local Education Agencies and are beyond the control of a Principal. The proposed rule holds only the principal, and not the school superintendent or school board, accountable for a school's performance. Without the revisions recommended above, implementation of the proposed rule will fail to achieve the stated goal of turnaround of low performing schools.

DEPARTMENT RESPONSE:

The Department disagrees. The proposed rule specifies that the school district, assisted by the Joint Intervention Team, will select an intervention model. As part of this selection process, the district and JIT may conduct an assessment of the factors that contributed to the school's low performance. The regulations ensure accountability at all levels of the school district, as the Commissioner may recommend that the Regents revoke the registration of the school if sufficient progress has not been demonstrated.

6. COMMENT:

The numbering of subparagraphs, clauses etc. in section 100.2(p)(10) does not follow the Department of State system for numbering of State agency rules.

DEPARTMENT RESPONSE:

The Department agrees and has renumbered the text in section 100.2(p)(10) to conform to the Department of State numbering system.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Hemlock-Canadice State Forest

I.D. No. ENV-28-10-00006-E

Filing No. 700

Filing Date: 2010-06-29

Effective Date: 2010-06-29

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

Action taken: Addition of section 190.26 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(1), (3)(b), 3-0301(1)(b), (2)(m), (v), 9-0105(1) and (3)

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

Specific reasons underlying the finding of necessity: This emergency regulation is necessary for the preservation of public health, safety and general welfare because it will protect water quality and allow responsible public use of Hemlock and Canadice Lakes and the lands surrounding the lakes. The emergency regulation will take effect immediately upon acquisition of the land by the State. The regulation is critical to protecting the City of Rochester's public water supply by continuing to regulate public use of the lakes and surrounding land consistent with the City's longstanding regulations and by adopting such additional necessary protective measures to control public use immediately upon State acquisition.

This new section, 190.26 of 6 NYCRR will allow for an enforceable State regulation that will enable the State to be responsible for care, custody and control of the lakes and surrounding land as well as public recreation management. Restrictions on motorized use, camping, swimming and other activities will be in place to protect the water supply.

Subject: Hemlock-Canadice State Forest.

Purpose: To control public use to protect watershed values, natural resources and public safety.

Text of emergency rule: A new section 190.26 is added to 6 NYCRR to read as follows:

190.26 Hemlock-Canadice State Forest (Livingston-Ontario State Reforestation Area #1)

In addition to other applicable general provisions of this Part, the following requirements apply to the Hemlock-Canadice State Forest. In the event of a conflict, these specific provisions shall control.

(a) Description. For the purposes of this section, Hemlock-Canadice State Forest refers to the Phelps and Gorham Purchase in Townships 7, 8 and 9, Ranges 5 and 6, located in the Finger Lakes Region, approximately 30 miles south of the city of Rochester. The property includes two large undeveloped parcels surrounding Hemlock and Canadice Lakes, totaling 6,684 acres in the towns of Canadice, Conesus, Livonia, Richmond and Springwater in Ontario and Livingston counties, being the same lands as more particularly described in deeds conveying such lands to the People of the State of New York, on file in the Department of Environmental Conservation, Albany, NY, and duly recorded in the offices of the county clerks of Ontario and Livingston counties. Said Hemlock-Canadice State Forest shall be hereinafter referred to in this section as "state forest".

(b) In or on the state forest, it is unlawful for any person to:

(1) possess or operate a boat, ice fish, traverse the ice or water, or fish from shore on:

i. Hemlock Lake: north of the northerly boat launch, and between Boat Launch Road and Hemlock Lake; and

ii. Canadice Lake: northernmost 500 feet of the lake, and Canadice Outlet Creek and adjacent property within one mile of intersection with Route 15A;

(2) possess or operate: a mechanically propelled vessel over 17 feet in length, a mechanically propelled vessel with a motor exceeding ten horsepower, or a non-mechanically propelled vessel over 17 feet in length;

(3) flush motors, bilges, bait buckets, livewells, or wash boats, except more than 100 feet from lakes and streams;

(4) swim, bathe, wade, water ski, tube or otherwise have water contact;

(5) set, light or use a campfire, charcoal fire or any other kind of fire;

(6) camp;

(7) possess or operate an all-terrain vehicle;

(8) possess or operate a snowmobile, except on designated trails when there is sufficient snow cover;

(9) discharge a firearm, except for legally taking game species;

(10) transport or introduce any aquatic plant or animal into the water;

(11) introduce, use or maintain any horses, work animals or other animals;

(12) possess a domesticated pet unless it is leashed or controlled at all times; however, no domesticated pet shall have any contact with the water;

(13) deposit any feces or animal entrails within 100 feet of any water body or water course;

(14) commit any act that may result in contamination of any portion of the lakes or streams.

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 September 26, 2010.

Text of rule and any required statements and analyses may be obtained from: David Forness, Chief, Bureau of State Land Management, NYS DEC, 625 Broadway, Albany, New York 12233-4255, (518) 402-9428, email: dmforness@gw.dec.state.ny.us

Additional matter required by statute: A Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory authority:

The Department of Environmental Conservation (Department) has entered into an agreement to acquire 6,684 acres of watershed lands, including Hemlock and Canadice Lakes, Livingston-Ontario State Reforestation Area #1 (Hemlock-Canadice State Forest), pristine Finger Lakes located approximately 28 miles south of, and currently owned by, the City of Rochester (City). Hemlock and Canadice Lakes are the primary source of drinking water for the City and several other communities. City stewardship of the Hemlock and Canadice Lakes watershed has resulted in both a superior water supply and a unique environmental setting. Under the City's management, the public has been welcome to pursue licensed sporting activities such as fishing and hunting as well as boating, hiking and nature study. The Department's emergency regulations will provide a seamless transition in the management of this important property in order to continue to maintain exceptional water quality and foster the remote atmosphere of the area.

Under the Environmental Conservation Law (ECL), the State has the authority to use the Environmental Protection Fund to acquire lands that are included as priorities in the State's Open Space Conservation program. (See ECL Article 49, Title 2) State acquisition of the 6,684 acre Hemlock-Canadice State Forest is a listed priority in the State's current (2009) Open Space Plan (priority project # 113, Conesus, Hemlock, Canadice & Honeoye), and has been listed as a priority since the beginning of the formal State Open Space Conservation program in 1992.

ECL section 1-0101(1) provides that it is "...the policy of the State of New York to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and general welfare of the people of the State and their overall economic and social well

being. ECL section 1-0101(3)(b) provides that “It shall further be the policy of the State to foster, promote, create and maintain conditions under which man and nature can thrive in harmony with each other...”, by “...guaranteeing that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences.” ECL section 3-0301(1) provides that “It shall be the responsibility of the Department... by and through the Commissioner to carry out the environmental policy of the State...” ECL section 3-0301(1)(b) gives the Commissioner the power to “promote and coordinate management of water, land...resources to assure their protection...and take into account the cumulative impact upon all such resources in...promulgating any rule or regulation...” ECL section 9-0105(1) gives the Department the “power, duty and authority” to “exercise care, custody and control” of State lands.

ECL section 3-0301(2)(m) authorizes the Department to “Adopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of...” the ECL, ECL section 3-0301(2)(v) empowers the Department to “...administer and manage the real property under the jurisdiction of the Department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was acquired or to which it is dedicated, employing all appropriate management activities.” ECL section 9-0105(3) authorizes the Department to “make necessary rules and regulations to secure proper enforcement of...” ECL Article 9.

2. Legislative objectives:

The Department has as one of its core missions, the acquisition of environmentally important lands and waters, funding for which has been provided by various acts of the State Legislature since the 19th century. The Department also has been provided authority by the Legislature to manage State owned lands (see ECL section 9-0105(1), and to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and ECL 9-0105(3)).

In adopting various articles of the ECL, the legislature has established forest, fish, and wildlife conservation to be policies of the State and has empowered the Department to exercise “care, custody and control” over certain State lands and other real property. Consistent with these statutory interests, the emergency regulations will protect natural resources and the safety and welfare of those who engage in recreational activities on the Hemlock-Canadice State Forest. Natural resources will be protected by continuing to: prohibit all personal and animal contact with the water; prohibit horses and other animals, other than domesticated pets while leased or controlled; prohibit camping, fires, all terrain vehicles; prohibit any boating or fishing on certain areas of the lakes near water supply facilities; and prohibit any act which would result in the contamination of the lakes or streams. These activities are either not covered or differently covered in the existing 6 NYCRR Part 190 regulations.

3. Needs and benefits:

On or about June 1, 2010, the Department will take title to the Hemlock-Canadice State Forest. The City will retain the right to use the lakes for its water supply. The Department will be responsible for the care, custody and control of the lakes and surrounding land as well as public recreation management. The Department’s intent is to manage the Hemlock-Canadice State Forest in substantially the same manner as the City has for more than a century, as a passive recreational property with restrictions on motorized use, camping, swimming and other activities, until such time as the Department is able to develop permanent long term regulations for this specific area following the development of a Unit Management Plan (UMP). Because the lakes will continue as the City’s water supply and the surrounding land will continue as the watershed for the City’s water supply, the Department needs to promulgate proposed regulations to control public use under State enforceable regulations. The City’s management of these unique Finger Lake properties has resulted in a magnificent public outdoor recreational opportunity and a well protected water supply. The proposed State’s acquisition of the Hemlock-Canadice State Forest has enjoyed overwhelming public support and a desire to continue the management of the property for watershed protection and passive public recreation.

State lands are managed under regulations promulgated under 6 NYCRR, Part 190 et al. While many existing public uses of these watershed lands will follow existing State land regulations, several special regulations, unique to the needs of this property, are required to continue the management of the property as closely as possible to that of the City in order to protect the water supply and the watershed. The need exists to promulgate proposed regulations so that appropriate mechanisms are in place to ensure the protection of the water supply, the property and continued public recreational use.

4. Costs:

The costs of promulgating these regulations will be minimal, and will involve signage and public brochures.

5. Local government mandates:

The regulations will not impose any additional burdens on local governments within the area.

6. Paperwork:

The regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

There is no duplication, conflict or overlap with State or Federal regulations. The proposed regulations are designed to avoid duplication with existing State and Federal rules and regulations, and are proposed for activities where existing State land regulations are insufficient to meet the requirements to protect this specific area.

8. Alternatives:

Since the City’s jurisdiction, and its existing regulatory scheme, would end upon the State’s acquisition of the Hemlock-Canadice State Forest, the “no action” alternative would result in only the application of the Department’s existing State land regulations, 6 NYCRR Part 190. While these existing regulations provide some protection for the Hemlock-Canadice State Forest, in the absence of specific area regulations, the resources of the area, particularly the water supply, would not be protected. While the Department could attempt to apply the proposed regulations solely through signage on the property, the experience of the Department’s enforcement staff is that this is generally not effective and often successfully challenged in judicial proceedings when not supported by regulations.

9. Federal standards:

The regulations do not exceed any minimum standards of the Federal government.

10. Compliance schedule:

This emergency rulemaking will substitute State regulations for the City’s regulations, which will no longer remain in effect upon sale of the property. The Department is concurrently submitting a proposed rulemaking package to put these regulations in place on a permanent basis. A UMP for the property will be completed, which will include a public comment period, a process that could take two or more years to complete. The proposed regulations will then be reviewed and may be revised as necessary to be consistent with the UMP and public comments received. The emergency regulations will be effective the date they are filed with the Department of State.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, record-keeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they would bear no economic impact as a result of this proposal. The proposed rule relates solely to protecting public safety and natural resources on the Hemlock-Canadice State Forest.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed regulation relates solely to protecting public safety and natural resources on the Hemlock-Canadice State Forest.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs

and employment opportunities. The proposed regulation relates solely to protecting public safety and natural resources on the Hemlock-Canadice State Forest.

**AMENDED
NOTICE OF ADOPTION**

Stationary Combustion Installations

I.D. No. ENV-51-09-00011-AA

Filing No. 676

Filing Date: 2010-06-25

Effective Date: 2010-07-25

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

Action taken: Amendment of Part 200 and Subparts 201-3 and 227-2 of Title 6 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on June 8, 2010, to be effective July 8, 2010, File No. 609. The notice of adoption, I.D. No. ENV-51-09-00011-AA, was published in the June 23, 2010 issue of the *State Register*.

Statutory authority: Environmental Conservation Laws, sections 1-0101, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305 and 19-0311

Subject: Stationary Combustion Installations.

Purpose: Reduce emission limits for all boilers and combustion turbines, redefine the mid-size boiler size, and allow a replacement option.

Substance of amended rule: The proposed Part 200 amendments will add the definitions for the terms boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, continuous emissions monitoring system plan, emergency power generating stationary internal combustion engine, simple cycle combustion turbine, and very large boiler. These definitions are being included under Part 200 for consistency due to their use in multiple regulations. The proposed revisions will also add a reference in section 200.9, Table 1 under clause 227-2.6(b)(3)(i)(b') and streamline the existing reference under subparagraph 227-2.6(b)(3)(v).

The proposed Subpart 201-3 revisions will change the exemptions for "stationary or portable combustion installations" and "emergency power generating stationary internal combustion engines." In order to qualify for the exemption for stationary or portable combustion installations, the maximum rated heat input capacity limitation for such sources is being reduced from less than 20 mmBtu/hr to less than 10 mmBtu/hr. The provision exempting emergency power generating stationary internal combustion engines is being revised to reflect the change in the citation for the definition of "emergency power generating stationary internal combustion engine."

The following change to Subpart 201-3 is unrelated to the Subpart 227-2 revisions. The reference to Subpart 231-2 in the text of paragraph 201-3.1(c)(2) will be replaced by a reference to Part 231 generally. This revision is meant to align the text of paragraph 201-3.1(c)(2) with the revisions to Part 231 that became effective in early 2009.

The proposed Subpart 227-2 revisions will include the removal of several definitions (to be relocated in Part 200, as stated above) and revision of other definitions, a change in the application and permitting requirements, a change in emission limits for most boiler categories and combined cycle combustion turbines, and revisions to the compliance options.

Section 227-2.2 will be revised to remove the definitions of boiler, combined cycle combustion turbine, combustion turbine, continuous emissions monitoring system (CEMS) certification protocol, emergency power generating stationary internal combustion engine, preliminary continuous emissions monitoring system plan, simple cycle combustion turbine, and very large boiler. These definitions will be moved to Part 200 (preliminary continuous emissions monitoring system plan) will be changed to continuous emissions monitoring system plan), as stated above. Also, the revisions will modify the terms mid-size boiler and small boiler. A mid-size boiler will now be defined as "a boiler with a maximum heat input capacity greater than 25 million Btu per hour and equal to or less than 100 million Btu per hour. A small boiler will now be defined as "a boiler with a maximum heat

input capacity equal to or greater than one million Btu per hour and equal to or less than 25 million Btu per hour."

Section 227-2.3 will be revised to specifically require that subject facilities must submit an application for a Title V permit or permit modification (depending on the current facility status). The requirement to submit a compliance plan will be removed.

Section 227-2.4 will be revised to change the presumptive RACT emission limits for very large, large, and mid-size boilers. Combined cycle turbines will be required to perform a case-by-case RACT analysis. Also, the revisions will remove the 500-hour non-ozone season presumptive emission limit exemption for simple cycle combustion turbines.

Section 227-2.5 will be revised to include a shutdown option for any subject emission source. The intent to shut down an emission source must be recorded as part of a permit modification prior to January 1, 2012, wherein the owner or operator commits to permanently shut down the emission source prior to December 31, 2014.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in section 200.9.

Text of amended rule and any required statements and analyses may be obtained from: Robert Stanton, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: airregs@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule has been approved by the Environmental Board.

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

No revisions were made to the RIS, RFA, RAFA and JIS.

Insurance Department

EMERGENCY RULE MAKING

Workers' Compensation Insurance Assessments

I.D. No. INS-28-10-00002-E

Filing No. 672

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: Addition of Subpart 151-6 (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: Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the Workers' Compensation Board ("WCB") to assess insurers and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers' WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers' Compensation Law required the Workers' Compensation Board to assess insurers on the total "direct premiums" they wrote in the preceding calendar year, whereas the insurers were collecting the assessments from their insureds on the basis of "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected, and the assessment the insured was required to remit to the Workers' Compensation Board.

Part QQ of Chapter 56 of the Laws of 2009 (“Part QQ”) amended Workers’ Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the WCB collects the portion of the allocation from each insurer from “direct premiums” to “standard premium” in order to ensure that insurers are not overcharged or under-charged for the assessment, and to ensure that insureds with high deductible policies are charged the appropriate assessment. Effective January 1, 2010, therefore, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent of Insurance to define “standard premium,” for the purposes of setting the assessments, and to set rules, in consultation with the WCB, and New York Compensation Rating Board, for collecting the assessment from insureds.

This regulation was previously promulgated on an emergency basis on December 29, 2009 and March 25, 2010. The proposal was sent to the Governor’s Office of Regulatory Reform on January 14, 2010 and the Department is awaiting approval to publish the regulation, however because the effective date of the relevant provision of the law is January 1, 2010, and the need that the assessments be calculated and collected in a timely manner, 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 benefit of the general welfare.

Subject: Workers’ Compensation Insurance Assessments.

Purpose: This regulation is necessary to standardize the basis upon which the the workers’ compensation assessments are calculated.

Text of emergency rule: A new sub-part 151-6 entitled Workers’ Compensation Insurance Assessments is added to read as follows:

Section 151-6.0 Preamble

(a) *Workers’ Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the workers’ compensation board to assess insurers, and the state insurance fund for the special disability fund, the fund for reopened cases, and the operations of the workers’ compensation board, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the state insurance fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.*

(b) *Prior to January 1, 2010, each insurer paid a percentage of the allocation based on the total direct written premiums it wrote in the preceding calendar year. However, Part QQ of Chapter 56 of the Laws of 2009 (“Part QQ”) amended Workers’ Compensation Law sections 15(8)(h)(4), and 151(2)(b) to change the basis upon which the board collects the portion of the allocation from each insurer. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the superintendent of insurance to define “standard premium,” for the purposes of the assessments, and to set rules, in consultation with the workers’ compensation board, and New York workers compensation rating board for collecting the assessment from insureds.*

Section 151-6.1 Definitions

As used in this Part:

(a) *Board means the New York workers’ compensation board.*

(b) *Insurer means an insurer authorized to write workers’ compensation insurance in this state, except for SIF.*

(c) *NYCIRB means the New York workers compensation rating board, which is also known as the New York workers compensation insurance rating board.*

(d) *SIF means the state insurance fund.*

(e) *Standard Premium means:*

(1) *For a non-retrospectively rated policy:*

(i) *the premium determined on the basis of the insurer’s approved rates; as modified by:*

(a) *any experience modification or merit rating factor;*

(b) *any applicable territory differential premium;*

(c) *the minimum premium;*

(d) *any construction classification premium adjustment program credits;*

(e) *any credit from return to work or drug and alcohol prevention programs;*

(f) *any surcharge or credit from a workplace safety program;*

(g) *any credit from an independently-filed insurer specialty program (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs);*

(h) *any charge for the waiver of subrogation;*

(i) *any charge for foreign voluntary coverage; and*

(j) *the additional charge for terrorism, and the charge for natural disasters and catastrophic industrial accidents; and*

(ii) *For purposes of determining standard premium, the insurer’s expense constant, including the expense constant in the minimum premium, the insurer’s premium discount, and premium credits for participation in any deductible program shall be excluded from the premium base; or*

(2) *For a retrospectively rated policy, the retrospective premium plus the implied premium discount.*

Section 151-6.2 Collection of assessments

Every insurer and SIF shall collect the assessments required by Workers’ Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) from its policyholders through a surcharge based on standard premium in an amount determined by the superintendent, in consultation with NYCIRB and the Board.

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 September 21, 2010.

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 of Insurance’s authority for the promulgation of Part 151-6 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Fifth Amendment to Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law, and Sections 15, 25-A. and 151 of the Workers’ Compensation Law.

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

Sections 15, 25-A, and 151 of the Workers’ Compensation Law, as amended by Part QQ of Chapter 56 of the Laws of 2009 require the Superintendent to define the “standard premium” upon which assessments are made for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers’ Compensation Board (“WCB”). Section 15 of the Workers’ Compensation Law further requires workers’ compensation insurers to collect the assessments from their policyholders through a surcharge based on premiums in accordance with the rules set forth by the Superintendent, in consultation with the New York Workers’ Compensation Insurance Rating Board (“NYCIRB”), and the chair of the WCB.

2. Legislative objectives: (a) Workers’ Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the WCB to assess insurers writing workers’ compensation insurance and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers’ Compensation Law required

the WCB to assess insurers on the total "direct premiums" they wrote in the preceding calendar year, whereas the insurers were collecting the assessments from their insureds on the basis of "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected, and the assessment the insured was required to remit to the WCB.

Therefore, Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the board collects the portion of the allocation from each insurer from "direct premiums" to "standard premium" in order to ensure that insurers are not over-charged or under-charged for the assessment, and to ensure that insureds with high deductible policies are charged the appropriate assessment. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the WCB, and NYCIRB for collecting the assessment from insureds.

3. Needs and benefits: This amendment is necessary, and mandated by the Workers' Compensation Law, in order to standardize the basis upon which the workers' compensation assessments are calculated to eliminate discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB.

The discrepancy in the assessment calculation and remittance became evident as a result of the proliferation of large deductible policies. In many instances, the "direct premium" paid on a large deductible policy is less than the "standard premium" would be for that policy. Insurers that offered high-deductible policies were collecting for assessments using the "standard premium," but the Workers' Compensation Law was requiring the WCB to use "direct premiums" to bill insurers. Thus, in some instances, workers' compensation insurers were collecting from employers more money than they were remitting to the WCB.

4. Costs: This amendment standardizes the basis upon which the workers' compensation assessments are calculated in order to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

5. Local government mandates: The amendment does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: This amendment requires no new paperwork. Insurers and the State Insurance Fund already collect and remit assessments to the WCB. This regulation only standardizes the basis upon which the assessments are calculated, as required by the Workers' Compensation Law.

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

8. Alternatives: No alternatives were considered, because Part QQ requires the Superintendent to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the WCB and NYCIRB, for collecting the assessment from insureds. Based on discussions with NYCIRB and the WCB, the Superintendent determined that the term "standard premium" should conform to the definition currently used by insurers, and should ensure that the definition accounts for high deductible policies.

NYCIRB has been collecting premium data on a "standard" basis since its inception nearly 100 years ago. The "standard premium" is the premium without regard to credits, deviations, or deductibles. As new credits and types of policies (such as large deductible policies) develop, NYCIRB adjusts the definition to account for the changes. The Insurance Department is merely adopting NYCIRB's current definition.

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

10. Compliance schedule: The effective date of the relevant provision of the law is January 1, 2010. The assessments must be calculated and collected as of January 1, 2010.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this 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.

This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as to the State Insurance Fund (SIF). It standardizes the basis upon which the workers' compensation assessments are calculated in order to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board.

The basis for this finding is that this 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" as found in section 102(8) of the State Administrative Procedure Act. 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. Nor does SIF come within the definition of "small business" found in section 102(8) of the State Administrative Procedure Act, because SIF is neither independently owned nor operated, nor does it employ one hundred or less individuals.

2. Local governments:

The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. This amendment does not affect self-insured local governments, because it applies only to insurers.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as to the State Insurance Fund (the "SIF"). These entities do business throughout New York State, including rural areas as defined under section 102(10) of the State Administrative Procedure Act ("SAPA").

2. Reporting, recordkeeping and other compliance requirements, and professional services: This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers and SIF already collect and remit assessments to the Workers' Compensation Board ("WCB"). This amendment simply standardizes the basis upon which the assessments are calculated.

3. Costs: This amendment standardizes the basis upon which the workers' compensation assessments are calculated in order to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

4. Minimizing adverse impact: The amendment does not impose any impact unique to rural areas.

5. Rural area participation: This amendment is required by statute. The entities covered by this amendment - workers' compensation insurers authorized to do business in New York State and the State Insurance Fund - do business in every county in this state, including rural areas as defined under section 102(10) of SAPA. This amendment standardizes the basis upon which the workers' compensation assessments are calculated.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule merely standardizes the basis upon which workers'

compensation assessments are calculated in order to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board. The insurer's existing personnel should be able to perform this task. There should be no region in New York which would experience an adverse impact on jobs and employment opportunities. This rule should not have a measurable impact on self-employment opportunities.

EMERGENCY RULE MAKING

Audited Financial Statements

I.D. No. INS-28-10-00003-E

Filing No. 673

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: Repeal of Part 89 and addition of new Part 89 (Regulation 118) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b)

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

Specific reasons underlying the finding of necessity: In September 2009, the New York State Insurance Department, after several years of working closely with the National Association of Insurance Commissioners ("NAIC"), received its accreditation under the NAIC's Financial Regulations Standards and Accreditation Program ("accreditation program"). This accreditation program is the cornerstone of uniform solvency regulation across the country. By obtaining accreditation, New York was recognized as having demonstrated its continued commitment to the NAIC and state-based regulation of insurers and other regulated entities. The regulatory regime acknowledged through the accreditation program provides substantial protection for the policyholders and for state and local governments that rely on the stability and solvency of insurers that do an insurance business within their borders.

The accreditation program is designed principally to ensure that all regulated insurers are required to maintain financial solvency. Other goals achieved by states that have been approved by the accreditation program are verification that the state conducts effective and efficient financial analysis and examination process, and has in place the appropriate organizational and personnel practices.

The benefits of accreditation for the Insurance Department are many. The chief benefit is that New York's examinations, audits and other reviews of its regulated insurers will be recognized by her sister states so that other states will not subject New York domestic insurers to greater barriers of entry and operation than non-New York insurers. Further, accreditation indicates that the Insurance Department examination and audit operations and controls meet a nationally recognized standard assuring potential policyholders that the prospective insurers meet desirable levels of financial solvency.

Accreditation is not a one-time event. Accredited insurance departments are required to undergo a comprehensive review by an independent review team every five years to ensure departments continue to meet baseline financial solvency oversight standards. Newly accredited insurance departments undergo this review both to obtain the initial approval and, in the case of the New York State Insurance Department, an additional review within two years of accreditation. The accreditation standards require state insurance departments to have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Among the commitments made by the Insurance Department to the NAIC as a condition of New York's approval under the accreditation program is an assurance that an NAIC model audit rule (NAIC model) would be timely adopted to be effective for regulated insurers as of January 1, 2010. The purpose of the NAIC model is to implement a state statute or regulation that contains a requirement for an annual audit of each domestic insurer by an independent certified public accountant (CPA), based on the June 1998 version of the NAIC's Model

Rule Requiring Annual Audited Financial Reports. Further, the NAIC model, once adopted by a state, requires that an insurer comply with certain best practices related to auditor independence, corporate governance and internal controls over financial reporting. The NAIC model reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The NAIC model closely hews to the audit and controls standards established by the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq., and extends that statute's application to regulated companies.

Continuation of accreditation by the NAIC requires New York to adopt specific rules in addition to those already imposed by current 11 NYCRR 89 (Regulation 118). For example, New York must prohibit each CPA from entering into an agreement of indemnity or release from liability, and must require CPA partner rotation in a manner similar to the NAIC's model.

Each of the required elements is contained in the proposed rule, either as a result of the adoption of the standards of the NAIC model or the continuation of the standards contained in present Regulation 118. New York has made every effort to conform the proposed rule to the NAIC model, except where inconsistent with a statutory requirement expressly established by New York law. Furthermore, and critically, the effective date stated in the proposed rule is required to maintain accreditation - January 1, 2010.

This regulation was previously promulgated on an emergency basis on December 28, 2009 and March 25, 2010. The proposal was sent to the Governor's Office of Regulatory Reform (GORR) on March 12, 2010 and the Department is awaiting approval to publish the regulation. Pending GORR's approval, this regulation must be continued on an emergency basis because of the accreditation deadline.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Audited Financial Statements.

Purpose: To implement provisions of Insurance Law, section 307(b), and add provisions required pursuant to the federal Sarbanes-Oxley Act of 2002.

Substance of emergency rule: Part 89 (Regulation No. 118) consists of 17 sections addressing the regulation of audits conducted by regulated insurers, fraternal benefit societies and managed care organizations (collectively the "companies").

Section 89.0 states that the purpose of the regulation is to apply audit and reporting standards upon each company.

Section 89.1 lists all definitions needed for the application of the regulation.

Section 89.2 contains the requirement that each company file audited financial statements and also directs each company to its correct filing location.

Section 89.3 sets forth the details of the items to be included in each audited financial statement.

Section 89.4 requires each company to notify the superintendent of the identity of its certified independent public accountant ("CPA") and any replacement.

Section 89.5 details the necessary qualifications for a CPA and restrictions upon employment of the same CPA for an extended period.

Section 89.6 provides rules for consolidated or combined audits of groups of companies.

Section 89.7 describes the scope of the audit and report of the CPA.

Section 89.8 requires both the company and its CPA to notify the superintendent upon the occurrence of a material misstatement or adverse financial condition.

Section 89.9 imposes a duty upon each company to report unremediated material weaknesses in its internal control over financial reporting.

Section 89.10 specifies terms to be included in the contract between a company and its CPA.

Section 89.11 requires each company to ensure that work papers of the CPA will be retained for review.

Section 89.12 contains rules for the appointment and duties of each company's audit committee.

Section 89.13 specifies the rules of conduct to be followed by the company with respect to the preparation of reports and documents.

Section 89.14 describes the requirements for management's report of internal control over financial reporting and incorporates the reports prepared by some of the companies to comply with the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq.

Section 89.15 sets forth special rules needed for Canadian and British insurers.

Section 89.16 contains the effective dates and special rules.

The full text of the regulation may be found at the Department's website (<http://www.ins.state.ny.us/>).

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 September 21, 2010.

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: Sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b) of the Insurance Law. These sections establish the superintendent's authority to promulgate regulations governing audited financial statements for authorized insurers as defined by section 107 of the Insurance Law and for fraternal benefit societies and managed care organizations.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe forms and regulations interpreting the Insurance Law, and to effectuate any power granted to the superintendent under the Insurance Law.

Insurance Law Section 307(b) requires insurers to file annual financial statements on forms prescribed by the superintendent.

Insurance Law Section 1109 provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Section 4710(a)(2) requires municipal cooperative health benefit plans to file annual financial statements on forms prescribed by the superintendent.

Insurance Law Section 5904(b) requires risk retention groups not chartered and licensed as property/casualty insurers to file a copy of the annual financial statement submitted to the state in which the risk retention group is chartered and licensed.

2. Legislative objectives: 11 NYCRR 89 (Regulation 118) was originally promulgated in 1984 to implement the provisions of Section 307(b) of the Insurance Law. The proposed repeal of the current regulation and promulgation of the new regulation continues to implement the provisions of section 307(b), and add provisions required pursuant to the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX").

3. Needs and benefits: SOX imposes a comprehensive regime of audits and internal management controls and reports designed to ensure greater transparency and accountability.

The proposed regulation is closely patterned upon a National Association of Insurance Commissioners model regulation ("NAIC model") that reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The NAIC model is similar to current Regulation 118 but imposes additional rules patterned on SOX. For example, the NAIC model and proposed regulation both require the regulated insurer to forbid its CPA from entering into an agreement of indemnity or release from liability. The proposed regulation will apply not only to companies already subject to SOX, but also to other companies, such as mutual companies, fraternal benefits societies and managed care organizations, that are presently governed by Regulation 118.

The proposed regulation, once adopted, will ensure that regulated companies engage in best practices related to auditor independence, corporate governance and internal controls over financial reporting.

4. Costs: This regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the

Insurance Department. Costs to be incurred by the parties affected differ depending upon the size of the company and whether that company is publicly held and thus already required to comply with SOX. Companies regulated by SOX will incur few additional costs. Compliance cost estimates received from a cross-section of affected companies that are not subject to SOX are most often estimated to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts range from \$25,000 a year to in excess of \$2 million (for one large mutual insurance company).

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Paperwork associated with filings to the superintendent should be minimal. The paperwork associated with the audit and controls regime required by the proposed regulation should also be minimal.

7. Duplication: None.

8. Alternatives: In developing this regulation, the Department obtained industry input and hued to the model regulation developed by the National Association of Insurance Commissioners (the "NAIC model") to implement SOX to the extent possible. However, the model has been modified as necessary to comply with New York statutes and regulations. The proposed regulation also restricts its application only to those entities over which the Department has jurisdiction unlike the NAIC model, which also contains rules that apply to CPAs.

Several comments received by the Department noted the compliance difficulties faced by foreign companies and United States branches of alien insurers, specifically with respect to the roles to be performed by persons not residing in the United States and for the reporting requirements to be imposed upon an integrated enterprise containing insurers in New York as well as entities with no nexus to New York. In response, the Department modified the regulation to provide detailed rules as to whether members of management may attest to filings, and to establish limited exceptions available only to these entities, in addition to the provision that permits a waiver of any provision of the regulation upon evidence of financial or organizational hardship.

One commenter requested that the definition of a managed care organization ("MCO"), entities that are included within the companies subject to this regulation, be restricted to exclude those entities that operate only in New York and that only serve public programs, i.e., Medicaid, Family Health Plus and Child Health Plus. After consideration and consultation with the Department of Health, the Department narrowed the definition of an MCO to exclude all MCOs that are primarily subject to the oversight of the Department of Health, and that also do not file financial documents with the Department other than for escrow accounts. Other MCOs that do file financial documents with the Insurance Department will still be governed by this regulation.

Another commenter objected to restrictions on using the same CPA for SOX audit work and tax return preparation for more than a five-year period for small companies. The exemption from any provision of the proposed regulation available upon proof of financial or organization hardship now addresses this comment.

Several comments noted that a company may be required to file both SOX reports and the reports required by the NAIC model as adopted by the various states. Companies want to avoid making duplicative filings to those required by the state of domicile. The proposed regulation contemplates accepting the domiciliary state filings as New York filings to the extent that they are substantially similar to those required by the proposed regulation.

Several comments noted differences between the NAIC model and the proposed regulation on filing deadlines, exceptions and the rules governing confidentiality of work papers. Different dates or deadlines are due to restrictions in New York law that require modification to the NAIC model. Certain automatic exclusions from the NAIC model could not be included in the proposed regulation to the extent that they conflict with New York law. Finally, the confidentiality of commercial

information, including work papers, obtained by state and local government is already subject in New York to a comprehensive regime of rules, exceptions and requirements, and thus did not need to be addressed in the proposed regulation.

9. Federal standards: The federal rules under SOX are extensive. The provisions in the proposed regulation are similar to the comparable federal provisions. The regulation does not conflict with any federal rules.

10. Compliance schedule: The regulation applies to companies for reporting periods beginning on or after January 1, 2010. Provisions of the regulation allow the company time to bring audit systems and controls into compliance without the need to ask for an extension or waiver. This timetable is contemplated by the NAIC model and has been adopted by many, but not all, states. The Department believes it is highly desirable to conform the application date of this proposed regulation to the effective date in other states.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation would not impose reporting, recordkeeping or other requirements on small businesses since the provisions contained therein apply only to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business in New York State. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act.

This regulation specifically considers the impact of the requirements contained therein on small businesses by exempting assessment co-operative property/casualty insurance companies having direct premiums written in New York State of less than \$250,000 in any calendar year and having fewer than 500 policyholders at the end of such calendar year from the requirement to file an annual statement. Further, the proposed regulation allows any company, including a small business, to request an exemption from any and all of its requirements upon written application to the superintendent based upon a financial or organizational hardship upon the company.

This regulation contains, as does current Regulation No. 118, minimum requirements that must be included in the contract between a regulated company and the independent certified public accountant ("CPA") retained by the company. Accordingly, CPAs, regardless of whether they are small businesses or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of the continuation of these rules to be minimal, especially since if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

The regulation does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirement on any local government.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Companies affected by the proposed regulation include regulated insurers, fraternal benefit societies, and managed care organizations authorized to do business in New York State. The companies affected by this regulation do business in every county in this state, including "rural areas" as defined under section 102(1) of the State Administrative Procedure Act. Some of the home offices of these companies lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

2. Reporting, recordkeeping and other compliance requirements: Many of the compliance requirements (such as filing due date and record retention period) are consistent with the requirements presently contained in Regulation 118 and should not impose upon any regulated party, regardless of whether they are located in a rural area or not, any additional paperwork, recordkeeping or compliance requirements. The obligations imposed by the proposed regulation with regard to establishment and maintenance of audit controls and standards are ei-

ther consistent with or less than those required by current Regulation 118 and a federal statute, the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX"), that imposes similar rules. If there are failures in the audit and controls process, a company is required to notify the superintendent. The regulation contains automatic exclusions from compliance for certain small companies. Further, any company that faces organizational or financial hardship can seek an exemption from any requirement imposed by the regulation.

The proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a certified independent public accountant ("CPA"). The terms of the employment of the CPA and the period for which work papers and communications are to be retained (contained in 11 NYCRR 243 ("Standards of Record Retention by Insurance Companies")) are both specified in the proposed regulation. Accordingly, CPAs, regardless of whether they are located in rural areas or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of these rules on CPAs, regardless of whether they are located in rural areas or not, should be negligible, if any at all. Indeed, if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

3. Costs: The proposed regulation implements requirements largely based on the rules imposed by current Regulation 118 and SOX. The cost of complying with the new requirements will depend on the size of the company and whether the company is already subject to SOX because it is publicly held. Companies regulated by SOX will incur few additional costs beyond those imposed by current Regulation 118 and the federal statute. Compliance cost estimates with respect to the proposed regulation were received from a cross-section of companies that are not subject to SOX. If the company is already required to comply with similar regulations in other states, the additional expense of the New York proposed regulation is estimated to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts range from \$25,000 a year to in excess of \$2 million (for one very large domestic mutual insurance company).

However, the proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a certified independent public accountant ("CPA"). The terms of the employment of a CPA is specified in the proposed regulation in a manner that is consistent with the current Regulation 118. Further, a CPA can obtain compensation for additional costs as part of the contract entered into with the regulated company. Accordingly, CPAs, regardless of whether they are located in rural areas or not, should not have to incur uncompensated additional costs to comply with the proposed regulation.

4. Minimizing adverse impact: The proposed regulation applies to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

5. Rural area participation: In developing this regulation, the Department conducted extensive outreach to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

The Insurance Department finds that this regulation will have no adverse impact on jobs and employment opportunities since, for publicly held companies, its requirements largely reflect obligations already contained in the present Regulation 118 and those imposed by the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX"). For insurers, fraternal benefit societies or managed care organizations not already subject to SOX, the regulation contain minor refinements of those companies' current obligations under Regulation 118 to establish, maintain and report internal audit and oversight. Compliance

may require the employment of additional personnel or outside contractors.

No region in New York should experience an adverse impact on jobs and employment opportunities. This regulation should not have a negative impact on self-employment opportunities.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Net Metering Provisions of the Tariff for Electric Service

I.D. No. LPA-28-10-00019-P

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

Proposed Action: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service with regard to net metering to be consistent with Section 66-j of the Public Service Law.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Net Metering provisions of the Tariff for Electric Service.

Purpose: To modify the Tariff for Electric Service with regard to net metering.

Public hearing(s) will be held at: 10:00 a.m., Sept. 10, 2010 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., Sept. 10, 2010 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service with regard to net metering, consistent with legislated changes to the New York State Public Service Law. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

Division of the Lottery

NOTICE OF ADOPTION

Multi-Jurisdictional Games and Payment of Prizes

I.D. No. LTR-19-10-00013-A

Filing No. 696

Filing Date: 2010-06-29

Effective Date: 2010-07-14

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

Action taken: Amendment of sections 2803.12, 2806.2, 2806.7 and 2806.11; and addition of section 2806.13 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612 and 1617

Subject: Multi-jurisdictional games and payment of prizes.

Purpose: To allow the sale of Powerball tickets and to codify an existing requirement regarding verification of prize winner identities.

Text or summary was published in the May 12, 2010 issue of the Register, I.D. No. LTR-19-10-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

NOTICE OF ADOPTION

Clinic Treatment Programs

I.D. No. OMH-11-10-00003-A

Filing No. 704

Filing Date: 2010-06-29

Effective Date: 2010-10-01

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

Action taken: Addition of Part 599 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.06, 31.07, 31.09, 31.11, 31.13, 31.19, 41.13, 43.01, 43.02, arts. 33 and 41; Social Services Law, sections 364, 364-a and 364-j

Subject: Clinic Treatment Programs.

Purpose: To establish standards for the certification, operation and reimbursement of clinic treatment programs serving adults and children.

Substance of final rule: Summary

This rulemaking establishes a new Part 599 of Title 14 NYCRR, governing the licensing, operation, and Medicaid fee-for-service funding of mental health clinics. The new rule establishes a modernized, more person-centered service delivery system, and a more equitable system of finances to properly support those services and creates incentives for the delivery of high quality clinic care. The complete text of the rulemaking and the complete text of the assessment of public comment are available on the Office of Mental Health’s website at www.omh.state.ny.us.

Overview

New York State’s mental health clinic system faces numerous and pressing financial and programmatic challenges. To address these challenges, the Office of Mental Health has been engaged in a multi-year initiative to restructure the way the State delivers and reimburses publicly supported mental health services. This clinic restructuring plan, which has been developed with input from numerous stakeholders, addresses the challenges by creating a defined and expanded range of clinic services; restructuring Medicaid rates to provide comparable payments for similar services; incentivizing services provided off-site, after hours, in languages other than English and by physicians and nurse practitioners in psychiatry; complying with Federal HIPAA billing requirements; and establishing a pool to compensate clinics for providing indigent care. These changes are necessary to improve service delivery and ensure the survival of a quality mental health clinic system in New York.

Requirements

The final, adopted rule replaces the existing requirements of Parts 587, 588 and 592 of Title 14 NYCRR, insofar as they pertain to mental health clinic services. The regulation establishes the following:

1. A redefined and more responsive set of clinic treatment services

with greater accountability for outcomes. Under this rule, clinics are required to offer services such as outreach, crisis response, and complex care management, which will enhance consumer engagement and support quality treatment.

2. A redesigned financing structure. Medicaid payment rates will be based on the efficient and economical provision of services to Medicaid clients. Payments will be comparable for similar services delivered by similar providers across service systems. Payments will also include adjustments for factors which influence the cost of providing services. Reimbursement under the previous methodology, including payment supplements under the Comprehensive Outpatient Provider (COPS) methodology, will be phased out over a four-year period.

3. A HIPAA-compliant procedure based payment system with modifiers to reflect variations in cost. Services will be billed using HIPAA-compliant procedure codes with modifiers to reflect differences in resources and related costs for the various services.

4. Provisions for indigent care. New York State is requesting a Federal waiver that would expand reimbursement for indigent care to include freestanding OMH-licensed mental health clinics.

The final rule differs from the proposed rule in minor, non-substantive ways. The changes made to the final rule - the majority of which were made as a result of comments received from the public - provide clarification of requirements included in the proposed rule and improve readability. Due to the length of the regulation, the Office of Mental Health is unable to publish the entire text in the State Register. However, to enable interested parties to view the differences between the proposed rule and the final rule, the Office of Mental Health will post the text which clarifies the changes on its website, and will post the entire text of the final rule as well. Complete information is available at www.omh.state.ny.us.

Final rule as compared with last published rule: Nonsubstantive changes were made in Part 599.

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

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

A revised regulatory impact statement is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The changes serve to provide clarification of requirements within the regulation and improve readability and comprehension. The changes are referenced in the Summary of the Assessment of Public Comment. In addition, the Assessment of Public Comment and Regulatory Text are available in their entirety on the OMH website at www.omh.state.ny.us.

Revised Job Impact Statement

A revised Job Impact Statement is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The changes serve to provide clarification of requirements within the regulation and improve readability and comprehension. There will be no adverse impact on jobs and employment opportunities as a result of these changes.

Assessment of Public Comment

The agency received a number of comments during the public comment period for the creation of Part 599, Clinic Treatment Programs. While the agency has made several technical and clarifying amendments in the regulation in response to these comments, none of these resulted in a substantive change in the regulation. A number of commenters expressed concern about the implementation date of the regulation and asked that the Office delay implementation for a number of months. The Office has agreed to an implementation date of October 1, 2010. The Office believes that this will provide sufficient time for providers to prepare for implementation.

The following is a summary of the changes made to the proposed rule in response to these comments. A comprehensive response to the comments is available on the OMH website at www.omh.state.ny.us.

599.1 - Background and intent

The final rule has been amended to consistently use the term "admitted", rather than "enrolled."

The Office has clarified which provisions of existing regulations will be superseded by this rule.

599.2 - Legal base

Clarifying language was added to reference the statutory authority of the local government mental health authority (the "local governmental unit").

599.3 - Applicability

The applicability section was amended in response to a comment requesting clarification of which elements of the regulation were contingent upon Federal approval.

599.4 - Definitions

Definitions were added for the terms "Director of Community Services", "primary clinician", "clinician", "serious emotional disturbance", and "treatment planning" to clarify these terms as they are used throughout the regulation. The definition of "impairment in functioning due to emotional disturbance" was replaced by a definition of "serious emotional disturbance".

The Office amended the definition of the term "complex care management" to make it clear that documentation should be in the progress note of the patient chart.

The definition of "developmental testing" was amended to clarify that assessment instruments, as well as screening instruments, were included.

The terms "family advisor", "health physical," "health screening", "homebound", "linkage with primary care", "mental health screening", "licensed psychologist", and "social worker" were clarified.

599.5 - Certification

The language in the proposed rule was amended to make it clear that while a clinic must provide access to all required services to enrollees needing them, it is not necessary that all services be available at all satellite sites.

The language concerning services to children was amended to clarify that individuals up to the age of 21 (including 21 year-old individuals currently admitted to the program) may be served by a children's specialty clinic, but fee-for-service Medicaid may be billed for children with serious emotional disturbance who are enrollees of managed care plans only if they are under the age of 19.

Language was also added clarifying the responsibility of providers to cooperate with the county local governmental unit's exercise of its oversight function.

599.6 - Organization and administration

The regulation was amended to make it clear that no person may serve as both a member of the governing body and of the paid staff of the clinic program without prior approval of the Office.

The regulation was also amended to clarify that the local governmental unit is permitted to determine that either individuals or, with the approval of the Office, groups of individuals, are in urgent need of receiving initial assessment services, for the purpose of triggering the requirement that providers admit such individuals or refer them to an appropriate provider of service.

Language was added clarifying the authority of the local governmental unit to monitor provider compliance with the requirement for written criteria for the admission and discharge of high need individuals and populations.

The provisions regarding obtaining recent records and communicating with family members were made into two separate subparagraphs of the regulations.

The prohibition on the use of restraint in clinic treatment programs was clarified to explain that this does not include the use of reasonable force when necessary to protect the life and limb of any person.

The regulation was amended to make it clear that the requirement that utilization review be performed on a random 25 percent sample of cases referred to open cases. It was further made clear that the provisions of 14 NYCRR 588.6 pertaining to utilization review and Medicaid Utilization Thresholds will continue to apply.

Language was added making it clear that providers of service are

required to cooperate with the local governmental unit in ensuring that individuals in high need are receiving required services or referrals.

Clarification was provided that policies and procedures for health monitoring must include a description of whether such monitoring will be performed by the provider or, if not, how the provider will seek to ascertain relevant health information. The language makes it clear that a failure to obtain such information for an individual where the individual refuses to provide access to such information shall be documented in the case record.

599.7- Rights of recipients

Language was added clarifying that individuals have the right to access to their diagnosis, upon request, consistent with existing statutory requirements.

599.8- Clinic services

The name of the service called “psychotropic medication administration” was changed to “injectable psychotropic medication administration” for the sake of clarity.

The language pertaining to mental health screening for children in children’s Clinic Plus was clarified to explain that it should be provided in a manner that has been approved by the local governmental unit or the Office.

599.9- Staffing

The regulation was clarified to explain that the language requiring a signed agreement between the clinic and an educational program permits a provider operating more than one clinic to have a single such agreement covering multiple clinic sites.

599.10 - Treatment planning

The regulation was amended to permit required documentation of an individual’s diagnosis to be included in either the treatment plan or a specific assessment document.

The regulation was amended to state that the treatment plan should include the recipient’s treatment and rehabilitative “goals and objectives”, rather than just “goals”.

The regulation was amended to make it clear that the expected scope and duration of services should be in the treatment plan.

The language on treatment planning was reordered for the sake of clarity.

The language concerning the requirement that the individual or his or her representative sign the treatment plan was amended to make this provision consistent with other Office regulations. The intent and meaning of the regulation remain unchanged.

The regulation was amended to provide that treatment plans occur no less frequently than every 90 days, or the “next provided service, whichever shall be later”, rather than 90 days or the “next scheduled service, whichever shall be later”. The Office declined to mandate a firm 90-day requirement, despite the fact that there is Federal Medicaid guidance recommending this standard. The Medicaid guidance is not a statutory or regulatory requirement, but providers should be aware of its existence. The Office believes, however, that in circumstances where the treatment plan calls for services to be provided on an interval of more than 90 days, requiring that an individual present at the clinic for the sole purpose of reviewing the treatment plan, or alternatively, that the treatment plan be reviewed without the participation of the individual, is unwarranted. Providers may, if they so chose, adhere to a firm 90-day requirement.

599.11 - Case records

Additional language was added to the regulations referencing existing statutory requirements regarding the confidentiality of HIV and substance abuse-related records.

Additional language was added to further explain and provide clarification of the requirements that the record include prescribed medications. The amended language makes it clear that such information should include medications prescribed by the clinic and other prescription medications being used by the individual. The language further makes clear that a failure to include such other prescription medications in the record shall not constitute non-compliance with this requirement if the individual refuses to disclose such information and such refusal is documented in the case record.

599.12 - Premises

The language relating to privacy was made more fully consistent across all sections of the regulation. The meaning and intent of the regulation are unchanged.

599.13 - Medical assistance clinic reimbursement system

The regulatory language has been amended to explain that the base fee reduction for providers with an operating certificate of less than six months duration pertains only to providers who receive an operating certificate of this duration as a result of being found to be deficient in meeting program standards.

Language pertaining to the calculation of a modifier or discount was corrected to state that when a modifier or discount is expressed as a percentage, it will adjust the payment by the percentage of the procedure weight, rather than the peer group base rate, and that when more than one procedure applies to a visit, rather than when more than one modifier or discount applies to a procedure, the highest value procedure shall be paid at its full fee value. There is no financial impact upon any provider as a result of this change.

The Office clarified that for the purposes of system transition, providers licensed solely under Article 31 of the Mental Hygiene Law and all mental health clinics licensed by the Office located in diagnostic and treatment centers will be treated the same for calculation of legacy rates.

The Office clarified that for the purposes of system transition and legacy calculation OMH will use the volume of visits with supplemental payments provided in the period July 1, 2008 through June 30, 2009. Additionally, the Office has clarified that for the purposes of the legacy rate calculation, OMH will use the supplemental rate in effect June 30, 2009, or rates made effective subsequent to June 30, 2009 and prior to the effective date of this Part. This clarification will allow the legacy rate to reflect changes made in the supplemental rate caused by provider rate appeals and to comply with applicable regulations.

The blend calculation language in the regulations was amended to pertain to providers, not peer groups.

599.14 - Medical assistance billing standards

Preadmission visit billing requirements were clarified.

The modifier chart within the regulations was amended to clarify that psychiatric assessment services receive the offsite modifier and that there is no limit on the number of post-admission psychiatric assessment services. It should be noted that reimbursement for the offsite modifier is contingent upon Federal approval.

The proposed regulation used the terms “skilled peer advocate” and “skilled family advisor”. The terms “peer advocate” and “family advisor” are defined in the regulations. The “skilled” modifier was used in the body of the regulation for the term “peer advocate” but not “family advisor”. The modifier was not intended to represent a substantive distinction from the general term “peer advocate”. Accordingly, the modifier has been deleted from the final rule.

The time periods associated with psychotherapy were amended to accommodate the school period for school-based services.

The requirement for family/collateral with recipient services was clarified to explain that the recipient must be present for a majority of the therapeutic session.

Language was added clarifying that the limitation of the use of the offsite modifier when services are provided to multiple recipients in the same location applies only when those services are provided by the same staff person. It should be noted that reimbursement for the offsite modifier is contingent upon Federal approval.

The language barring the offsite modifier for services receiving a modifier for languages other than English was deleted. It should be noted that reimbursement for the offsite modifier is contingent upon Federal approval.

599.15 - Indigent care pool

The Office has added clarifying language regarding eligibility for reimbursement from the Indigent Care Pool explaining that claims must be consistent with the Medical Assistance billing standards set forth in the regulation.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Revision of the Reimbursement Methodologies for Various Facilities and Services Provided Under the Auspices of OMRDD

I.D. No. MRD-28-10-00017-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 635-10.5, 671.7, 679.6, 681.14, 686.13 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: Revision of the reimbursement methodologies for various facilities and services provided under the auspices of OMRDD.

Purpose: To implement Health Care Adjustment (HCA) VI.

Public hearing(s) will be held at: 10:30 a.m., Aug. 30, 2010 at 75 Morton St., New York, NY; and 11:00 a.m., Aug. 31, 2010 at Capital District DDSO, 500 Balltown Rd., Bldg. 3, Rm. 2, Schenectady, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.omr.state.ny.us): The proposed regulations for Health Care Adjustment (HCA) VI represent the most recent in an annual series of initiatives to continue the momentum to support and sustain provider agencies in addressing the health care needs of their staff. OMRDD recognizes the essential role staff, especially direct support workers, play in developing and maintaining a high quality service delivery system. These funding initiatives will enable providers to sponsor or continue to sponsor attractive employee health care related benefits and may simultaneously serve to facilitate recruitment and retention efforts.

Medicaid funded services covered by these initiatives at various funding levels include Residential Habilitation, Day Habilitation, Supported Employment, Prevocational Services, Respite, Community Residential Habilitation, Article 16 Clinics, ICF/DDs, Day Treatment, Plan of Care Support Services and Family Education and Training.

OMRDD has determined a benchmark of health care coverage and has identified provider agencies that meet or exceed the benchmark criteria. In recognition of health care costs being incurred and to serve as a model toward which all providers should strive, providers which offer coverage at or above the benchmark will receive either a 3.0 percent increase to their allowable operating costs per trended program or a 1.0 percent increase to their allowable operating costs per all covered programs. Providers not in this category may apply to OMRDD to receive funding equivalent to 1.0 percent of their allowable operating costs in their rates or prices in the covered programs. The application must specify the intended use of the funds which are, first, to offset health care premium increases and, if any funds remain, to establish health care related benefits or to reduce employee out-of-pocket health care related expenses. Non-benchmark providers must assure board authorization and agree to maintain records to substantiate distribution of these funds consistent with their applications.

In all instances, the increases will be calculated based on the rates, prices or fees in effect on April 1, 2010 and will be a fixed amount thereafter. There will also be Health Care Adjustment VI payments in the amounts providers would have received if the increase had become effective on April 1, 2010.

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

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

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

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.

Regulatory Impact Statement

1. Statutory authority:
a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OMRDD.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in the anticipated 2010-2011 New York State Budget and in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law by making revisions to the reimbursement methodologies for various Medicaid funded services including Residential Habilitation, Day Habilitation, Supported Employment, Prevocational Services, Respite, Community Residential Habilitation, Article 16 Clinics, ICF/DDs, Day Treatment, Plan of Care Support Services and Family Education and Training. The proposed amendments will increase reimbursement of providers of the referenced programs and services so as to enable them to sustain or enhance employee health care related benefits and/or to help their employees defray the ever increasing costs of health care.

3. Needs and benefits:

Direct support staff are the backbone of the delivery of services for people with mental retardation and developmental disabilities. These vital staff meet the grassroots, hands on, person to person needs of each individual requiring care. The direct support staff person may provide assistance to individuals who need help with daily living skills such as getting ready for the day, preparing meals or eating. Other activities of direct support staff are aimed at building life skills such as job coaching, activity development and training in social interaction.

Health Care Adjustment (HCA) VI represents the most recent in a series of annual initiatives designed to continue the momentum to support and sustain provider agencies in addressing the health care needs of their employees.

OMRDD recognizes providers' dependence on direct support staff to deliver essential services to those individuals requiring care. It also recognizes how disproportionately workers with lower salaries may be impacted by rising health care related expenses. HCA VI funding is offered to help providers meet the challenges of sustaining and enhancing health care related benefits for their employees. While these funding initiatives will enable providers to sponsor or continue to sponsor attractive health care related benefits, they may simultaneously serve to facilitate staff recruitment and retention efforts.

Medicaid funded services covered by these initiatives include Residential Habilitation, Day Habilitation, Supported Employment, Prevocational Services, Respite, Community Residential Habilitation, Article 16 Clinics, ICF/DDs, Day Treatment, Plan of Care Support Services and Family Education and Training.

OMRDD has determined a benchmark of health care coverage and has identified provider agencies that meet or exceed the benchmark criteria. In recognition of health care costs being incurred and to serve as a model toward which all providers should strive, providers which offer coverage at or above the benchmark will receive for each adjustment either a 3.0 percent increase to their allowable operating costs per trended program or a 1.0 percent increase to their allowable operating costs per all covered programs. Providers not in this category may apply to OMRDD to receive funding equivalent to 1.0 percent of their allowable operating costs in their rates or prices in the covered programs. The application must specify the intended use of the funds from among the required and approved uses. Approved applicants shall be required to use these funds to offset health care premium increases. Remaining funds shall be used to establish health care related benefits or to reduce employee out-of-pocket health care related expenses. Non-benchmark providers must assure board authorization and agree to maintain records to substantiate distribution of these funds consistent with their applications. Funds are subject to audit to assure compliance with these regulations.

Health Care Adjustment VI will be effective October 1, 2010, and will include additional payments equal to the amount eligible providers would have received if the increase had become effective on April 1, 2010.

4. Costs:

a. Costs to the agency and to the State and its local governments: If

there is full provider participation, the amendments will result in an annual aggregate increase of approximately \$28.1 million in Medicaid reimbursements to affected providers of developmental disabilities services. This will be evenly shared by the State (approximately \$14 million) and the federal (approximately \$14 million) governments. For affected HCBS waiver services the estimated cost will be approximately \$22 million; for community residential habilitation, approximately \$200,000; for Article 16 clinics, approximately \$250,000; for intermediate care facilities, approximately \$5.6 million; and for day treatment facilities, approximately \$70,000. There will be no additional costs to local governments as a result of these particular amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There may be some administrative costs associated with implementation and continued compliance with the amendments. However, overall, the change will have a positive fiscal impact on providers of services because the revisions are designed to provide them with additional funds to be utilized to enhance the health care benefits and reduce the health care expenditures of their employees.

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

6. Paperwork: For providers which are below the benchmark there will be some paperwork associated with the preparation and forwarding of applications and attestations and the associated governing body resolutions. They will also need to maintain records documenting the distribution of the health care initiative funds.

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

8. Alternatives: The proposed rule making represents what OMRDD believes to be the most effective way to provide funding increases designed to address health care related costs. The proposed amendments have been developed with the participation and input of the service provider community. The alternative would be to revise the current reimbursement methodologies by giving all providers a general increase in funding which would not necessarily address health care related benefits in agencies which are below the benchmark. Also, without the agency application and attestation procedure and associated governing body resolutions for providers which are below the benchmark, there would be no guarantee that the added funds would be applied to the intended purpose.

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

10. Compliance schedule: OMRDD expects to adopt the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. As with similar targeted funding initiatives previously adopted by OMRDD, this agency will be available to provide guidance to providers with regard to their compliance activities.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies that are providers of Medicaid funded services covered by these initiatives at various funding levels including Residential Habilitation, Day Habilitation, Supported Employment, Prevocational Services, Respite, Community Residential Habilitation, Article 16 Clinics, ICF/DDs, Day Treatment, Plan of Care Support Services and Family Education and Training.

While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. OMRDD estimates that approximately 700 provider agencies are eligible for the funding.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not have any negative effects on these small business service providers. In fact, the proposed amendments to the various reimbursement methodologies have been developed to increase funding provided to these small business service providers in order to enhance their capacity to provide adequate health care related benefits for their employees.

Direct support staff are the backbone of the delivery of services for people with mental retardation and developmental disabilities. These vital staff meet the grassroots, hands on, person to person needs of each individual requiring care. The direct support staff person may provide assistance to individuals who need help with daily living skills such as getting ready for the day, preparing meals or eating. Other activities of direct support staff are aimed at building life skills such as job coaching, activity development and training in social interaction.

Health Care Adjustment (HCA) VI represents the most recent in a series of annual initiatives designed to continue the momentum to support and sustain provider agencies in addressing the health care needs of their employees.

OMRDD recognizes providers' dependence on direct support staff to deliver essential services to those individuals requiring care. It also recognizes how disproportionately workers with lower salaries may be impacted by rising health care related expenses. HCA VI funding is offered to help providers meet the challenges of sustaining and enhancing health care related benefits for their employees. While these funding initiatives will enable providers to sponsor or continue to sponsor attractive health care related benefits, they may simultaneously serve to facilitate staff recruitment and retention efforts.

Medicaid funded services covered by these initiatives at various funding levels include Residential Habilitation, Day Habilitation, Supported Employment, Prevocational Services, Respite, Community Residential Habilitation, Article 16 Clinics, ICF/DDs, Day Treatment, Plan of Care Support Services and Family Education and Training.

OMRDD has determined a benchmark of health care coverage and has identified provider agencies that meet or exceed the benchmark criteria. In recognition of health care costs being incurred and to serve as a model toward which all providers should strive, providers which offer coverage at or above the benchmark will receive either a 3.0 percent increase to their allowable operating costs per trended program or a 1.0 percent increase to their allowable operating costs per all covered programs. Providers not in this category may apply to OMRDD to receive funding equivalent to 1.0 percent of their allowable operating costs in their rates or prices in the covered programs. The application must specify the intended use of the funds from among the required and approved uses. Approved applicants shall be required to use these funds to offset health care premium increases. Remaining funds shall be used to establish health care related benefits or to reduce employee out-of-pocket health care related expenses. Approved applicants must also assure board authorization and agree to maintain records to substantiate distribution of these funds consistent with their applications. Funds are subject to audit to assure compliance with these regulations.

Health Care Adjustment VI will be effective October 1, 2010, and will include additional payments equal to the amount eligible providers would have received if the increase had become effective on April 1, 2010.

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

2. Compliance requirements: For providers below the benchmark, there will be some compliance activities associated with the submission of applications and attestations for the additional funds and the associated governing body resolution that will ensure their appropriate expenditure. The provider is also required to maintain records documenting the distribution of these funds.

3. Professional services: Depending on the labor situation of the individual provider, there may be some need for the advice of a labor relations professional to implement the benefit. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these proposed amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and administrative issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: As discussed in the Regulatory Impact Statement, the amendments will have only positive economic impacts.

7. Small business and local government participation: The proposed amendments continue to address an area of concern for both the providers and OMRDD. During the initial phase of this funding initiative, OMRDD surveyed all voluntary provider agencies regarding their various health insurance benefit plans and worked closely with the provider community in the development of the regulations. The funding initiatives and the regulatory structures surrounding their implementation were discussed with provider associations, which represent provider agencies. OMRDD interfaces with them on a continuing basis to exchange information and gather input and feedback so that stakeholders' interests may be represented in all aspects of OMRDD's service delivery systems.

The first five phases of the funding initiative were well received by the provider community. HCA VI merely builds upon the first five installments of the health care adjustment initiative. Therefore, providers will already be familiar with the basic concepts and requirements contained in these proposed regulations.

The OMRDD Budget Briefing Booklet for 2010-2011 also included information that the Executive Budget recommendations included funding

for an additional phase of the health care adjustment initiative. This document was widely disseminated.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these amendments is not being submitted because the proposed amendments will not impose any adverse economic impact on rural areas. The proposed amendments will revise the reimbursement methodologies for the referenced facilities and services to implement the sixth phase of a Health Care Adjustment (HCA VI) initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care related costs of their employees. The amendments provide additional funding and will only have positive fiscal impacts for providers.

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

As discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments, there will be some compliance activities associated with submission of applications for the additional funds, the associated governing body or board resolution that will ensure their appropriate expenditure, and recordkeeping relative to the distribution of these funds. OMRDD will provide any necessary guidance.

Finally, the amendments will have no adverse impact on providers as a result of the location of their operations (rural/urban) because OMRDD's reimbursement methodologies are primarily based upon costs or budgeted costs of services. Thus, OMRDD's reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and employment opportunities. The proposed amendments will revise the reimbursement methodologies for the referenced facilities and services to implement the sixth phase of a health care adjustment initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care related costs of their employees and enhance their ability to hire and retain indispensable direct support staff. While the amendments do provide additional funding for the stated purposes, they will not result in any changes to current staffing levels of the affected facilities and services. There will therefore be no effect on the numbers of jobs and employment opportunities in New York State.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Efficiency Adjustment for Residential Habilitation Services in Supervised IRAs and Supervised CRs

I.D. No. MRD-28-10-00018-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 635-10.5(b), 671.7(a) and 686.13(k) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Efficiency adjustment for residential habilitation services in supervised IRAs and supervised CRs.

Purpose: To implement an efficiency adjustment by modifying the IRA price.

Public hearing(s) will be held at: 10:30 a.m., Aug. 30, 2010 at 75 Morton St., New York, NY; and 11:00 a.m., Aug. 31, 2010 at Capital District DDSO, 500 Balltown Rd., Bldg. 3, Rm. 2, Schenectady, NY.

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

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

Text of proposed rule: Paragraph 635-10.5(b)(18) is amended as follows:

(18) Determination of the efficiency adjustment for individualized residential alternatives (IRAs): [effective January 1, 2003.]

(i) *Effective January 1, 2003, there shall be an efficiency adjustment for IRAs as follows:*

[(i)] (a) The efficiency adjustment shall be a percentage reduc-

tion applied to the allowed administration operating reimbursements for residential habilitation services and room, board and protective oversight (see section 686.13[k][1] of this Title) in the IRA price in effect on December 31, 2002.

[(ii)] (b) The efficiency adjustment described herein will not apply to:

Clauses (a)-(c) of the current subparagraph 635-10.5(b)(18)(ii) are renumbered to be subclauses (1)-(3)

Subparagraphs (iii)-(viii) of the current paragraph 635-10.5(b)(18) are renumbered to be clauses (c)-(h) and the new clauses (c) and (d) are amended as follows:

(c) Reimbursement for administration operating costs for IRAs newly certified on or after January 1, 2003, except those described in [clauses (ii)(a) and (b)] *subclauses (b)(1) and (2)* of this [paragraph] *subparagraph*, will reflect the percentage reductions determined in [subparagraph (vii)] *clause (g)* of this [paragraph] *subparagraph*.

(d) All information used to determine the efficiency adjustment percentage described in [subparagraph (vii)] *clause (g)* of this [paragraph] *subparagraph* is based on allowed IRA administration operating reimbursements for the calendar 2001 or the 2001-2002 price period.

Paragraph 635-10.5(b)(18) is amended by the addition of a new subparagraph (ii) as follows:

(ii) *Effective October 1, 2010, for providers in all regions there shall be an efficiency adjustment applied to the IRA price for the residential habilitation services provided in supervised IRAs and supervised Community Residences.*

(a) *There shall be three components of the efficiency adjustment as follows:*

(1) *Non-Personal Services (NPS). Providers which demonstrate a level of NPS at or above the benchmark described in item (ii) of this subclause shall be subject to a reduction in the supervised IRA price.*

(i) *For the purposes of this efficiency adjustment, NPS includes site Other Than Personal Services (OTPS), transportation, and expensed equipment as contained in the supervised IRA price. NPS does not include Personal Services, contracted personal services, Fringe benefits, total program administration, total agency administration, Health Care Adjustments (HCA), capital costs and State paid items.*

(ii) *The benchmark is predicated on the value of all NPS contained in a provider's supervised IRA price in effect on June 30, 2008 for Region I reporting providers and on December 31, 2007 for Region II and Region III reporting providers. This value is expressed as a percentage of the total operating costs including transportation and HCA but exclusive of capitalized property contained in a provider's supervised IRA price on the respective date. The percentages for each provider offering residential habilitation services are ranked ordinally. OMRDD has established the benchmark at the 15th percentile. All providers below the 15th percentile in the ordinal ranking are exempt from the NPS reduction.*

(iii) *For all providers ranked at or above the benchmark, the reduction shall be applied to NPS operating costs contained in the supervised IRA price in effect on October 1, 2010.*

(iv) *The percentage reduction shall be 18 percent.*

(2) *Administration. Providers which demonstrate a level of Administration contained in the supervised IRA price at or above the benchmark described in item (ii) of this subclause shall be subject to a reduction in the supervised IRA price.*

(i) *For the purposes of this efficiency adjustment Administration includes Total Program Administration and Total Agency Administration contained in the supervised IRA price. Both Total Program Administration and Total Agency Administration include components representing personal services, administrative contracted services, administrative OTPS and administrative fringe benefits.*

(ii) *The benchmark is predicated on the combined value of Total Program Administration and Total Agency Administration contained in a provider's supervised IRA price in effect on June 30, 2008 for Region I reporting providers and on December 31, 2007 for Region II and Region III reporting providers. This value is expressed as a percentage of the total operating costs including transportation and the HCA but exclusive of capitalized property contained in a provider's supervised IRA price on the respective date. The percentages for each provider offering residential habilitation services are ranked ordinally. OMRDD has established the benchmark at the 15th percentile. All providers below the 15th percentile in the ordinal ranking are exempt from the Administration reduction.*

(iii) *For all providers ranked at or above the benchmark, the reduction shall be applied to Total Program Administration and Total Agency Administration operating costs contained in the supervised IRA price in effect on October 1, 2010.*

(iv) *The percentage reduction shall be 5 percent.*

(3) *Residual Adjustment. For providers subject to either one or both of the reductions described in subclauses (1) and (2) of this clause, a residual adjustment shall be implemented as described in items (i) and*

(ii) of this subclause. The residual adjustment shall confine the aggregate effect of this efficiency adjustment and an offset factor of \$44 per unit of service to a range between a minimum of 1.5 percent and a maximum of 3.5 percent of the total supervised IRA price on October 1, 2010.

(i) For providers which would realize a reduction in the total supervised IRA price less than 1.5 percent after combining the effects subclauses (1) and (2) of this clause and \$44 per unit of service, the total efficiency adjustment shall be increased to 1.5 percent of the total supervised IRA price in effect on October 1, 2010.

(ii) For providers which would realize a reduction in the total supervised IRA price greater than 3.5 percent after combining the effects of subclauses (1) and (2) of this clause and \$44 per unit of service, the total efficiency adjustment shall be held to 3.5 percent of the total supervised IRA price in effect on October 1, 2010.

(b) New sites: To the extent that a provider is subject to this efficiency adjustment, a corresponding correction to approved budgeted costs for new sites shall be made so that the percentage offsets in effect before inclusion of the new site—18% NPS, 5% Administration and any residual adjustment thereto—shall be preserved when the new site's budgeted costs are included in the calculation of the supervised IRA price.

(c) For purposes of requesting a price adjustment, the effects of this efficiency adjustment resulting from the NPS and Administrative reductions as described in subclauses (a)(1) and (2) of this subparagraph as well as any subsequent residual adjustment thereto per subclause (a)(3) of this subparagraph shall not be construed as a basis for loss. In processing a price adjustment, any revised price will be offset by the monetary effects of the NPS and Administrative reductions including the residual adjustment thereto, if any.

Paragraph 671.7(a)(10) is amended as follows:

(10) The price as computed in accordance with this subdivision for a community residence of 16 or fewer beds shall be offset as follows:

(i) [For s]Supervised community residences:

(a) Effective January 1, 2010, the offset shall be \$1,404 (or a prorated portion thereof for facilities which opened after April, 2009) and beginning January 1, 2010, \$156 per month.

(b) Effective October 1, 2010, the offset shall be \$200 per month.

(ii) For supportive community residences the offset shall be \$1,134 (or a prorated portion thereof for facilities which opened after April, 2009) and beginning January 1, 2010, \$126 per month.

Subdivision 671.7(a) is amended by the addition of a new paragraph (11) as follows and the existing paragraphs (11) and (12) are renumbered to be (12) and (13):

(11) Effective October 1, 2010, for providers in all regions there shall be an efficiency adjustment applied to the IRA price for residential habilitation services provided in supervised IRAs and supervised Community Residences.

(i) There shall be three components of the efficiency adjustment as follows:

(a) Non-Personal Services (NPS). Providers which demonstrate a level of NPS at or above the benchmark described in subclause (2) of this clause shall be subject to a reduction in the supervised IRA price.

(1) For the purposes of this efficiency adjustment, NPS includes site Other Than Personal Services (OTPS), transportation, and expensed equipment contained in the supervised IRA price. NPS does not include Personal Services, contracted personal services, Fringe benefits, total program administration, total agency administration, Health Care Adjustments (HCA), capital costs and State paid items.

(2) The benchmark is predicated on the value of all NPS contained in a Community Residence provider's supervised IRA price in effect on June 30, 2008 for Region I reporting providers and on December 31, 2007 for Region II and Region III reporting providers. This value is expressed as a percentage of the total operating costs including transportation and HCA but exclusive of capitalized property contained in a provider's supervised IRA price on the respective date. Alternatively, for Community Residence providers which did not operate supervised IRAs at these times, the NPS costs and the total operating costs shall be extracted from the CFR filed for the period ending either on December 31, 2007 or June 30, 2008 as appropriate in order to calculate a comparable value. The percentages for each provider offering residential habilitation services are ranked ordinally. OMRDD has established the benchmark at the 15th percentile. All providers below the 15th percentile in the ordinal ranking are exempt from the NPS reduction.

(3) For all providers ranked at or above the benchmark, the reduction shall be applied to NPS operating costs contained in the supervised IRA price in effect on October 1, 2010.

(4) The percentage reduction shall be 18 percent.

(b) Administration. Providers which demonstrate a level of Administration contained in the supervised IRA price at or above the benchmark described in subclause (2) of this clause shall be subject to a reduction in the supervised IRA price.

(1) For the purposes of this efficiency adjustment Administration includes Total Program Administration and Total Agency Administration contained in a provider's supervised IRA price. Both Total Program Administration and Total Agency Administration include components representing personal services, administrative contracted services, administrative OTPS and administrative fringe benefits.

(2) The benchmark is predicated on the combined value of Total Program Administration and Total Agency Administration contained in a Community Residence provider's supervised IRA price in effect on June 30, 2008 for Region I reporting providers and on December 31, 2007 for Region II and Region III reporting providers. This value is expressed as a percentage of the total operating costs including transportation and HCA but exclusive of capitalized property contained in a provider's supervised IRA price on the respective date. Alternatively, for Community Residence providers which did not operate supervised IRAs at these times, the Administrative costs and the total operating costs shall be extracted from the CFR filed for the period ending either on December 31, 2007 or June 30, 2008 as appropriate in order to calculate a comparable value. The percentages for each provider offering residential habilitation services are ranked ordinally. OMRDD has established the benchmark at the 15th percentile. All providers below the 15th percentile in the ordinal ranking are exempt from the Administration reduction.

(3) For all providers ranked at or above the benchmark, the reduction shall be applied to Total Program Administration and Total Agency Administration operating costs contained in the supervised IRA price in effect on October 1, 2010.

(4) The percentage reduction shall be 5 percent.

(c) Residual Adjustment. For providers subject to either one or both of the reductions described in clauses (a) and (b) of this subparagraph, a residual adjustment shall be implemented as described in subclauses (1) and (2) of this clause. The residual adjustment shall confine the aggregate effect of this efficiency adjustment and an offset factor of \$44 per unit of service to a range between a minimum of 1.5 percent and a maximum of 3.5 percent of the total supervised IRA price on October 1, 2010.

(1) For providers which would realize a reduction in the total supervised IRA price less than 1.5 percent after combining the effects of clauses (a) and (b) of this subparagraph and \$44 per unit of service, the total efficiency adjustment shall be increased to 1.5 percent of the total supervised IRA price in effect on October 1, 2010.

(2) For providers which would realize a reduction in the total supervised IRA price greater than 3.5 percent after combining the effects clause (a) and (b) of this subparagraph and \$44 per unit of service, the total efficiency adjustment shall be held to 3.5 percent of the total supervised IRA price in effect on October 1, 2010.

(i) New sites: To the extent that a provider is subject to this efficiency adjustment, a corresponding correction to approved budgeted costs for new sites shall be made so that the percentage offsets in effect before inclusion of the new site—18% NPS, 5% Administration and any residual adjustment thereto—shall be preserved when the new site's budgeted costs are included in the calculation of the supervised IRA price.

(ii) For purposes of requesting a price adjustment, the effects of this efficiency adjustment resulting from the NPS and Administrative reductions as described in clauses (i)(a) and (b) of this paragraph as well as any subsequent residual adjustment thereto per clause (i)(c) of this paragraph shall not be construed as a basis for loss. In processing a price adjustment, any revised price will be offset by the monetary effects of the NPS and Administrative reductions including the residual adjustment thereto, if any.

Paragraph 686.13(k)(1) is amended by the addition of a new subparagraph (ix) as follows and the existing subparagraphs (ix) and (x) are renumbered to be (x) and (xi):

(ix) The total reimbursable operating costs derived through the application of the above methodology shall be subject to efficiency adjustments in paragraph 635-10.5(b)(18) of this Title.

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

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

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

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.

Regulatory Impact Statement

1. Statutory authority:

a. OMRDD's authority to adopt rules and regulations necessary and

proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments are necessary to make adjustments to the reimbursement methodology applicable to Home and Community Based Services (HCBS) waiver residential habilitation services provided in supervised Individualized Residential Alternatives (IRAs) and supervised Community Residences (CRs).

3. Needs and benefits: New York State is looking for savings in its Medicaid program, including Medicaid funded services overseen by OMRDD. OMRDD consulted with providers about how to best achieve savings. An implementation approach was designed that targets cost categories of residential habilitation in supervised settings -non-personal services and administrative expenses-- which may most easily sustain cuts and thereby preserve services and maintain the security of direct professional staff positions. One component of the plan adjusts the financial impacts to create a more equitable spread among providers.

The State believes that the fiscal impact of this efficiency adjustment will be softened by trend increases (3.06 percent for 2009 and 2.08 percent for 2010) to the operating costs components of providers' prices/rate/fees which became effective on February 1, 2010. Additionally, funding to assist employers in addressing the health care needs of their employees is slated to produce an additional 1 percent increase in operational funding for many programs. The health care funding and the efficiency adjustment are being proposed concurrently. Both project an effective date of October 1, 2010.

OMRDD is encouraging providers to seek efficiencies of operation. Because of budgetary uncertainty, many providers had not incorporated any trend increases into their fiscal planning. OMRDD expects that the additional funding attributable to the trend factors which providers only realized after February 1, 2010 may have bolstered their fiscal positions sufficiently for them to absorb the efficiency adjustment without detriment.

Included in this proposal is an increase in the offset to reimbursement for supervised settings. The offset is put in place to avoid duplication of funding and reduces State funding in recognition of other revenues received by providers.

4. Costs:

a. Costs to the agency and to the State and its local governments. There is an approximate \$50 million savings in Medicaid that will be evenly shared by the State (approximately \$25 million) and the federal (approximately \$25 million) governments. There will be no fiscal impact on local governments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The proposed amendments are expected to result in a decrease of approximately \$50 million in aggregate funding to providers of supervised IRAs and supervised CRs.

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

6. Paperwork: No additional paperwork will be required by the proposed amendments.

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

8. Alternatives: The current course of action as embodied in these proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of HCBS waiver for residential habilitation services provided in supervised IRAs and CRs. OMRDD had previously, in collaboration with representatives of provider associations, discussed alternatives to achieve the desired efficiencies in the provision of the affected services. Other alternatives were thoroughly explored but this was determined to be the optimal methodology.

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

10. Compliance schedule: OMRDD expects to finalize the proposed amendments with an effective date of October 1, 2010. The amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These proposed regulatory amendments will apply to voluntary non-profit agencies that provide HCBS waiver residential habilitation services provided in supervised Individualized Resi-

dential Alternatives (IRAs) and supervised Community Residences (CRs) to persons with developmental disabilities in New York State. As of December 2009, approximately 19,000 individuals received residential habilitation services in supervised IRAs and supervised CRs in New York State.

The OMRDD has determined, through a review of the certified cost reports, that while most services are provided by non-profit agencies which employ more than 100 people overall, many of the services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses. The proposed amendments are expected to result in a decrease of approximately \$50 million in funding to providers of the affected HCBS waiver residential habilitation services provided in supervised IRAs and supervised CRs. OMRDD has determined that these amendments will not result in increased costs for additional services or increased compliance requirements.

2. Compliance requirements: There are no additional compliance requirements resulting from the implementation of these proposed amendments. The proposed amendments revise the reimbursement methodology for HCBS waiver residential habilitation services provided in supervised IRAs and supervised CRs to adjust payments made to providers, consistent with goals for increased operational efficiency. While operators of the referenced facilities will need to address adjustments in funding through increased operational efficiencies, the amendments do not specifically impose any new requirements with which regulated parties are expected to comply.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports certified by certified accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments.

4. Compliance costs: There are no additional compliance costs to regulated parties associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and reimbursement issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The purpose of these proposed amendments is to revise the reimbursement methodologies of the referenced programs and services to adjust payments made to providers, consistent with goals for increased operational efficiency. OMRDD determined that it could adjust prices for HCBS waiver residential habilitation services provided in supervised IRAs and supervised CRs to encourage efficiencies in operation and still adequately reimburse providers of such services. The proposed amendments which adjust the affected residential habilitation reimbursement methodology represent OMRDD's best effort at adjusting reimbursement in a way which will accommodate the realization of efficiencies where they can best be achieved and afforded, and in the most equitable distribution possible.

OMRDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. However, since these amendments require no specific compliance response of regulated parties, the approaches outlined cannot be effectively applied.

7. Small business participation: As noted in the Regulatory Impact Statement, New York State is looking for savings in its Medicaid program, including Medicaid funded services overseen by OMRDD. OMRDD consulted with providers about how to best achieve savings.

In an effort to include small businesses as much as possible in the decision-making process, OMRDD has continued to meet regularly with associations of providers of services to discuss issues of interest. Options for implementing a residential habilitation efficiency adjustment were discussed with representatives of the provider associations at four meetings held on March 22, April 19, May 6, and May 13, 2010. Additionally, workgroups including providers were formed with the goal to refine and work out the specifics of the efficiency adjustment.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments. While the efficiency adjustment contained in the proposed amendments may have some adverse fiscal impact on providers of HCBS waiver residential habilitation services provided in supervised Individualized Residential Alternatives (IRAs) and supervised Community Residences (CRs), the geographic location of any given program (urban or rural) will not be a contributing factor to any such impact.

This is because the reimbursement methodology OMRDD uses to reimburse residential habilitation services in supervised IRAs and supervised CRs is primarily based upon provider specific cost projections. Thus, both this reimbursement methodology and the efficiency adjustment, which is applied proportionately to reimbursement, have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because OMRDD does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed amendments are necessary to make adjustments to the reimbursement methodology applicable to Home and Community Based (HCBS) waiver residential habilitation services provided in supervised Individualized Residential Alternatives (IRAs) and Community Residences (CRs). An implementation approach was designed that targets cost categories—non-personal services and administrative expenses-- which may most easily sustain cuts and thereby preserve services and maintain the security of direct professional staff positions. The fiscal impact of this efficiency adjustment will be softened by trend increases (3.06 percent for 2009 and 2.08 percent for 2010) to providers' operating costs which became effective on February 1, 2010. Additionally, funding to assist employers in addressing the health care needs of their employees is slated to produce an additional 1 percent increase in funding for many programs. Consequently, OMRDD does not anticipate an adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Specific Large Industrial Electric Energy Efficiency Programs

I.D. No. PSC-14-09-00015-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order concerning specific large industrial electric Energy Efficiency Programs.

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

Subject: Specific large industrial electric Energy Efficiency Programs.

Purpose: To approve three new EEPS programs and enhancing funding and making other modifications for other EEPS programs.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving three new Energy Efficiency Portfolio Standard (EEPS) Programs and enhancing funding and making other modifications for other EEPS programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-1127SA2)

NOTICE OF ADOPTION

Commercial and Industrial Gas Energy Efficiency Programs

I.D. No. PSC-47-09-00008-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order approving in part and denying in part, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) request for additional funding of EEPS programs.

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

Subject: Commercial and industrial gas Energy Efficiency Programs.

Purpose: To approve in part and deny in part commercial and industrial gas Energy Efficiency Programs.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving in part and denying in part, The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) and KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) request for additional funding of EEPS programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-G-0363SA3)

NOTICE OF ADOPTION

Accounting, Revenues and Costs Associated with a Proposed Compressor Project

I.D. No. PSC-48-09-00010-A

Filing Date: 2010-06-25

Effective Date: 2010-06-25

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

Action taken: On 6/17/10, the PSC adopted an order, approving in part, Corning Natural Gas Corporation's Petition to determine accounting, revenues and costs pertaining to the Root Pipeline and Compressor Project.

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

Subject: Accounting, revenues and costs associated with a proposed Compressor Project.

Purpose: To approve, in part a petition for accounting, revenues and costs pertaining to the Root Pipeline and Compressor Project.

Substance of final rule: The Commission, on June 17, 2010, adopted an order, approving in part, Corning Natural Gas Corporation's Petition to determine accounting, revenues and costs pertaining to the Root Pipeline and Compressor Project, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-G-0791SA1)

NOTICE OF ADOPTION

Funding for Electric Energy Efficiency Programs

I.D. No. PSC-06-10-00014-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order approving three new Energy Efficiency Portfolio Standard (EEPS) Programs and enhancing funding and making other modifications for other EEPS programs.

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

Subject: Funding for electric Energy Efficiency Programs.

Purpose: To approve, in part, funding for selected electric Energy Efficiency Programs.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving three new Energy Efficiency Portfolio Standard (EEPS) Programs and enhancing funding and making other modifications for other EEPS programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA17)

NOTICE OF ADOPTION

Funding for Gas Energy Efficiency Programs

I.D. No. PSC-06-10-00015-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order approving three new Energy Efficiency Portfolio Standard (EEPS) Programs and enhancing funding and making other modifications for other EEPS programs.

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

Subject: Funding for gas Energy Efficiency Programs.

Purpose: To approve, in part funding for gas Energy Efficiency Programs.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving three new Energy Efficiency Portfolio Standard (EEPS) Programs and enhancing funding and making other modifications for other EEPS programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA18)

NOTICE OF ADOPTION

Implementation of Central Hudson's Home Energy Reporting Program

I.D. No. PSC-06-10-00016-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order approving the implementation of Central Hudson Gas & Electric Corporation proposed Home Energy Reporting Program to be administered within the budgets and targets set forth by the Commission.

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

Subject: Implementation of Central Hudson's Home Energy Reporting Program.

Purpose: To approve the implementation of Central Hudson's Home Energy Reporting Program.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving the implementation of Central Hudson Gas & Electric Corporation proposed Home Energy Reporting Program to be administered within the budgets and targets set forth by the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-1135SA1)

NOTICE OF ADOPTION

Waiver of the Individual Residential Unit Metering Requirements

I.D. No. PSC-06-10-00021-A

Filing Date: 2010-06-23

Effective Date: 2010-06-23

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

Action taken: On 6/17/10, the PSC adopted an order granting Batavia Special Needs Apartments, L.P., located at 549-555 East Main Street, Batavia, New York, a waiver of the individual residential unit metering requirements, conditioned on continued use of the facility.

Statutory authority: Public Service Law, sections 2, 4, 65 and 66

Subject: Waiver of the individual residential unit metering requirements.

Purpose: To grant waiver of the individual residential unit metering requirements, conditioned on continued use of the facility.

Substance of final rule: The Commission, on June 17, 2010, adopted an order granting Batavia Special Needs Apartments L.P., located at 549-555 East Main Street, Batavia, New York, a waiver of the individual residential unit metering requirements in Opinion No. 76-17, conditioned on continued use of the facility, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0306SA2)

NOTICE OF ADOPTION

St. Lawrence Gas Company, Inc.'s Administration of a "Fast Track" Gas Energy Efficiency Program

I.D. No. PSC-07-10-00013-A

Filing Date: 2010-06-23

Effective Date: 2010-06-23

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

Action taken: On 6/17/10, the PSC adopted an order, approving the request of St. Lawrence Gas Company, Inc. for clarification and/or modification of the Commission's April 9, 2009 Order in Case 08-G-1004, et al.

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

Subject: St. Lawrence Gas Company, Inc.'s administration of a "Fast Track" gas energy efficiency program.

Purpose: To approve St. Lawrence Gas Company, Inc.'s request for clarification of the Commission's April 9, 2009 Order.

Substance of final rule: The Commission, on June 17, 2010, adopted an order, approving the request of St. Lawrence Gas Company, Inc. for clarification and/or modification of the Commission's April 9, 2009 Order in Case 08-G-1004, et al., approving certain "Fast Track" utility-administered gas energy efficiency programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-G-1021SA3)

NOTICE OF ADOPTION

Funding for Small and Mid-Size Commercial Gas Efficiency Program

I.D. No. PSC-07-10-00014-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC approved Central Hudson Gas & Electric Corporation's Small Commercial Gas Efficiency Program prescriptive rebate program for high efficiency space and water heating equipment using natural gas at the levels in the budgets and targets.

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

Subject: Funding for Small and Mid-Size Commercial Gas Efficiency Program.

Purpose: To approve funding for Small and Mid-Size Commercial Gas Efficiency Program.

Substance of final rule: The Commission, on June 17, 2010, approved Central Hudson Gas & Electric Corporation's Small Commercial Gas Efficiency Program prescriptive rebate program for high efficiency space and water heating equipment using natural gas at the levels in the budgets and targets set forth by the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-G-0363SA4)

NOTICE OF ADOPTION

Funding for NYSEDA's Agricultural Energy Efficiency Component of the Existing Facilities Program

I.D. No. PSC-09-10-00012-A

Filing Date: 2010-06-24

Effective Date: 2010-06-24

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

Action taken: On 6/17/10, the PSC adopted an order approving New York State Energy Research and Development Authority's (NYSEDA) Agricultural Energy Efficiency component of the Existing Facilities Program within the budgets and targets set forth by the Commission.

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

Subject: Funding for NYSEDA's Agricultural Energy Efficiency component of the Existing Facilities Program.

Purpose: To approve funding for the Agricultural Energy Efficiency component of the Existing Facilities Program.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving New York State Energy Research and Development Authority's (NYSEDA) Agricultural Energy Efficiency component of the Existing Facilities Program within the budgets and targets set forth by the Commission, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-1132SA2)

NOTICE OF ADOPTION

Inclusion of CFL Fixtures in Previously Approved EEPS Programs

I.D. No. PSC-12-10-00014-A

Filing Date: 2010-06-23

Effective Date: 2010-06-23

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

Action taken: On 6/17/10, the PSC adopted an order approving modifications to the July 27, 2009 Order allowing all EEPS program administrators to use cost-effective replacement lighting fixtures that accommodate both CFL and LED bulbs in all applicable electric EEPS.

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

Subject: Inclusion of CFL fixtures in previously approved EEPS programs.

Purpose: To approve modifications to the July 27, 2009 Order allowing the use cost-effective replacement lighting.

Substance of final rule: The Commission, on June 17, 2010, adopted an order approving modifications to the July 27, 2009 Order to allow all Energy Efficiency Portfolio Standard Programs (EEPS) program administrators to use cost-effective replacement lighting fixtures that accommodate both CFL and LED bulbs in all applicable electric EEPS programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA19)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Rio Tronics Pulse Initiator for Use in Commercial and Residential Gas Meter Applications

I.D. No. PSC-28-10-00008-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. for the approval to use the Rio Tronics Pulse Initiator.

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

Subject: Whether to permit the use of the Rio Tronics Pulse Initiator for use in commercial and residential gas meter applications.

Purpose: To permit gas utilities in New York State to use the Rio Tronics Corp. Pulse Initiator.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Consolidated Edison, to use the Rio Tronics Pulse Initiator Device for automatic meter readings in commercial and residential natural gas meter applications.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 10007, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-G-0301SP1)

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

To Consider Various Rehearing Petitions

I.D. No. PSC-28-10-00009-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 Petitions for Rehearing of the Commission's February 4, 2010 Order in Case 07-C-1541 establishing a rate for the termination of Sprint Nextel's wireless traffic over XChange Telcom, Inc.'s network.

Statutory authority: Public Service Law, sections 97(3) and 22

Subject: To consider various rehearing petitions.

Purpose: To reconsider a rate for the termination of wireless traffic over XChange's network.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, rehearing petitions of the Commission's February 4, 2010 order in Case 07-C-1541 establishing a rate for the termination of Sprint Nextel's wireless traffic over XChange Telcom, Inc.'s network.

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

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

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

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

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

(07-C-1541SP1)

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

KEDNY's Petition to Disburse Positive Funds from the Program's Balancing Account to Enhance Its Existing Program

I.D. No. PSC-28-10-00010-P

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

Proposed Action: The Commission is considering a petition from the Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) proposing to enhance its current Low Income Discount Program (Program) utilizing positive funds from the Program's Balancing Account.

Statutory authority: Public Service Law, sections 65 and 66

Subject: KEDNY's petition to disburse positive funds from the Program's Balancing Account to enhance its existing Program.

Purpose: Consideration of KEDNY's proposed enhancements to its Program, funded by positive funds in the Program's Balancing Account.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition from Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY or Company) to enhance the Company's current Low Income Discount Program using positive funds in the Company's Low Income Discount Program Balancing Account (Balancing Account). As of December 31, 2009, \$2,519,166 has accumulated in the Company's Balancing Account. The Company's Gas Rates Joint Proposal, adopted by the Commission on December 21, 2007 in Cases 06-G-1185 and 06-G-1186, states that, if the Balancing Account has a positive balance in excess of \$2 million at the end of Rate Year Two (2009), the Company or any other interested party may submit a proposal for disbursement of the funds. The Company proposes to utilize the Balancing Account funds to enhance the current Low Income Discount Program by continuing to enroll customers beyond the 60,000 enrollment target provided for in the Gas Rates Joint Proposal, provided that the Balancing Account is not projected to be depleted prior to the end of Rate Year Five (2012). The Commission may grant, deny or modify, in whole or in part, the petition filed by the Company, 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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(06-G-1185SP11)

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

Revenue Decoupling Mechanism

I.D. No. PSC-28-10-00011-P

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

Proposed Action: The Commission is considering a petition by Consolidated Edison Company of New York, Inc. to recover the S.C. 6 under-collection of about \$483,000 from all other classes subject to the Revenue Decoupling Mechanism (RDM).

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

Subject: Revenue Decoupling Mechanism.

Purpose: To recover the SC6 under-collection of approximately \$483,000 from all other classes subject to the RDM.

Substance of proposed rule: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. (Con Edison)

to recover the SC6 under-collection of approximately \$483,000 from all other classes subject to the RDM. The Commission may adopt, reject, or modify, in whole or in part, Con Edison's proposal.

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

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

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

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

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

(08-E-0539SP6)

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

Approval of Financing and a Lightened Regulatory Regime in Connection with a 1,040 MW Electric Generating Facility

I.D. No. PSC-28-10-00012-P

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

Proposed Action: The Commission is considering a petition by Astoria Gas Turbine Power LLC for approval of financing and a lightened regulatory regime in connection with a 1,040 MW electric generating facility to replace an existing 600 MW facility in Long Island City, NY.

Statutory authority: Public Service Law, sections 2(13), (22), 5(1)(b), 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Approval of financing and a lightened regulatory regime in connection with a 1,040 MW electric generating facility.

Purpose: Consideration of approval of financing and a lightened regulatory regime for a 1,040 MW electric generating facility.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition dated April 23, 2010, from Astoria Gas Turbine Power LLC, requesting approval of financing and a lightened regulatory regime in connection with a 1,040 MW electric generating facility that will replace an existing 600 MW facility located in Long Island City, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-0197SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-28-10-00013-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 The Trump Corporation to submeter electricity at Trump Park Residences at 3770 Barger Street, Shrub Oak, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of The Trump Corporation to submeter electricity at 3770 Barger Street, Shrub Oak, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by The Trump Corporation to submeter electricity at Trump Park Residences, 3770 Barger Street, Shrub Oak, 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. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-E-0300SP1)

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

Implementation of Metering Fee

I.D. No. PSC-28-10-00014-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 Central Hudson Gas & Electric Corporation to make various changes in rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 15 — Electricity.

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

Subject: Implementation of Metering Fee.

Purpose: To implement a metering fee for customers taking service under S.C. Nos. 2, 3 and 13.

Substance of proposed rule: The Commission is considering a tariff filing by Central Hudson Gas & Electric Corporation (Central Hudson) to implement a metering fee for customers taking service under S.C. Nos. 2, 3, and 13 who, per existing tariff provisions, are required to provide a dedicated phone line, and whose phone line is not operational when the company attempts to read the meter. The proposed filing has an effective date of October 1, 2010. The Commission may adopt, reject, or modify, in whole or in part, Central Hudson's proposal.

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

Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(10-E-0304SP1)

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

Approval to Lease Certain Real Property and to Construct a Generator

I.D. No. PSC-28-10-00015-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 whether to approve a joint petition of Fishers Island Electric Corporation and the Connecticut Municipal Electric Cooperative for lease of real property and construction of a 2.5 MW electric generator.

Statutory authority: Public Service Law, sections 5, 68 and 70

Subject: Approval to lease certain real property and to construct a generator.

Purpose: To decide whether to approve the lease of certain real property and construction of a generator.

Substance of proposed rule: The Public Service Commission is considering whether to approve a joint petition of Fishers Island Electric Corporation (FIEC) and the Connecticut Municipal Electric Cooperative (CMEC) for lease by FIEC to CMEC of real property located within the existing utility yard of FIEC and construction and operation by CMEC of a 2.5 MW electric generator on the leased parcel. The project will provide CMEC with peak sharing capacity and provide a local source of backup electric power to FIEC. The Commission may approve, modify or reject, in whole or in part, the relief requested.

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: Jaelyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

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

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

(10-E-0282SP1)

Racing and Wagering Board

NOTICE OF ADOPTION

Uncoupling of Entries with Common Thoroughbred Trainers

I.D. No. RWB-16-10-00034-A

Filing No. 697

Filing Date: 2010-06-29

Effective Date: 2010-07-14

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

Action taken: Amendment of sections 4025.10(d) and 4035.2(e) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 231

Subject: Uncoupling of entries with common thoroughbred trainers.

Purpose: To allow multiple horses with a common trainer to compete in the same race as separate betting interests.

Text or summary was published in the April 21, 2010 issue of the Register, I.D. No. RWB-16-10-00034-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 J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.state.ny.us

Assessment of Public Comment

The Board received public comments from Paul Campo of the New York Racing Association; Senior Director of Operations Phil Palermo and Director of Racing Pat Placito of Finger Lakes Gaming and Racetrack; Bennett Liebman from Albany Law School; and Stuart Rainey, the State Steward at Finger Lakes Racetrack. After considering the comments, the Board decided to adopt the rule without revision.

Mr. Campo supported the amendments, but requested that an additional amendment be made to subdivision (g) of Section 4025.10 to lower the coupling requirement of that provision from a \$1 million threshold to the \$100,000 threshold. The amendment requested was outside of the scope of the current rulemaking because subdivision (g) pertains to coupling of horses with common ownership, not a common trainer. Nevertheless, the suggestion may be considered by the Board in the future as part of a separate proposal.

Mr. Palermo and Mr. Placito also wrote in support of the rule amendment to subdivision (d) of Section 4025.10 and subdivision (e) of Section 4035.2. They went on to state that it is their understanding that a horse/owner registry must be maintained, and they requested information as to whether the Board will develop and maintain the registration process. Such a registry is not necessary for the implementation of this rule amendment because this amendment deals with uncoupling of horses that are trained by the same trainer and does not change the current rule as it pertains to two horses owned by a single owner in a race.

Mr. Rainey wrote in opposition, but based his opposition "to the proposal to uncouple different owner entries in all races." The rule amendment would not change the coupling rules for two or more horses that are owned by the same owner in a single race, but would only change the coupling rules for two or more horses that are trained by the same trainer.

Mr. Liebman did not write in support or opposition, but provided the Board with an alternative formulation for the rule determining whether stewards should disqualify the part of the entry that did not commit the foul. He proposed revising the provision that requires that both coupled entries shall be disqualified whenever the foul "prevented any other horse or horses from finishing ahead of the other part of the entry." For this and others reasons, he suggested that the Board amend existing Rule 4035.2(e) to conform to Model Rule 010-035 E (4)(b) of the Association of Racing Commissioners International, which reads: "If a horse is disqualified for a foul, any horse or horses in the same race owned or trained by the same interests, whether coupled or not may also be disqualified." The suggested amendment was beyond the scope of the current rulemaking, but since it contained considerable merit it may be considered as part of a future rule amendment.

Department of State

**EMERGENCY
RULE MAKING**

Electrical Bonding of Gas Piping, and Protection of Gas Piping Against Physical Damage

I.D. No. DOS-16-10-00012-E

Filing No. 694

Filing Date: 2010-06-28

Effective Date: 2010-06-28

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

Action taken: Addition of section 1220.1(d)(9), (10), (11) and (12); amendment of section 1224.1(b); and addition of section 1224.1(c)(2), (3) and (4) to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377 and 378

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

Specific reasons underlying the finding of necessity: At its meeting held on June 16, 2010, the State Fire Prevention and Building Code Council determined that adopting this rule on an emergency basis is necessary to preserve public safety by clarifying requirements for electrical bonding of gas piping, clarifying requirements for protection of gas piping against physical damage, and adding new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST), which will increase protection against fires caused by lightning strikes in the vicinity of buildings equipped with CSST gas piping and fires caused by accidental punctures of CSST gas piping.

Subject: Electrical bonding of gas piping, and protection of gas piping against physical damage.

Purpose: To clarify requirements for electrical bonding of gas piping, to clarify requirements for protection of gas piping against physical damage, and to add new requirements for installation of gas piping made of corrugated stainless steel tubing (CSST).

Substance of emergency rule: This rule amends several existing provisions in, and adds several new provisions to, the 2007 edition of the Residential Code of New York State (the "2007 RCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1220, and the 2007 edition of the Fuel Gas Code of New York State (the "2007 FGCNYS"), the publication which is incorporated by reference in 19 NYCRR Part 1224. The new and amended provisions in the 2007 RCNYS and 2007 FGCNYS:

(1) Clarify the situations in which a gas piping system that contains no corrugated stainless steel tubing ("CSST") will be considered to be "likely to become energized" and, therefore, required to be bonded to an effective ground-fault current path;

(2) Specify that a gas piping system that contains no CSST may be bonded in any manner described in Section E3509.7 of the 2007 RCNYS, in cases where the 2007 RCNYS applies, or in any manner described in Section 250.104(B) of NFPA 70-2005, in cases where the 2007 FGCNYS applies;

(3) Require gas piping systems that contain any CSST to be electrically continuous and bonded to the electrical service grounding electrode system at the point where the gas service enters the building or structure;

(4) Specify standards for the installation and bonding of CSST, including standards for the size of the bonding jumper, standards for bonding clamp, standards for the place and manner of attachment of the bonding clamp, and standards for separation of the CSST from other electrically conductive systems;

(5) Specify standards for protection of piping other than black or galvanized steel from physical damage, including standards for the types of shield plates to be used, standards for determining the location where shield plates are required, and additional standards for protection of piping made of CSST; and

(6) Clarify the situations in which section E3509.7 in the RCNYS (entitled "Bonding other metal piping") will apply.

This rule also provides that the 2005 edition of standard NFPA 70, entitled "National Electrical Code" shall be deemed to be one of the standards incorporated by reference into 19 NYCRR Part 1224.

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. DOS-16-10-00012-EP, Issue of April 21, 2010. The emergency rule will expire August 26, 2010.

Text of rule and any required statements and analyses may be obtained from: Joseph Ball, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-6740, email: Joseph.Ball@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377(1) authorizes the State Fire Prevention and Building Code Council to periodically amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code").

Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions.

2. LEGISLATIVE OBJECTIVES.

Executive Law section 371(2) provides that it is the public policy of the State of New York to provide for the promulgation of a uniform code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction.

The Legislative objectives sought to be achieved by this rule are to provide uniform requirements for the installation of gas piping made of corrugated stainless steel tubing (CSST); to reconcile inconsistencies among the installation instructions provided by CSST manufacturers; to require extra protective measures in all cases where CSST is used; to prohibit certain practices which may reduce the effectiveness of the electrical bonding of CSST piping; to require the use of shield plates whenever gas piping made of any material other than black or galvanized steel is installed through a hole or notch in a wood stud, joist, rafter or similar member less than 1.75 inches from the nearest edge of such member; and to provide a basic minimum level of protection to all people of the state from the hazard of fires caused by punctures of gas piping made of material other than black or galvanized steel.

3. NEEDS AND BENEFITS.

CSST piping can be punctured by nails and other fasteners driven into walls containing concealed CSST piping. It can also be punctured when

arcng of electrical currents from a nearby lightning strike burns a hole in the wall of the piping.

CSST manufacturers have provided installation instructions that require (1) the use of shield plates and other means of protecting CSST from the puncturing caused by nails and other fasteners driven into walls containing concealed CSST piping and (2) electrical bonding of CSST piping to protect against the puncturing caused by the lightning-induced current and arcing phenomena. However, the manufacturers' installation instructions are not uniformly consistent with each other.

The Uniform Code currently requires that materials such as CSST piping be installed in accordance with manufacturer's instructions. The purposes of this rule are to provide uniform requirements for the installation of CSST piping and, by doing so, to reconcile inconsistencies among the installation instructions provided by CSST manufacturers; to require certain extra protective measures which are called for by some, but not all, of such installation instructions; to prohibit certain practices which may reduce the effectiveness of the electrical bonding of CSST piping and which are prohibited by some, but not all, of such installation instructions; and to provide a basic minimum level of protection to all people of the state from the hazard of fires caused by the puncturing of CSST gas piping.

Gas piping made of other materials other than black or galvanized steel (such as copper, brass or aluminum-alloy pipe or copper, brass or aluminum tubing) can also be punctured by nails and other fasteners driven into walls containing concealed gas piping. The Uniform Code currently requires the use of shield plates to protect non-steel gas piping when it is installed through a hole or notch in a wood stud, joist, rafter or similar member less than 1 inch from the nearest edge of such member. This rule will require the use of shield plates whenever non-steel gas piping is installed through a hole or notch in a wood stud, joist, rafter or similar member less than 1.75 inches from the nearest edge of such member, which will decrease the instances where a nail or other fastener driven into an unprotected member, and penetrating that member by more than 1 inch, will puncture concealed non-steel gas piping.

The report or study that served as a basis for this rule is Corrugated Stainless Steel Tubing for Gas Distribution in Buildings and Concerns Over Lightning Strikes, dated August 2007, published by The NAHB Research Center, Inc., which is summarized as follows: "In the case of proximity lightning, a high voltage can be induced in metallic piping that may cause arcing; and for CSST there is concern that arcing may cause perforation of the CSST wall and therefore cause gas leakage. The fuel gas code, electric code, plumbing code, product standards, and manufacturer installation instructions have different methods of providing dissipation of electrical energy through techniques called bonding and grounding. Since the codes, product standards, and installation requirements are not harmonized, builders and contractors may find differing and possibly conflicting requirements. Generally, the local jurisdiction having authority and code official will rely upon the manufacturer's installation recommendations in lieu of other requirements."

This report was used to determine the necessity for and benefits derived from this rule in the following manner: CSST manufacturers have always required that CSST systems be bonded to the electrical system in accordance with the local codes. Based on this report, the bonding methods prescribed within such local codes are minimum requirements and are designed to protect the consumer against ground-faults from the premise wiring system only. The intent of this rule is to harmonize the requirements for bonding of metallic piping while providing protection from proximity lightning strikes.

4. COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule.

The Department of State ("DOS") estimates the cost of the bonding jumper required in a typical installation to be between \$200 and \$300; the cost of the clamp and 4-inch section of schedule 40 pipe (including the cost of installing the clamp and pipe section) to be \$31; the cost of purchasing and installing the shield plates required in a typical installation to be between \$15.50 and \$77.50; and the cost of the protective metal pipe required in a typical installation to be \$135.50. Based on the foregoing, DOS estimates that the cost of the clamp, bonding jumper, section of schedule 40 pipe, shield plates and protective metal pipe in a typical installation will be between \$382 and \$544. However:

(1) The installation instructions provided by each of the major CSST manufacturers already require the use of the same bonding jumper required by this rule; accordingly, with regard to the use of bonding jumper, this rule adds no new requirement and no new cost.

(2) Attaching the bonding jumper to the brass hexagonal nut on the CSST fitting is "unlisted," and this method of clamping could decrease the effectiveness of the electrical bonding of the CSST gas piping, which would reduce the protection that the bonding requirement is intended to provide. In this context, the extra cost (\$31) is negligible.

(3) The failure to use shield plates and/or protective metal pipe in all situations specified in this rule could increase the chances that non-steel gas piping will be punctured by nails driven into walls that contain concealed gas piping. In this context, the extra cost (\$15.50 per shield plate, \$13.55 per linear foot of protective piping) is viewed as negligible.

(4) CSST piping, even if not physically constrained, can be punctured by a nail driven by a power nail gun. In light of the almost universal use of power nail guns and other similar devices on construction sites, it is the opinion of DOS that failure to require the use of shield plates and/or protective metal pipe to protect CSST gas piping running parallel to, and within 1.75 inches of, a stud, joist, rafter or other member will increase the chances that such CSST gas piping will be punctured. In this context, the extra cost (\$15.50 per shield plate, \$13.55 per linear foot of protective piping) is viewed as negligible.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

There are no costs to DOS for the implementation of this rule. DOS is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of this rule, except as follows:

First, if the State or any local government constructs a building equipped with non-steel gas piping, or installs any such piping in an existing building, the State or such local government, as the case may be, will be required to bond the piping (in the case of CSST piping) and protect the piping from physical damage in the manner required by this rule.

Second, the authorities responsible for administering and enforcing the Uniform Code will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. It is anticipated that verifying compliance with this rule will add only a negligible amount to the already existing duties associated with reviewing permit applications and conducting inspections.

5. PAPERWORK.

This rule will not impose any new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that constructs a building equipped with n-steel gas piping, or installs any such piping in an existing building, will be required to comply with the electrical bonding and physical protection provisions amended and/or added by this rule.

Second, most cities, towns and villages, and some counties, are responsible for administering and enforcing the Uniform Code; since this rule amends provisions in the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code. It is anticipated that verifying compliance with this rule will add only a negligible amount to the already existing duties associated with reviewing permit applications and conducting inspections.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

The alternative of making no change to the Uniform Code provisions relating to electrical bonding and physical protection of gas piping was considered. However, it was determined that the existing provisions of the Uniform Code could be construed as permitting inadequate electrical bonding and inadequate physical shielding of gas piping, particularly in the case of gas piping made of CSST. Therefore, this alternative was rejected.

The alternative of banning the use of CSST was considered. However, the weight of expert opinion appears to be that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that the principal concerns about the use of CSST piping (viz., puncturing of CSST gas piping caused by electrical arcing induced by lightning strikes in the vicinity of buildings equipped with CSST or by nails or other fasteners driven into walls containing concealed CSST gas piping) could be adequately addressed by the increased electrical bonding and physical protection requirements to be added by this rule. Therefore, this alternative was rejected.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule.

10. COMPLIANCE SCHEDULE.

Regulated persons will be able to achieve compliance with this rule in the normal course of operations, either as part of the installation or construction of a new building or the renovation of an existing building.

Summary of Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code"). The amended provisions add new requirements for installation and electrical bonding of gas piping made from corrugated stainless steel tubing (CSST), and for protection of gas piping made of any material other than black or galvanized steel against physical damage. Specifically, in a case where gas piping made of CSST is installed, this rule will (1) require the electrical bonding of CSST gas piping to the building's grounding electrode system; (2) prohibit certain practices which may reduce the effectiveness of the electrical bonding of CSST piping, such as using the brass hexagonal nut on the CSST fitting as the attachment point for the bonding jumper; and (3) require certain protective measures, such as using strike plates or other protective coverings, in certain situations where CSST gas piping runs parallel to, a stud, joist, rafter or similar member. Additionally, in a case where gas piping made of CSST or any other material other than black or galvanized steel is installed, this rule will require the use of strike plates in situations where the gas piping passes through a stud, joist, rafter or similar member and is within 1.75 inches of the edge of such member (the Uniform Code currently requires the use of strike plates only where the non-steel gas piping is located within 1 inch of the edge of the member). Any small business or local government that constructs a building equipped with gas piping made of CSST (or any other material other than black or galvanized steel), or that installs any such gas piping in an existing building, will be affected by this rule. Small businesses that manufacture, sell or install gas piping, bonding jumpers, bonding clamps, shield plates, and other related equipment may also be affected by this rule.

Since this rule amends provisions in the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State (DOS) estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or recordkeeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install gas piping in accordance with the rule's provisions. In most cases, the local government responsible for administering and enforcing the Uniform Code will be required to consider the requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

When gas piping made of CSST is installed, this rule will require the use of a bonding jumper, a bonding clamp, and shield plates and/or protective metal pipe. DOS estimates the costs in a typical installation to be:

(1) approximately 30 to 50 feet of bonding jumper, at \$6.00 per foot: \$200 to \$300.

(2) clamp and 4-inch section of schedule 40 pipe (including the cost of installing the clamp and pipe section): \$31.

(3) 1 to 5 shield plates, at a cost (including the cost of installation) of \$15.50 per shield plate: \$15.50 and \$77.50.

(4) approximately 10 linear feet of protective metal pipe (schedule 40 steel or iron pipe), at a cost (including the cost of installation) of \$13.55 per linear foot: \$135.50.

Based on the foregoing, DOS estimates that in the case of a typical installation of gas piping made of CSST, the cost of the clamp, bonding jumper, section of schedule 40 pipe, shield plates and protective metal pipe required by this rule will be between \$200 and \$530. However:

(1) The installation instructions provided by each of the major CSST manufacturers already require the use of the same bonding jumper required by this rule; accordingly, with regard to the use of bonding jumper, this rule adds no new requirement and no new cost.

(2) The installation instructions provided by two of the four major CSST manufacturers permit attaching the bonding jumper to the brass hexagonal nut on the CSST fitting, and do not require the clamp and 4-inch section of schedule 40 pipe required by this rule. In the case of installation of CSST piping made by either of the two manufacturers whose installation instructions permit attaching the bonding jumper to the brass hexagonal nut, this rule may be viewed as adding a new requirement (use of the clamp and 4-inch section of schedule 40 pipe) and as adding an additional cost (estimated to be \$31). However, attaching the bonding jumper to the brass hexagonal nut on the CSST fitting is not "listed" and, in the opinion of DOS, this method of clamping could decrease the effectiveness of the electrical bonding of the CSST gas piping which, in turn, could reduce the

protection that the bonding requirement is intended to provide. In this context, the extra cost (\$31) is viewed as negligible.

(3) The installation instructions provided by each of the four major CSST manufacturers already require the use of shield plates and/or protective metal pipe in places where CSST piping passes through holes or notches in wood studs, joists or rafters. However, the installation instructions provided by three of the four major manufacturers do not require the use of shield plates and/or protective metal pipe in all situations specified in this rule. In the case of installation of CSST piping made by any of the three manufacturers whose installation instructions do not require the use of shield plates and/or protective metal pipe in all situations specified in this rule, this rule may be viewed as adding a new requirement (the use of shield plates or protective metal pipe in situations where neither method of protection would have been required by the manufacturer's installation instructions) and as adding an additional cost (the cost of installing the additional shield plates or protective metal pipe). Additionally, where gas piping made of CSST or copper, brass or aluminum tubing is installed, this rule will require the use of shield plates where such piping is within 1.75 inches, rather than 1 inch, of the edge of a stud, rafter, joist or other member. However, in the opinion of DOS, the failure to use shield plates and/or protective metal pipe in all situations specified in this rule will increase the chances that gas piping made of CSST, or copper, brass or aluminum tubing will be punctured by nails driven into walls that contain concealed gas piping. In this context, the extra cost (\$15.50 per shield plate, \$13.55 per linear foot of protective piping) is viewed as negligible.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule.

Any variation in costs of complying with this rule for different types or sizes of small businesses and local governments will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type or sizes of such small businesses and local governments. To the extent that larger businesses and larger local governments may tend to own larger buildings, or more than one building, the total costs of compliance would be higher for larger businesses and larger local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

6. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule on small businesses and local governments will be no greater than the economic impact of this rule on other regulated parties, and the ability of small businesses and local governments to comply with the requirements of this rule should be no less than the ability of other regulated parties to comply. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DOS notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by DOS and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

In addition, DOS held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. DOS also participated in several meetings on this topic, including a meeting with local fire official and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above include:

(1) A comment suggesting that all metal gas piping, and not just CSST piping, should be subject to the bonding requirements. This alternative has not been incorporated into the proposed rule, because the data available at this time do not support the need for more robust bonding of gas piping made of material other than CSST.

(2) A comment suggesting that non-CSST metal piping should be considered to be bonded when it is connected to appliances that are connected to the appliance grounding conductor of the circuit supplying that appliance. This alternative is reflected in the proposed rule. This rule

continues the existing rule regarding the circumstances under which non-CSST gas piping is considered to be "bonded."

(3) A comment suggesting changes to the wording of the proposed rule, to clarify its intent. These alternatives have been incorporated, in whole or in substantial part, into the proposed rule.

(4) A comment suggesting that earlier versions of the proposed rule may have confused the concept of bonding with grounding. DOS believes that the current version of the proposed rule eliminates any such confusion.

(5) A comment suggesting that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors. DOS believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded. The alternative of banning the use of CSST was considered. However, it was determined that the principal concerns about the use of CSST piping (viz., puncturing of CSST gas piping caused by electrical arcing induced by lightning strikes in the vicinity of buildings equipped with CSST or by nails or other fasteners driven into walls containing concealed CSST gas piping) could be adequately addressed by the increased electrical bonding and physical protection requirements to be added by this rule. Therefore, this alternative was rejected.

DOS has posted the full text of this rule on its website.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code"). The amended provisions add new requirements for installation and electrical bonding of gas piping made from corrugated stainless steel tubing (CSST), and for protection of gas piping made of CSST, or any material other than black or galvanized steel, against physical damage. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will add new requirements relating to the installation and electrical bonding of gas piping made of CSST, and new requirements relating to protection of gas piping made of CSST (or any other material other than black or galvanized steel) against physical damage. No professional services are likely to be needed in a rural area in order to comply with such requirements.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the bonding jumpers and clamps, shield plates and protective metal piping required by the rule.

When gas piping made of CSST is installed, this rule will require the use of a bonding jumper, a bonding clamp, and shield plates and/or protective metal pipe.

The Department of State estimates the cost of the bonding jumper required by this rule in most situations (6 AWG copper wire) to be \$ 6.00 per foot. In a typical installation, approximately 30 to 50 feet of bonding jumper may be required. Therefore, the Department of State estimates that the cost of bonding jumper required in a typical installation to be between \$200 and \$300.

The Department of State estimates the cost of the clamp and 4" section of schedule 40 pipe, when required by this rule, (including the cost of installing the clamp and pipe section) to be \$31.

The Department of State estimates the cost of the shield plates required by this rule (including the cost of installing the shield plates) to be \$15.50 per shield plate. In a typical installation, approximately 1 to 5 shield plates may be required. Therefore, the Department of State estimates that the cost of shield plates required in a typical installation to be between \$15.50 and \$77.50.

The Department of State estimates the cost of the protective metal pipe (schedule 40 steel or iron pipe) required in certain instances by this rule (including the cost of installation) to be \$13.55 per linear foot. In a typical installation, approximately 10 linear feet of protective metal pipe may be required. Therefore, the Department of State estimates that the cost of protective metal pipe required in a typical installation to be \$130.55.

Based on the foregoing, the Department of State estimates that in the case of a typical installation of gas piping made of CSST, the cost of the clamp, bonding jumper, section of schedule 40 pipe, shield plates and protective metal pipe required by this rule will be between \$200 and \$530.

It should be noted, however, that in most cases, the bonding jumper, clamp, and shield plates required by this rule are also required by the CSST manufacturer's installation instructions. Accordingly, these materials would be required even in the absence of this rule, and this rule has little actual impact on the cost of installing CSST piping.

Additionally, in the case of installation of gas piping made of copper, brass or aluminum tubing, this rule may be viewed as adding a new requirement (using shield plates where such tubing is within 1.75 inches, rather than 1 inch, of the edge of a stud, rafter, joist or other member) and as adding an additional cost (the cost of installing shield plates in areas where the tubing is more than 1 inch, but less than 1.75 inches, from the edge of a stud, rafter, joist or other member). As noted above, the Department of State estimates the cost of shield plates required in a typical installation to be between \$15.50 and \$77.50.

Compliance with this rule will occur when gas piping is initially installed; therefore, it is anticipated that there will be no annual costs of complying with the rule. Any variation in costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the gas piping installed by such entities, and not to nature or type of such entities or to the location of such entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of proposed text of this rule by posting a notice on the Department's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State, including rural areas.

In addition, the Department of State held three conference calls, open to the public, specifically devoted to developing proposed code text involving CSST. Participants in the conference calls included members of the Code Council's Plumbing, Mechanical and Fuel Gas Technical Subcommittee, representatives of CSST manufacturers, and local government representatives. The Department of State also participated in several meetings on this topic, including a meeting with local fire official and electrical inspectors held on June 26, 2007 in East Meadow, NY, and a meeting with code officials, plumbing inspectors, a utility company representative and a CSST manufacturer representative held on January 21, 2009 in Hicksville, NY. Finally, speakers provided comments at the Code Council meetings where earlier versions of this rule were considered for adoption by the Code Council as emergency rules. Comments received in the conference calls, meetings, and Code Council meetings described above included:

(1) a suggestion that all metal gas piping, and not just CSST piping, should be subject to the bonding requirements, since all metal piping could be susceptible to damage from nearby lightning strikes (this suggestion has been incorporated into the proposed rule);

(2) a suggestion that non-CSST metal piping should be considered to be bonded when it is connected to appliances that are connected to the appliance grounding conductor of the circuit supplying that appliance (this suggestion was not incorporated into the proposed rule);

(3) suggested changes to the wording of the proposed rule, to clarify its intent (these suggestions have been incorporated, in whole or in substantial part, into the proposed rule);

(4) a suggestion that earlier versions of the proposed rule may have confused the concept of bonding with grounding (the Department of State believes that the current version of the proposed rule eliminates any such confusion); and

(5) a suggestion that it is inappropriate to attempt to address concerns about lightning damage to CSST by requiring bonding of CSST systems, since that shifts responsibility from CSST manufacturers to electrical inspectors (the Department of State believes that the weight of expert opinion is that with appropriate bonding, CSST can be as safe from lightning damage as non-CSST metal piping, and that given a choice between banning the use of CSST or permitting its use but requiring that it be bonded, the better choice is to permit its use and require that it be bonded).

The Department of State has posted the full text of this rule on the Department's website.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

The rule adds new paragraphs (9), (10), (11), and (12) to subdivision (d) of section 1220.1, amends subdivision (b) of section 1224.1, and adds

new paragraphs (2), (3), and (4) to subdivision (c) to section 1224.1 of Title 19 NYCRR. New paragraphs (9), (10), (11), and (12) of subdivision (d) of section 1220.1 and new paragraphs (2), (3), and (4) of subdivision (c) of section 1224.1 will clarify requirements in the Uniform Fire Prevention and Building Code ("Uniform Code") relating to electrical bonding of gas piping and protection of gas piping against physical damage, and will add new requirements relating to installation of gas piping made of corrugated stainless steel tubing (CSST).

It is anticipated that builders will be able to comply with the electrical bonding and physical protection requirements, as clarified and added by this rule, by using equipment that is currently available and techniques that are currently known. It is also anticipated that any increase costs of compliance resulting from this rule will be negligible. Therefore, it is anticipated that this rule will have no significant adverse impact on jobs or employment opportunities in the building industry, or in businesses that manufacture or install gas piping, other metal piping, or CSST piping.

Department of Taxation and Finance

EMERGENCY RULE MAKING

Cigarette Tax

I.D. No. TAF-28-10-00016-E

Filing No. 703

Filing Date: 2010-06-29

Effective Date: This rule shall take effect on July 1, 2010; provided, however, section 6 shall take effect on the date the Notice of Emergency Adoption is filed with the Department of State.

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

Action taken: Amendment of Parts 74 and 82 and sections 70.1 and 80.2; repeal of section 79.2; and addition of new section 79.2 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 472 (1); 475 (not subdivided); and L. 2010, ch. 134, Part D

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

Specific reasons underlying the finding of necessity: Chapter 134 of the Laws of 2010 was enacted on June 21, 2010. Part D of Chapter 134, which increases the rate of excise tax on cigarettes, takes effect July 1, 2010, and applies to all cigarettes possessed in the state by any person for sale and all cigarettes used in the state by any person on or after July 1, 2010. Part D of Chapter 134 of the Laws of 2010 also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 30, 2010, based on the increased rate of tax. This rule relates to the implementation of these statutory provisions. This rule also sets the commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. Without the amendments, the regulation would not provide a rate of commission for affixing cigarette stamps at the new tax rate. In addition, the rule provides procedures relating to the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps required to be taken by all agents, wholesale dealers and retail dealers as of the close of business on June 30, 2010, and the tax due attributable to the increase. Due to the effective date, it is not possible to timely promulgate the necessary regulations other than by emergency measure.

Subject: Cigarette tax.

Purpose: To implement statutory provisions and set commissions to agents for affixing cigarette stamps relating to the new rate of tax.

Substance of emergency rule: This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on June 21, 2010, by Part D of Chapter 134 of the Laws of 2010.

Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the excise tax on cigarettes from \$2.75 for each 20 cigarettes, or fraction thereof, to \$4.35, effective July 1, 2010. It also imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. The purpose of the rule

is to make necessary regulatory changes related to implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes for purposes of the Cigarette Marketing Standards Act (CMSA).

Sections 1, 2, 3 and 5 of the rule make technical and conforming amendments to sections 70.1, 74.1, 74.2 and 74.5, respectively, of the Cigarette Tax regulations to reflect the statutory increase in the excise tax on cigarettes and the new denominations of stamps relating to the new rate of tax.

Section 4 of the rule amends section 74.3 of the regulations, which provides the schedule by which commissions (pursuant to section 472 of the Tax Law) are allowed to licensed cigarette agents as compensation for affixing stamps to packages of cigarettes. The rule amends current language to reflect the change in the amount of tax payment represented by the tax stamps, which is the basis upon which the commissions are computed. The current percentage rates and related threshold used to compute commissions are not amended by this rule, resulting in an increase in the commissions on a per stamp basis.

Section 6 of the rule repeals section 79.2 of the regulations and adds a new section 79.2 to reflect the additional amount of tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed tax stamps as of the close of business on June 30, 2010, based on the increased rate of excise tax. For purposes of taking the required June 30, 2010, close of business inventories, the rule allows dealers that operate vending machines to estimate the contents of such machines at one-half of their normal fill capacities. This provision results from the fact that it may not be possible to take an actual physical inventory of every machine a dealer operates in the State on a given day. The rule also outlines the procedures by which a tax on existing inventories will be reported and paid. Pursuant to the statutory provisions, the additional amount of tax on existing inventories must be paid no later than September 20, 2010.

Section 7 of the rule amends section 80.2 of the regulations to reflect the new rate of tax in the computation of the basic cost of cigarettes for purposes of the CMSA.

Sections 8, 9, 10, and 11 of the rule make technical amendments to sections 82.2, 82.3, 82.4 and 82.5 of the Cigarette Marketing Standards regulations, respectively, to reflect the change to the basic cost of cigarettes made by section 7 of the rule. These changes are carried through the illustrations outlining the minimum prices at which cigarettes may be sold at various points in the distribution chain.

Finally, section 12 of the rule provides that the rule shall take effect on July 1, 2010; however, section 6 of the rule concerning the tax due on inventory shall take effect on the date the Notice of Emergency Adoption is filed with the Department of State.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 26, 2010.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 472(1); 475 (not subdivided), of the Tax Law; and Part D of Chapter 134 of the Laws of 2010. Section 171, subdivision First of the Tax Law provides for the Commissioner of Taxation and Finance to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 472(1) of the Tax Law directs the Commissioner to prescribe stamps and authorizes the Commissioner to prescribe commissions. Section 475 (not subdivided) of the Tax Law provides such authority to the Commissioner specifically with respect to the cigarette tax imposed by Article 20 of the Tax Law. Part D of Chapter 134 of the Laws of 2010 amended sections 471(1) and 471-a of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. In addition, Part D of Chapter 134 of the Laws of 2010 imposes a tax on inventories of cigarettes possessed for sale in New York State based on the increased cigarette tax, subject to the terms and conditions as the Commissioner of Taxation and Finance may prescribe.

2. Legislative objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part D of Chapter 134 of the Laws of 2010 to increase the rate of the cigarette tax imposed by Article 20 of the Tax Law.

3. Needs and benefits: Part D of Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law to increase the tax on cigarettes from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof effective July 1,

2010. Additionally, Part D of Chapter 134 imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 30, 2010, based on the increased rate of tax.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions, including providing procedures relating to the tax on the inventory, and sets the commissions allowable to cigarette agents for affixing cigarette stamps based on the new face value of such stamps as of July 1, 2010. In providing for commissions, the rule maintains the current percentage rates per stamp and related threshold amount to which different rates apply. The resulting effect will be an increase in the amount of commission allowable per stamp to take into consideration the amount of the July 1, 2010 tax increase. Finally, the rule updates the calculation of the basic cost of cigarettes.

4. Costs:

(a) Costs to regulated persons: The regulated parties affected by this rule are 73 licensed cigarette agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations). Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. There are administrative/compliance benefits associated with the rule. Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

(b) Costs to the State and its local governments including this agency: This rule will not have a revenue impact on New York State or its local governments. It is estimated that the implementation and continued administration of this rule will have no fiscal impact on the Department of Taxation and Finance.

(c) Information and methodology: These conclusions are based upon the application of the current commission rate to stamps at the higher rate of tax and the anticipated volumes of cigarettes subject to tax, as well as an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Tax Policy Analysis, Office of Counsel, Audit Division, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Regulated parties will need to file a return on or before September 20, 2010, showing the quantity of cigarettes possessed for sale in New York State and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. Form CG-11, Cigarette Floor Tax Return, is being mailed to affected parties and is available on the Department's website.

The rule provides that the tax should be paid by check or money order. Allowing electronic payments associated with this limited time filing requirement would not be practical.

7. Duplication: These amendments do not duplicate any existing Federal or State requirements.

8. Alternatives: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the

commissions on a per stamp basis and has a positive impact on regulated parties.

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

10. Compliance schedule: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers to pay an amount of tax on all cigarettes and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule provides that returns must be filed by September 20, 2010, showing the quantity of such cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. A notice explaining the cigarette tax increase and the related tax on inventory as of the close of business on June 30, 2010, along with Form CG-11, Cigarette Floor Tax Return, are being mailed to affected parties and are available on the Department's website.

Regulatory Flexibility Analysis

1. Effect of rule: There are 73 licensed cigarettes agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations), some of which may be small businesses as defined in section 102(8) of the State Administrative Procedure Act, which will be affected by this rule.

2. Compliance requirements: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers, including small businesses, to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule provides that returns must be filed by September 20, 2010, showing the quantity of all cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines that are located throughout the state.

3. Professional services: The rule itself imposes no requirements for professional services upon regulated parties that are small businesses. Depending on the nature or volume of a taxpayer's inventory of cigarettes and/or unaffixed tax stamps, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

4. Compliance costs: There will be no additional costs imposed on state or local governments, including the department. Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on regulated parties that are small businesses, for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties that are small businesses will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. There are administrative/compliance benefits associated with the rule.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase. Smaller agents will likely receive the benefits of the commission rate applying to the increased tax for a longer period through the calendar year than larger agents because the commission rate is higher for amounts up to a specified dollar amount.

5. Economic and technological feasibility: The rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties that are small businesses.

7. Small business and local government participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Office of Coastal, Local Government, and Community Sustainability; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York State Association of Wholesale Marketers and Distributors.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: There are 73 licensed cigarettes agents; approximately 265 licensed wholesale dealers (including the licensed cigarette agents), 103 of which are strictly vending machine operators; and approximately 22,000 licensed retail dealers (including approximately 4,500 that have multiple locations); some of which are located in rural areas as defined in section 102(10) of the State Administrative Procedure Act. There are 44 counties in the State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: Part D of Chapter 134 of the Laws of 2010, requires all agents, wholesale dealers and retail dealers in rural areas to pay an amount of tax on all cigarettes possessed for sale in New York State and unaffixed cigarette tax stamps in inventory as of the close of business on June 30, 2010, based on the increased rate of tax. This amount of tax due must be paid by September 20, 2010. The rule provides that returns must be filed by September 20, 2010, showing the quantity of all cigarettes and unaffixed stamps as of the June 30, 2010, close of business inventory. The rule provides procedures relating to the tax on the inventory, including rules for the physical inventory of cigarettes in vending machines that are located in rural areas.

The rule itself imposes no requirements for professional services upon regulated parties in rural areas. Depending on the nature or volume of a taxpayer's inventory of cigarettes and/or unaffixed tax stamps, such taxpayer may deem it necessary to employ additional professional services in order to comply with the provisions of the floor tax imposed by the statute.

3. Costs: Part D of Chapter 134 of the Laws of 2010 increased the tax on cigarettes imposed by Article 20 from \$2.75 to \$4.35 for each 20 cigarettes or fraction thereof. The impact of the statutory increase in cigarette tax, which is ultimately borne by consumers, depends on the volumes involved. There is no tax liability impact on the regulated parties in rural areas for the implementation of and continuing compliance with the rule as the increased cigarette tax reflected in the rule and the tax on the inventory based on the increased rate of tax are imposed by statute. Regulated parties in rural areas will need to conduct an inventory of the cigarettes and any unaffixed cigarette tax stamps as of the close of business on June 30, 2010. Based on this inventory, returns are required to be filed and any additional tax on this inventory based on the increased cigarette tax will need to be paid. This is necessitated by Part D of Chapter 134 of the Laws of 2010, which imposes a tax on such inventory and sets the payment date. There are administrative/compliance benefits associated with the rule.

Amendments to reflect the increased rate of cigarette tax in section 74.3 of the regulations, relating to the commissions allowed to cigarette agents, will affect commissions allowed. The current percentage rates and related threshold for determining commissions are not amended by the rule and will apply to the increased rate of cigarette tax. As a result of the statutory increase, annual stamping agent commissions (which are set by regulation and are paid out as a fraction of the applicable tax rate) will increase by approximately \$850,000 in the first full year of the increase.

4. Minimizing adverse impact: The majority of the amendments made by the rule are a direct result of statutory changes. An alternative to amending section 74.3 of the regulations as is done by the rule would have been to reduce the rates of commissions allowed to agents in order to maintain the same amount of commission per stamp. Retaining the rate of commissions and applying that rate to the higher amount of tax results in an increase in the commissions on a per stamp basis and has a positive impact on regulated parties in rural areas.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; Empire State Development, Division of Small Business; the National Federation of Independent Businesses; the New York Association of Convenience Stores; the New York State Association Counties; the New York Conference of Mayors and Municipal Officials; the New York State Department of State, Office of Coastal, Local Government, and Community Sustainability; the Small Business Council of the New York State Business Council; the Retail Council of New York State;

and the New York State Association of Wholesale Marketers and Distributors.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities. This rule amends the Cigarette Tax and the Cigarette Marketing Standards regulations, as published in Title 20 NYCRR, in response to legislative changes enacted on June 21, 2010, by Part D of Chapter 134 of the Laws of 2010. Part D of Chapter 134 increases the excise tax on cigarettes and imposes a tax on the inventory of cigarettes possessed for sale in New York State and any unaffixed stamps as of the close of business June 30, 2010, based on the increased rate of excise tax. The purpose of the rule is to make necessary regulatory changes related to the implementation of these provisions and set the rate of commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The amendments also update the calculation of the basic cost of cigarettes. These amendments will have no impact on jobs or employment opportunities.

Office of Victim Services

EMERGENCY RULE MAKING

Practices and Procedures Before the Office of Victim Services

I.D. No. OVS-28-10-00001-E

Filing No. 671

Filing Date: 2010-06-23

Effective Date: 2010-06-23

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

Action taken: Repeal of Part 525 and addition of new Part 525 to Title 9 NYCRR.

Statutory authority: Executive Law, art. 22, section 623(3), L. 2010, ch. 56

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

Specific reasons underlying the finding of necessity: Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) eliminates the New York State Crime Victims Board and creates the Office of Victim Services as a new Executive Agency. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists pursuant to Chapter 56, the previous Part 525 of Title 9 NYCRR shall be repealed and a new Part 525 of Title 9 NYCRR shall be added to outline the Practice and Procedure Before the Office of Victim Services. This new Part shall retain much of the former Board's regulatory structure, but is altered to reflect the elimination of the Board and any new requirements created by Chapter 56. This new Part also reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22.

These changes have been determined to be necessary for the general welfare of not only the residents of the State of New York but any person who may be the innocent victim of a crime within the State regardless of their residency or citizenship. These changes are necessary in order to ensure the continued, uninterrupted provision of assistance, as required by both State and federal law, to innocent victims of crime in New York State.

Subject: Practices and procedures before the Office of Victim Services.

Purpose: To implement regulations necessary for the proper implementation of chapter 56 of the Laws of 2010.

Substance of emergency rule: Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) eliminates the New York State Crime Victims Board (the Board) and creates the Office of Victim Services (the Office) as a new Executive Agency. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists pursuant to Chapter 56, the previous Part 525 of Title 9 NYCRR shall be repealed and a new Part 525 of Title 9 NYCRR shall be added to outline the Practice and Procedure

Before the Office of Victim Services. This new Part shall retain much of the former Board's regulatory structure, but is altered to reflect the elimination of the Board and any new requirements created by Chapter 56. This new Part also reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. A summary of the changes between the previous Part and the new Part are as follows:

Subdivisions (a) through (j) of the previous section 525.1 are deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. Subdivision (o) of the previous section 525.1 is relocated to be included under the definition of medical services or medical expenses [new section 525.1(d)(2)]. The last two sentences of subdivision (q) of the previous section 525.1 are relocated to be included under manner of payments; awards [new section 525.10(g)(6)]. The new 525.1 contains subdivisions (a) through (g) to define/further clarify: child victim [pursuant to Executive Law, section 627(1)(d)], conduct contributing, representative, medical services or medical expenses, transportation expenses incurred for necessary court appearances, hospitalization, and financial counseling.

Subdivisions (a) through (d) of the previous section 525.2 are deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.2 contains: a new subdivision (a) related to the electronic filing of claims [pursuant to Executive Law, section 625(3)], the previous subdivision (e) re-lettered as subdivision (b), and a new subdivision (c) related to the initial processing of claims [pursuant to Executive Law, section 627(1)(b)].

Subdivision (d) of the previous section 525.3 is relocated to be included under decision on a claim [new section 525.4(a)]. The new 525.3 contains: in subdivision (a) a time frame during which a claim must be assigned, in subdivision (b) a time frame during which a claim must be investigated [both pursuant to Executive Law, section 627(1)(b)] and a new subdivision (d) related to all claims being investigated regardless of subsequent arrest or conviction [pursuant to Executive Law, section 627(1)(c)].

Subdivision (a) of the previous 525.4 is altered to reflect the elimination of the Board and is relocated to subdivision (b). Subdivision (b) of the previous 525.4 is altered to reflect the elimination of the Board Members and is relocated to subdivision (e). The new 525.4 also contains: a new subdivision (a) containing the language from the previous 525.3 (mentioned above), a new subdivision (c) related to the federal VOCA requirement that a claimant cooperate with the reasonable requests of law enforcement, a new subdivision (d) related to all claims receiving a decision regardless of subsequent arrest or conviction [pursuant to Executive Law, section 627(1)(c)], and in subdivisions (e) and (f) language to explain when anticipated payment may be made and the decision is the written report the claimant is entitled to [pursuant to Executive Law, section 627(1)(e)].

There are no substantive changes between the previous or new 525.5.

The new 525.6 retains much of the previous 525.6 with the following exceptions: the new subdivision (d) makes the claimant financially responsible for previously scheduled medical exams which were not attended without justification, the new subdivision (f) states that hearings may be adjourned by the office only, not upon the request of any interested party, the new subdivision (g) is rewritten to comply with the confidentiality provisions of the Executive Law, claimant hearings shall not be open to the public, and the new subdivision (i) the hearings shall simply take place at a time and place designated by the office.

The new 525.7 includes language in subdivision (a) that the office shall provide certain written notice about attorney representation to applying claimants [pursuant to Executive Law, section 627(1)(a)].

There are no substantive changes between the previous or new 525.8.

The previous 525.9 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.9 includes the language of the previous 525.10 related to emergency awards.

The previous 525.10 is renumbered to the new 525.9 (above). The

new 525.10 includes the language of the previous 525.12 related to manner of payment; awards. The new 525.10 retains much of the previous 525.12 language with the following exceptions: the previous 525.12(g)(2)(i) to (iv) is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, the new subdivision (g)(5) contains the language of the previous 525.26 related to court transportation expenses with clarification that such expenses are available to any eligible claimant, the new subdivision (i)(3)(i) related to determining period of disability for loss of earnings (a regulation previously submitted to the State Register, CVB-52-09-00002-P though never adopted), the new subdivision (j) related to awards for livery cab operators [pursuant to Executive Law, section 627(1)(f)], the new subdivision (k) related to awards for loss of earnings or loss of support in excess of that which was initially awarded [pursuant to Executive Law, section 627(1)(g)], and the new subdivision (l) which contains the statutory references and requirements of the previous 525.11 related to reduction of awards for collateral payments.

The previous 525.11 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, but references to the reduction of awards for collateral payments are included in the new 525.10(l) (above). The new 525.11 includes the language of the previous 525.13 related to review of a decision on a claim. The new 525.11 retains much of the previous 525.13 language with the following exceptions: the previous 525.13(b) and (c) are altered to reflect the elimination of the Board Members and the remaining language relocated to the new subdivision (b), the new subdivision (b) eliminates certain language contained in the previous 525.13(c) related to hearings being mandatory unless waived by the claimant, the new subdivision (c) relates to the notice to be included on a final determination [pursuant to Executive Law, section 627(1)(e)].

The new 525.12 contains the language of the previous 525.14 related to judicial review.

The new 525.13 is related to the confidentiality of and access to claimant records. The provisions of the previous 525.15 combined both public and claimant records in one section which was unworkable. The previous 525.15 is deleted and two new, separate sections related to claimant records (525.13) and the access of public records (FOIL) (525.21) are included in its place.

The new 525.14 contains the language of the previous 525.16 related to the availability of rules.

The new 525.15 contains the language of the previous 525.25 related to requests for reduction of a lien to reflect the elimination of the Board Members.

The new 525.16 contains the language of the previous 525.30 related to battered spouses shelter cost guidelines.

The previous 525.17 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.17 contains the language of the previous 525.31 related to crimes committed by family members.

The previous 525.18 was renumbered to the new 525.29. The new 525.18 contains the language of the previous 525.32 related to victims of human trafficking, presumption of physical injury.

The previous 525.19 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.19 contains the language of the previous 525.33 related to the prohibited use of personal identifying information.

The previous 525.20 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board. The new 525.20 relates to victim assistance programs and their role in preparing and assisting in the processing of claims to the office [pursuant to Executive Law, sections 623(3) and 627(1)(b)]. It also provides clarification of the office's confidentiality responsibilities.

The previous 525.21 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board. The new 525.21 relates to the access of public records, containing the model FOIL regulations as

developed by the DOS Committee on Open Government and reflecting the elimination of the Board Members. See also, the explanation for the new 525.13 (above).

The previous 525.22 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board. There is not a new 525.22.

The previous 525.23 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. There is not a new 525.23.

The previous 525.24 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. There is not a new 525.24.

The provisions of the previous 525.25 were generally included in the new 525.15 related to requests for further reduction of lien. There is not a new 525.25.

The provisions of the previous 525.26 are generally included in the new 525.10(g)(5). There is not a new 525.26.

The previous 525.27 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. There is not a new 525.27.

The previous 525.28 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. There is not a new 525.28.

There was not a previous 525.29. The new 525.29 contains the language of the previous 525.18 related to the construction of rules.

The previous 525.30 was renumbered as the new 525.16. The new 525.30 provides for a severability clause.

The previous 525.31 is renumbered as the new 525.17, there is not a new 525.31. The previous 525.32 is renumbered as the new 525.18, there is not a new 525.32. The previous 525.33 is renumbered as the new 525.19, there is not a new 525.33.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 20, 2010.

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Office of Victim Services, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: johnwatson@cvb.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The New York State Executive Law, Article 22 which created the Crime Victims Board (the Board) was originally enacted by Chapter 894 of the Laws of 1966. During its existence for over four decades the Board had the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. The rules and regulations which evolved during that time are found in Part 525 of Title 9 of the New York Codes Rules and Regulations (NYCRR). Recently, Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) amended Article 22 of the Executive Law to eliminate the Board and create the Office of Victim Services (the Office) as a new Executive Agency. Chapter 56 provides in subdivision 3, section 623 of the Executive Law, that the Office shall have the power and duty to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law.

2. Legislative objectives: By enacting Chapter 56 of the Laws of 2010, the Legislature sought to ensure that, although the Board itself would be eliminated, the provisions and purpose of Article 22 of the Executive Law would continue under a reorganized Executive Agency to be known as the Office of Victim Services.

3. Needs and benefits: Chapter 56 of the Laws of 2010 eliminates the New York State Crime Victims Board and creates the Office of Victim Services as a new Executive Agency. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists pursuant to Chapter 56, the previous Part 525 of Title 9 NYCRR must be repealed and a new Part 525 of Title 9 NYCRR must be added to outline the Practice and Procedure Before the Office of Victim Services. This new Part shall retain much of the former Board's regulatory structure, but is altered to appropriately reflect the elimination of the Board and all

new requirements created by Chapter 56. This new Part also reorganizes certain provisions of the former Board's regulatory structure and eliminates language that is either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22 in order to avoid any confusion on the part of the Office or the public. These changes are necessary in order to ensure the continued, uninterrupted provision of assistance, as required by State and federal law, to innocent victims of crime in New York State.

4. Costs:

a. Costs to regulated parties. These proposed regulations would codify much of the former Board's regulatory structure and all new regulatory requirements created by Chapter 56, therefore it is not expected that the proposed regulations would impose any additional costs to the agency or State. The proposed regulatory changes may, in fact, result in saving the agency and State money when the volume of otherwise ineligible claims filed with the Board decreases because claimants or potential claimants would now have access to a more concise and clear regulatory structure.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations do not apply to private regulated parties and would not impose any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations do not require any additional paperwork requirements.

7. Duplication: These proposed regulations do not duplicate any other existing state or federal requirements.

8. Alternatives: These proposed regulations retain much of the former Board's regulatory structure, but are altered to reflect the elimination of the Board and any new regulatory requirements created by Chapter 56. The proposed regulations also reorganize certain provisions of the former Board's regulatory structure and eliminate confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. While the changes and reorganization are significant, a wholesale, substantive change to the former Board's regulatory structure was not considered in order to ensure a smooth transition during the agency's reorganization and the continued, uninterrupted provision of assistance, as required by State and federal law, to innocent victims of crime in New York State.

9. Federal standards: Permissible under 42 USC 10602.

10. Compliance schedule: The regulations will be effective immediately.

Regulatory Flexibility Analysis

The Office of Victim Services projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

The Office of Victim Services projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the

Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

The Office of Victim Services projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.