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.

State Board of Elections

NOTICE OF ADOPTION

Mandatory Audit of Voting Systems, Setting of Procedures and Discrepancy Thresholds

I.D. No. SBE-23-09-00007-A
Filing No. 538
Filing Date: 2010-05-18
Effective Date: 2010-06-02

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

Action taken: Amendment of section 6210.18 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-102, 7-201, 7-206 and 9-211

Subject: Mandatory audit of voting systems, setting of procedures and discrepancy thresholds.

Purpose: Provide procedures for conducting mandatory audit of voting systems and set discrepancy thresholds for escalated audits.

Text of final rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by repealing Part 6210.18, and by adding thereto a new Part, to be Part 6210.18, to read as follows:

Section 6210.18 Three-Percent (3%) Audit

(a) As required by NYS Election Law Section 9-211, the board of elections or a bipartisan team appointed by such board shall manually count all votes of the voter verifiable paper audit trail (VVPAT) from no less than 3% of each type of voting machine or system used within the county, provided, however, that there shall be a manual count of at least one of each type of voting machine or system used therein for each public office and any questions or proposals appearing on the ballot. The conduct of such random audit shall be in a manner consistent with procedures prescribed by the State Board of Elections.

(b) The voting machines or systems to be audited to meet the countywide minimum requirement set forth in Subdivision (a) herein shall be selected by lot through a transparent, random, manual process where all selections of machines or systems used in the county are equally probable. The voting machines or systems to be audited to meet the requirements for a specific contest set forth in Subdivision (a) herein shall be selected by lot through a transparent, random, manual process where all selections of machines or systems used in the contest within each county are equally probable. The county boards shall adopt one of the random, manual selection methods prescribed by the State Board of Elections or such county board may submit for approval by the State Board a proposed alternative random, manual selection method. County Board adoption of the prescribed random, manual selection method shall take place not later than 45 days after the purchase of a voting system and notice by the County Board of the adoption of such random, manual selection method shall be filed with the State Board.

(1) As required by NYS Election Law Section 9-211, not less than five days prior to the time fixed for the random selection process, the board of elections shall send notice by first class mail to each candidate, political party and independent body entitled to have had watchers present at the polls in any election district in such board's jurisdiction and to the State Board. Such notice shall state the time and place fixed for such random selection process. Such random selection process shall not occur until after election day. Each candidate, political party or independent body entitled to appoint watchers to attend at a polling place shall be entitled to appoint such number of watchers to observe the random selection process and the subsequent audit.

(2) Such notice shall also announce the date, time, and location that the audit shall commence, information on the number of audit teams which will conduct such audit, and such other information that the County Board deems necessary.

(3) The county board shall at a single session randomly select from all machines and systems used within the county in the election so that no further drawings are required if anomalies are encountered during the manual audit. The audit shall commence on the same day as the random, manual selection process.

(4) Prior to auditing the audit records, the county board shall distribute to those in attendance at the audit session, copies of the list showing the number of machines and systems needed to meet the audit requirement and the unofficial vote results per voting machine or system selected for audit.

(c) For each voting machine or system subject to be audited, the manual audit shall consist of a manual tabulation of the voter verifiable paper audit trail records and a comparison of such count, with respect to all candidates and any questions or proposals appearing on the ballot, with the electronic vote tabulation reported for such election district.

(1) A reconciliation report, on a form prescribed by the State Board of Elections, that reports and compares the manual and electronic vote tabulations for each audited candidate for each contest and any question or proposal from each machine or system subject to

the audit by election district, including tallies of overvotes, undervotes, blank ballots, spoiled ballots and rejections recorded on the VVPAT, along with any discrepancies, shall be prepared by the board of elections or a bipartisan team appointed by such board and signed by such members of the audit team.

(2) Any discrepancies between the corresponding audit results and initial electronic vote counts shall be duly noted, along with a description of the actions taken by the county board of elections for resolution of discrepancies. The number and type of any damaged or missing paper records shall be duly noted.

(3) If any unresolved discrepancy is detected between the manual count described in Subdivision (c) above and the machine or system electronic count, even an unresolved discrepancy of a single vote, the manual count shall be conducted a second time on such machine or system to confirm the discrepancy.

(d) The reconciliation report required in Subdivision (c) above shall be transmitted to the County Board commissioners or their designees upon completion of the initial phase of the audit for determination on the expansion of the audit conducted pursuant to Subdivisions (e) through (g) herein.

(e) The county board shall aggregate the audit results reported pursuant to Subdivision (c) (2) herein that are applicable to any contests, questions or proposals. The aggregated results for each contest, question or proposal shall be used to determine whether further auditing is required as follows:

(1) For any contest, question or proposal, an expanded audit will be required if either or both of the following criteria apply to the aggregated audit results:

(i) Any one or more discrepancies between the confirming manual counts described in Subdivision (c) (3) herein and the original machine or system electronic counts, which taken together, would alter the vote share of any candidate, question or proposal by one tenth of one percent (0.1%) or more of the hand counted votes for respective contests, questions or proposals in the entire sample; or

(ii) If discrepancies of any amount are detected between the confirming manual count described in Subdivision (c) (3) herein and the original machine or system electronic count from at least 10% of the machines or systems initially audited then the board or bipartisan team appointed by such board shall manually count the votes recorded on all the voter verifiable paper audit trail records from no less than an additional 5% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies.

(iii) When determining whether discrepancies warrant expanding the audit, the percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(f) A further expansion of the audit will be required if either or both of the following criteria apply to the audit results:

(1) For each contest, question or proposal, the county board shall aggregate the results from the initial audit as required in Subdivision (a) above and the expanded 5% audit. If, such aggregated results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(i) above, a further expansion of the audit will be required.

(2) For each contest, question or proposal, the county board shall take the results of the 5% expanded audit under Subdivision (e) above, and, if such results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(ii) above, a further expansion of the audit will be required.

(3) When an expanded audit is required for a contest pursuant to this section, each county board or bipartisan team appointed by such board shall manually count all voter verifiable paper audit trail records from no less than an additional 12% of each type of the same type of voting machine or system which contains any such discrepancy or discrepancies.

(4) When determining whether discrepancies warrant expanding the audit, all percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(g) A further expansion of the audit will be required if either or both of the following criteria apply to the audit results:

(1) For each contest, question or proposal, the county board shall aggregate the results from the initial audit as required in Subdivision (a) above and the expanded audit as required in Subdivision (e) and (f) above. If, such aggregated results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(i) above, a further expansion of the audit will be required.

(2) For each contest, question or proposal, the county board shall take the results of the 12% expanded audit under Subdivision (f) above, and, if such results of unresolved discrepancies satisfy the criteria in Subdivision (e)(1)(ii) above, a further expansion of the audit will be required.

(3) When an expanded audit is required for a contest pursuant to this section, each county board shall manually count all voter verifiable paper audit trail records from all the remaining unaudited machines and systems where the contest appeared on the ballot.

(4) When determining whether discrepancies warrant expanding the audit, all percentage-based thresholds in this section shall be rounded down by truncating the decimal portion (with a minimum of 1).

(h) The standards set forth in Subdivisions (a)-(g) above are not intended to describe the only circumstances for a partial or full manual count of the voter verifiable paper audit record, but instead are designed to set a uniform statewide standard under which such hand counts must be performed. The county boards of elections, as well as the courts, retain the authority to order manual counts of those records in whole or in part under such other and additional circumstances as they deem warranted. In doing so, they should take into consideration: 1) whether the discrepancies were exclusively or predominantly found on one type of voting machine or system; 2) the size of the discrepancies; 3) the number of discrepancies; 4) the percentage of machines or systems with discrepancies; 5) the number and distribution of unusable voter-verified paper audit trail records as described in Section J below; 6) the number of cancellations recorded on the voter-verified paper audit trail records reported pursuant to Subdivision (c)(1) herein; and 7) whether, when projected to a full audit, the discrepancies detected (no matter how small) might alter the outcome of the contest, question or proposal result.

(i) If the audit officials are unable to reconcile the manual count with the electronic vote tabulation on a voting machine or system, then the board of elections shall conduct such further investigation of the discrepancies as may be necessary for the purpose of determining whether or not to certify the election results, expand the audit, or prohibit that voting machine or system's use in such jurisdiction.

(j) If a complete audit is conducted, the results of such audit shall be used by the canvassing board in making the statement of canvass and determinations of persons elected and propositions approved or rejected. The results of a partial audit shall not be used in lieu of voting machine or system tabulations, unless a voting machine or system is found to have failed to record votes in a manner indicating an operational failure. When such operational failure is found, the board of county canvassers shall use the voter verifiable audit records to determine the votes cast on such machine or system, provided such records were not also impaired by the operational failure of the voting machine or system. If the voter verified paper audit trail records in any machine or system selected for an audit are found to be unusable for an audit for any reason whatsoever, another machine or system used in the same contest shall be selected at random by the county board to replace the original machine or system in the audit sample. All such selections shall be made randomly in the presence of those observing the audit. The County Board shall inquire in an effort to determine the reason the voter verified paper audit trail records were compromised and unusable and such inquiry shall begin as soon as practicable. The results of the inquiry shall be made public upon completion.

(k) Any anomaly in the manual audit shall be reported to and be on a form prescribed by the State Board and shall accompany the certified election results.

Final rule as compared with last published rule: Nonsubstantive changes were made in paragraph (b)(4).

Revised rule making(s) were previously published in the State Register on March 31, 2010.

Text of rule and any required statements and analyses may be obtained from: Paul M. Collins, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: pcollins@elections.state.ny.us

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

The change made to the text of this regulation is a nonsubstantive correction of a typographical error. Specifically, the error involved a reference to ''each contest and any questions and proposal'' on page 3 at paragraph 4, which has been corrected. Such correction is not a substantial revision and will have no impact on the creation or elimination of jobs; nor on small businesses; nor on businesses or agencies in rural areas.

Assessment of Public Comment

The comments received on the Revised Proposed Rule with respect to the post election audit of the new voting systems can be divided into two parts, those praising the State Board for restricting the scope of the post election audit to the statutory mandate of Election Law § 9-211 and those demanding an audit process well in excess of the statutory requirement. The public comments essentially mirrored those received previously when the Regulation was originally proposed in 2009, which comments prompted the State Board to revise the rule.

Many of the negative comments were premised upon the assertion that ''testing complex election systems to high levels of security and reliability is not possible''. Additional negative comments pointed to experiences in other states where the certification process was nonexistent or not as robust as the New York certification process. Some opponents argued that the elimination of the per proposition and per contest audit requirement might result in not uniform statewide standard for audits.

Those in favor of the proposed regulation made reference to the fact that the largest source of error in election administration, management and certification was the human factor, especially in counting ballots.

Laura Costello, Madison County Election Commissioner pointed out a typographical error in the Proposed Rule which has been corrected. The error involved a reference to ''each contest and any questions and proposal'' on page 3 at paragraph 4, which has been corrected in the rule as submitted to the State Board for adoption. Such correction is not a substantial revision so as to require a Notice of Revised Rule Making.

Department of Health

NOTICE OF ADOPTION

Personnel Health Amendments and Medicare Conditions of Participation

I.D. No. HLT-49-09-00005-A
Filing No. 520
Filing Date: 2010-05-13
Effective Date: 2010-06-02

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

Action taken: Amendment of sections 405.3, 405.9, 405.10, 415.26, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800, 2803, 3612 and 4010

Subject: Personnel Health Amendments and Medicare Conditions of Participation.

Purpose: Allow but not require facilities to use FDA approved Blood Assay for TB testing in place of the tuberculin skin test, etc.

Text or summary was published in the December 9, 2009 issue of the Register, I.D. No. HLT-49-09-00005-P.

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

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

Assessment of Public Comment

The Public comment period ended on January 23, 2010 and the Department received 2 comments.

The first comment was received from the New York State Association of Health Care Providers, Inc. and was in support of this proposal.

The second comment was received from the Healthcare Association of New York State. This comment was in support, but requested that all physicians, and not just those who practice from a remote location outside of New York State, be exempted from the personnel health assessment and immunization requirements. The Department considered this request, but believes that New York State physicians may spend some time, on occasion, in the health care facilities even if not directly caring for patients one on one. It may be difficult for a hospital to make a clear delineation of which providers are exempt and which must meet these requirements.

A change will not be made to these provisions.

NOTICE OF ADOPTION

Early Intervention Program

I.D. No. HLT-01-10-00023-A
Filing No. 541
Filing Date: 2010-05-18
Effective Date: 2010-06-03

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

Action taken: Amendment of Subpart 69-4 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2540-2559-b

Subject: Early Intervention Program.

Purpose: To make several changes to the standards for the provision of services in the Early Intervention Program.

Substance of final rule: A new subdivision (2)(iii) is added to section 69-4.1(l) creating a definition of ''applied behavior analysis.'' Subdivision (l) of section 69-4.1 is repealed and a new section is created and renumbered to be (m) to clarify several aspects of the duration of eligibility for children potentially eligible for the preschool special education program to conform with modifications to Public Health Law and Education Law enacted in 2003. This section is amended to clarify that ''eligible child'' also includes any infant or toddler with a disability who is an Indian child residing on a reservation located in the State; a homeless child or a ward of the State. These changes are needed to conform with modifications enacted as part of the reauthorization of the federal Individuals with Disabilities Education Act of 2004. Section 69-4.1(ak) is amended to revise the list of qualified personnel to reflect changes that have been made to teacher certifications and professional licenses. Optometrists and vision rehabilitation therapists are added to the list of qualified personnel.

Subdivision 69-4.3(b)(1) is amended to add that race and ethnicity can be included in a referral without parent consent to conform with federal requirements. Subdivision 69-4.3(c) is amended to add facsimile and secure web transmission to the list of ways referrals can be made. Subdivision 69-4.3(f) is amended to clarify certain items on the list of criteria that define children to be at risk of having a disability, including adding the presence of a genetic syndrome, modifying the definition of elevated blood levels, and adding indicated cases of child maltreatment.

Section 69-4.5 is repealed and a new section 69-4.5 is created to establish enhanced standards for the approval of providers, including a requirement that agencies enroll as Medicaid providers and that they submit consolidated fiscal reports to the Department. For individual providers who are able to deliver services as independent contractors in the program, a minimum amount of past experience is required serving children under five years of age. Agency providers are required to submit a quality assurance plan for each service offered; employ a program director and a minimum of two qualified personnel; and employ professionals to oversee the quality assurance plan. The Commissioner would be authorized to require approved agencies and individuals to seek reapproval no sooner than five years after approval. Subsection 69-4.5(b) establishes criteria for the approval of agencies allowed to provide ABA intervention programs using paraprofessional aides. Subdivision 69-4.5(c) requires that an agency's approval in the program shall terminate upon the transfer of ten percent or more of an interest in the agency within the last five years. The new agency is required to apply for approval at least ninety days prior if it wishes to provide services in the program after such transfer. Subdivision 69-4.5(d) requires providers to communicate with parents and other service

providers. Subdivision 69-4.5(e) requires providers to comply with marketing standards issued by the Department. Subdivision 69-4.5(f) requires approved individuals to notify the Department within two business days if his or her license is suspended, revoked, limited or annulled and subdivision (g) requires providers to comply with State and Federal non-discrimination provisions. Subdivision 69-4.5(l) requires providers who intend to cease providing services to submit written notice and a plan for transition of children not less than 90 days prior, and to collaborate to ensure a smooth transition of eligible children.

A new subdivision (d) is added to section 69-4.6 requiring parents to provide information for claiming to third party payors in conformance with modifications enacted to Public Health Law in 2003.

Subdivision (a)(6)(i) of section 69-4.8 is repealed and replaced with a new subdivision that requires evaluators to use standardized instruments from a list of preferred tools developed by the Department. Evaluators are required to provide written justification if an instrument is used that is not on the list.

Section 69-4.9 is repealed and replaced with a new section 69-4.9. Subdivisions (c) and (d) clarify that municipalities and providers are required to comply with Department health and safety standards. Subdivision (g) requires providers to notify parents in a reasonable period of time prior to any inability to deliver a service due to illness, emergencies, hazardous weather, or other circumstances. Providers also are required to notify parents and service coordinator five days prior to any scheduled absences due to vacation, professional activities, or other circumstances, and notify parents, service coordinator and early intervention official at least thirty days prior to the date on which the provider intends to cease providing services to a child altogether. Subdivision (i) prohibits the use of aversives in the program, a definition of aversive interventions is included, and it is clarified that behavior management techniques are allowed to prevent a child from seriously injuring him/herself or others.

A new subdivision (a)(2)(ii)(a) is added to section 69-4.11 to allow early intervention officials to participate in Individualized Family Service Plans (IFSP) meetings by phone. A new subdivision (a)(5)(i) is added to require that notice to parents of an IFSP meeting include that parents furnish social security numbers to facilitate claiming to third party payors. A new subdivision (a)(6)(i) is added to clarify that if parents refuse to provide social security numbers, services must still be provided. Subdivision (a)(10)(v) is amended to clarify the intent for frequency, intensity, length, duration, location and the method of delivering services. Subdivision (a)(10)(vi) is amended to clarify the requirements for the IFSP when services will not be provided in a natural environment. Subdivision (a)(10)(xiii) is amended to modify the requirements for the IFSP for transition of children out of the program who are potentially eligible for preschool special education. Subdivision (b) is amended to allow six month IFSP reviews to occur via conference call or record review; and to allow early intervention officials to require an additional evaluation be performed to assess the need for an increase in the frequency or duration of services.

Subdivision (a)(1)(i) of section 69-4.12 is amended and a new subdivision (a)(4)(x) is created to add verification of correction of non-compliance to the list of monitoring procedures consistent with new federal requirements.

Subdivisions (i)(4), and (i)(6) through (i)(10) of section 69-4.17 are repealed. Subdivision (i)(5) is renumbered to be (i)(4) and a new subdivision (i)(5) is added to clarify the requirements for complaint investigations performed by the Department.

Subdivision (b) of section 69-4.20 is amended to drop a requirement that parent's consent to notification and instead provide parents the opportunity to ''opt-out'' by providing their objection. This modification is needed to comply with an opinion from the U.S. Department of Education that requiring parents to affirmatively consent is in conflict with federal regulations. This subdivision is further modified to clarify that parents may decline transition conferences.

A new section 69-4.23 is created establishing initial and continuing eligibility criteria for the program. For children with a delay only in the communication domain, the criteria are a score of 2.0 standard deviations below the mean in the area of communication. If no test is appropriate for the child, a delay in the area of communication is determined by qualitative criteria in clinical practice guidelines issued by the Department. Subdivision (b) of section 69-4.23 allows early intervention officials to require a determination be made of the child's continuing eligibility if there is an observable change in the child's developmental status. Continuing eligibility is be established by a multidisciplinary evaluation and can include a delay consistent with the criteria for initial eligibility, a delay in one or more domains such that the child is not within the normal range expected for his or her age, a score of 1.0 standard deviation below the mean in one or more domain; or the continuing presence of a diagnosed condition with a high probability of delay.

A new section 69-4.24 is added relating to proceedings involving the approval of providers. Subdivision (a) provides that a provider's approval may be revoked, suspended, limited or annulled if the provider no longer meets one of the criteria for approval or reapproval; does not have current licensure, registration or certification; falsely represented or omits material in an application; has been excluded or suspended from any medical insurance program; has been the subject of actions taken against the provider by another State agency; has been convicted in an administrative or criminal proceeding; fails to provide access to facilities, child records, or other documents; fails to submit corrective action plans; fails to pay recoupment due, or implement any actions required on the basis of an audit; fails to pay fines or penalties assessed by the Department; has placed children, parents, or staff in danger; or has submitted improper or fraudulent claims.

Subdivision (b) of section 69-4.24 gives providers the right to be heard prior to actions being taken by the Department. Subdivision (c) provides that the Department may take a summary action prior to granting an opportunity to be heard for one hundred twenty days following a finding that the health or safety of a child, parents or staff of the agency or municipality is in imminent risk of danger. The provider is then granted an opportunity to be heard to contest the Department's findings.

A new section 69-4.25 is added that creates standards for the use of paraprofessional aides in the delivery of Applied Behavior Analysis (ABA) in the program. Subdivision (a)(1) requires agencies approved to deliver ABA services to coordinate all services in a child's IFSP. Subdivision (a)(2) requires agencies to assign each child to a team consisting of a supervisor, ABA aides and other qualified personnel. Subdivision (a)(3) requires ABA agencies to employ supervisory personnel and aides to implement ABA plans, and subdivision (a)(4) allows them to either employ or contract with other qualified personnel to participate in delivery of ABA plans or deliver other services in a child's IFSP. Subdivision (a)(5) requires the use of systematic measurement and data collection to monitor child progress. Subdivision (a)(6) requires ABA agencies to maintain and implement policies and procedures for the delivery of ABA services. Subdivision (a)(7) requires ABA agencies to ensure the training of supervisory personnel and ABA aides. Subdivisions (b), (c) and (d) establish the minimum requirements and responsibilities for supervisors of ABA aides, respectively. The supervision of ABA behavior aides must include a minimum of six hours per month in the first three months of employment, and a minimum of four hours per month thereafter, of direct on-site observation; and a minimum of two hours per month of indirect supervision. Supervisors are required to convene a minimum of two team meetings per month with all personnel delivering services to the child. Subdivision (e) and (f) establishes the minimum qualifications and allowable activities for ABA aides. Subdivision (g) establishes the requirements for other employed or contracted qualified personnel providing other services in a child's IFSP as part of a ABA services.

A new section 69-4.26 is added clarifying the requirements for the content and retention of child records consistent with a guidance document previously issued by the Department. Subdivision (a) and (b) establish the requirements for municipalities and providers, respectively. Subdivision (c) establishes requirements for maintaining original signed and dated session notes.

Subdivision (c)(1) of section 69-4.30 is amended to delete the requirement that early intervention officials notify the Department of additional screenings provided. A new subdivision (c)(13) is added establishing a price for services provided by an ABA intervention program aide to be billed in 60 minute increments.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 69-4.3(f), 69-4.8(a)(9), 69-4.9(i)(9), 69-4.11(a)(10), 69-4.25(b)(1) and 69-4.30(c)(13).

Revised rule making(s) were previously published in the State Register on April 7, 2010.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

Notice of adoption of rulemaking pursuant to the authority vested in the New York State Department of Health by Public Health Law, Article 25, Title II-A, for Part 69-4 of Chapter II of Title 10 (Health) – New York State Early Intervention Program.

Public comment was received from 153 commenters, including one municipality (the New York City Department of Health and Mental

Hygiene (NYCDOHMH)), 147 early intervention (EI) providers, and one parent. Comments were also submitted by the New York State Education Department (SED), Advocates for Children, Agencies for Children's Therapy Services, Interagency Council of Mental Retardation and Developmental Disabilities Agencies, Inc., NYS Alliance for Children with Special Needs, NYS Association for Behavior Analysis (NYSABA), NYS Physical Therapy Association, NYS Speech-Hearing and Language Association (NYSSHLA), and the United Cerebral Palsy Association of NYS.

Of the comments received, three addressed 69-4.1, Definitions; nine addressed 69-4.3, Referrals; 74 addressed 69-4.23, Initial and Ongoing Eligibility; 87 addressed 69-4.5, Approval of Service Coordinators, Evaluators, and Service Providers; one addressed 69-4.8, Evaluators/Screening, Evaluation, and Assessment Responsibilities; one addressed 69-4.9, Standards for the Provision of Services; nine addressed 69-4.25, Standards for Agency Providers Approved to Deliver Applied Behavior Analysis (ABA) Intervention Programs Using ABA Aides; four addressed 69-4.11, Individualized Family Service Plans; one addressed 69-4.20, Transition Planning; and, one addressed 69-4.30, Computation of Rates for Early Intervention services.

Two commenters objected to the removal of board certified behavior analyst and assistant behavior analyst (BCBAs and BCABAs, respectively) from the list of qualified personnel. The Department made this revision in response to SED's opposition to the inclusion of individuals with these certifications as qualified personnel. Since SED is the State agency responsible for oversight of the practice of the professions, no change has been made. BCBAs and BCABAs have been retained as ABA aides in 69-4.25, which sets forth requirements for agency providers using ABA aides to assist in the delivery of ABA services. No further revision has been made.

At the recommendation of NYSABA, the term ''behavioral'' has been replaced throughout the rule with ''behavior,'' as the commonly used terminology in the field.

Several commenters, including NYSSHLA, again expressed concern about the proposed change to 69-4.3(f)(1)(xvii), which replaces ''suspected hearing impairment'' with ''failure of initial newborn infant hearing screening and the child is in need of follow-up screening.'' This provision was clarified to state that children with risk of hearing loss based on family history, including those children with syndromal presentation, are at risk of having a disability. Children with suspected hearing impairment must be referred for a multidisciplinary evaluation under existing regulation at 69-4.3(d) and (e).

Many commenters opposed the criteria in 69-4.23(a)(2)(iv), which creates a new definition of developmental delay for children who have a delay only in the communication domain. The NYCDOHMH supported these criteria with clarifying edits, but expressed concern that the proposed revisions were less restrictive than what is currently stated in guidance documents. One commenter supported clarification made by the Department that the physical domain of development includes oral-motor feeding and swallowing disorders.

The new definition of communication delay will ensure that the program identifies children with speech/language delays for whom intervention is imperative, while also appropriately identifying children experiencing a normal variation in development that will resolve without intervention.

One commenter proposed language to include in 69-4.23(a)(2) to further clarify eligibility criteria for oral-motor feeding and swallowing disorders. The Department recognizes the need for guidance in this area, and will update standards and procedures and clinical practice guidelines, to address this concern. No revision was made.

Advocates for Children recommended adding language to 69-4.23(a)(b)(1), on continuing eligibility, to clarify that parents may select an evaluator to conduct the multidisciplinary evaluation for these purposes. This change has been made as it is consistent with the proposed rule, which requires that evaluations be conducted in accordance with 69-4.8. 69-4.8 gives the parent the right to select an evaluator from a list of approved evaluators.

Eighty-seven comments were received on 69-4.5, Approval of Service Coordinators, Evaluators, and Service Providers. Many commenters expressed continued concern about the administrative burden that would be imposed by 69-4.5(a)(1), which requires agencies approved to deliver EI services to enroll as providers in the medical assistance program (Medicaid). Some commenters argued that requiring agencies to enroll in Medicaid while exempting individual providers from this requirement is inequitable.

Section 69-4.5(a)(1) has been retained. Medicaid reimburses all services provided to EI children and families enrolled in Medicaid, and is a major source of financing for EI services. To ensure the quality and integrity of services provided under both programs, it is imperative that EI providers enroll in and are held accountable to Medicaid requirements. Individual providers, as contractors or subcontractors to municipalities or agency providers, will be held accountable to Medicaid through these contractual relationships. In addition, 69-4.5(a)(4)(iii) requires agency and individual providers to complete an approved Medicaid provider agreement and reassignment of benefits to the municipality. Agency providers will not be required to bill Medicaid. Statutory change would be necessary to require direct provider billing to Medicaid for reimbursement of early intervention services.

Some commenters continued to oppose 69-4-5(a)(2), which requires agency providers to submit consolidated fiscal reports to the Department upon request, and approved individual providers to submit information on revenues and expenses, citing burden and costs that will be incurred by providers to do so. The information contained in these reports is needed to maintain program reimbursement rates that are equitable, adequate, and cost-effective. This provision has been retained.

The majority of commenters support revisions to 69-4.5(a)(3)(iv), which reduces the minimum requirement for relevant clinical experience to 1,600 hours for approval as individual providers. One commenter, the United Cerebral Palsy Association of NYS opposed this change, advocating for a higher standard. The revision has been retained in the final rule. Relevant professions licensed, registered, or certified by SED require a minimum of 1,600 hours of clinical experience as a prerequisite for credentialing, and therefore this is a reasonable minimum standard for qualified personnel seeking to deliver EIP services.

Several commenters expressed concern about the burden that quality assurance plans required by 69-4.5(a)(3)(vii)(c) would place on small businesses. The provision has been retained as written. It is permissible for the professional who holds a license, certification, or registration in the type of service offered by the agency whose responsibilities include monitoring and overseeing the agency's quality assurance plan to have other responsibilities and duties for the agency, including rendering EI services.

Small agencies that are unable to meet requirements for agency providers may continue to participate in the program by receiving Department approval as individual providers. Individual practitioners who are incorporated entities or sole proprietorships, and who do not employ or contract with other professionals to deliver services, can be approved as individual providers of EI services without meeting the minimum organizational requirements proposed for agency providers.

NYCDOHMH recommended that 69-4.8(a)(9)(iii) be revised to clarify proposed language which requires that the evaluation report describe in detail how the child meets eligibility. This section has been revised to clarify that in documenting eligibility, evaluators must describe the child's developmental status in sufficient detail to document how the evaluator has established eligibility in accordance with criteria set forth in 69-4.23.

SED proposed language to clarify that planned restraint and contingent food programs would not be allowed to be used for punishment, but only under highly controlled and planned conditions when necessary to prevent physical injury or harm to the child, and also language that would recognize the need for emergency procedures to ensure child safety. The proposed language regarding aversives is consistent with SED's alternative language. The Department has clarified that behavior management techniques include emergency physical interventions.

NYCDOHMH expressed concern about the operational implications of the proposed requirement that the behavior management plan be documented in the child's IFSP, including potential impediments to timely delivery of services. It was the Department's intent that the behavior management plan be documented as part of the child's record rather than prompt an additional IFSP meeting. 69-4.9(i)(9) has been revised accordingly to clarify that the behavior management plan must be documented in the child's record.

SED commented that it continued to be unclear whether ABA aides would be providing instructional services, and if so, recommended that the aides be required to have qualifications equivalent to those of teaching assistants. Section 69-4.9a(1) was previously revised to prohibit ABA aides from providing services that are within the scope of any profession licensed, certified, or registered by the State. In the Department's view, this includes instructional services. No further revision has been made.

One commenter continued to oppose the amendment to 69-4.11(a)(2), which would allow the early intervention official to participate in IFSP meetings by conference call due to concerns that this may impede the timely delivery of services. The Department believes this measure will help to conserve local resources and ensure timely development of IFSPs. The amendment has been retained.

One commenter recommended revisions to 69-4.11(xiii)(a)(2) to clarify that with parental consent, the EIO may assist in making a referral to the CPSE. The proposed language states that a parent needs to make timely referral to the CPSE. With parental consent, the early intervention official may assist the parent in making a referral to the CPSE, to ensure timely referral and evaluation of children potentially eligible for services under section 4410 of Education Law. As this is consistent with current policy

and practice and the intent of the proposed regulation, this clarifying change has been made.

One commenter continued to oppose amendments in 69-4.11(10)(xiii) and 69-4.20(b), which eliminate the requirement that parent consent be obtained prior to notification of the school district in which the child resides of the child's potential eligibility for services under section 4410 of the Education Law, and make changes required by the U.S. Department of Education to allow parents to ''opt out'' of the federal notice requirement. Parents and advocates in particular viewed this to be a diminution of parental rights. The Department has been notified that the State must implement an ''opt out'' policy consistent with U.S. Department of Education policies to continue to receive federal funding for administration of the EIP and, therefore, these proposed provisions are being retained.

NYCDOHMH recommended that 69-4.30(c)(13) be revised to clarify that reimbursement of direct and indirect supervision of ABA aides, team meetings and training is included in the rate for ABA aides and is not separately billable. The Department concurs and has made this change.

NOTICE OF ADOPTION

HIV Uninsured Care Programs

I.D. No. HLT-05-10-00004-A

Filing No. 540

Filing Date: 2010-05-18

Effective Date: 2010-06-02

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

Action taken: Amendment of Subpart 43-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2776(1)(e), 201(1)(h) and (p) and 206(3)

Subject: HIV Uninsured Care Programs.

Purpose: Receive and expend funds to provide medications, medical treatment and other supportive services to persons with HIV disease.

Text of final rule: The title of Subpart 43-2 is amended to read:

SUBPART 43-2

[AIDS DRUG ASSISTANCE PROGRAM] *HIV UNINSURED CARE PROGRAMS*

(Statutory authority: Public Health Law, §§ 201(1)(p), 2776(1)(e))

Section 43-2.1 is amended to read:

Section 43-2.1 Scope. These regulations govern the application and eligibility determination process for the [AIDS Drug Assistance Program] *HIV Uninsured Care Programs* and establish the rights and responsibilities of applicants, participants, [medical] providers, and [the contractor] *contractors* in that process.

Section 43-2.2(e) and (f) are amended to read:

(e) Period of coverage. Coverage for assistance *for each individual program component* is effective [on the first date a drug is dispensed to an individual who is determined to be eligible for participation in the program] *as specified in the individual's notification of eligibility*. Coverage will terminate under the following circumstances:

(1) the applicant indicates in writing that he/she no longer needs or desires assistance;

(2) the department determines that a change in the participant's circumstances or residence has affected his/her eligibility;

(3) the participant has died or cannot be located; and

(4) funding for the [AIDS Drug Assistance Program] *HIV Uninsured Care Programs* is exhausted.

(f) Program means the *HIV Uninsured Care Programs, including the following service components:*

(1) AIDS Drug Assistance Program*, which provides coverage of medications;*

(2) ADAP Plus, which provides coverage for ambulatory care services;

(3) ADAP Plus Insurance Continuation, which pays for insurance premiums for eligible individuals who have cost effective insurance policies; and

(4) the HIV Home Care Program, which provides coverage for home care services.

Section 43-2.2(i) is amended to read as follows:

(i) [Contractor means any corporation which has entered into a contract with the department to assist in carrying out the provisions of the program] *Available household income means the applicant's household income after deducting the amount paid by the applicant under the Federal Insurance Contributions Act for Social Security and Medicare and the cost of health care coverage paid by the applicant*.

A new Section 43-2.2(j) is added to read:

(j) Provider means a medical provider, including a pharmacy, hospital, clinic, physician, laboratory or home health care agency.

Section 43-2.3 is amended to read:

Section 43-2.3 Confidentiality. All information which may identify an applicant which is received by the program will be confidential and can only be used when necessary for supervision, monitoring or administration of the program. Information received by any contractor, his agents, employees, or by any other person or agency concerning applicants or participants in the program is confidential and may not be disclosed without the written approval of the [AIDS Drug Assistance] *HIV Uninsured Care* Program Director, who shall approve disclosure only in conformance with Article 27-F of the Public Health Law *and the federal standards with respect to the privacy and security of individually identifiable health information contained in Part 164 of Title 45 of the Code of Federal Regulations*.

Section 43-2.4(a) is amended to read:

43-2.4 Use of the application form. (a) The State-approved application form must be completed:

(1) for each applicant upon initial application and recertification, if required; and

(2) *documentation may be required* when there is a change in status affecting eligibility.

Section 43-2.5(b)(1) is amended to read:

(b) Financial eligibility will be based upon the [total gross income] available *household income* [to the applicant's household].

(1) In order to be eligible, an applicant's *available* household income must be equal to or less than [the income guideline for the applicant's family size as specified below:] *435% of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant's family size. Federal poverty guidelines are published annually by the Department of Health and Human Services in the Federal Register.*

[Schedule--Statewide Standard of Need (Annual)

Number of persons in household

ONE	TWO	THREE+
44,000	59,200	74,400]

Section 43-2.5(c) is amended to read:

(c) Liquid resources shall be reviewed to determine their availability in determining eligibility for the program. In order to be eligible, an applicant's liquid resources must be less than $25,000.

[(1)] Liquid resources are cash or those assets which can be readily converted to cash such as bank accounts, lump sum payments, i.e., stocks, bonds and mutual fund shares. [Resources in an Individual Retirement Account (IRA) or other tax deferred compensation plan will be calculated at the rate of 50% for purposes of determining liquid assets.]

Section 43-2.5(d) is amended to read:

(d) Full and proper use shall be made of existing public and private medical and health services and facilities for obtaining therapeutic drugs*, medical services, and related supplies and equipment* for the treatment of *HIV or* AIDS.

Section 43-2.5(e) is amended to read:

(e) An applicant or recipient of assistance may be required as a condition of eligibility or continued eligibility to assign any rights he/she may have for [drug] coverage benefits under any health insurance policy or group health plan to the department.

Section 43-2.5(f) is amended to read as follows:

(f) [The department may employ a contractor to determine eligibility consistent with the requirements and responsibilities of Subpart 43-2 of this Part. Eligibility determinations are subject to department review and adjustment.]

In order to be eligible for ADAP Plus Insurance Continuation, an applicant must have:

(1) a health insurance policy that is determined to be cost effective by the department, based on the cost of premiums, limitations of coverage (i.e., deductible, caps, co-payments) and estimates of the monetary value of projected utilization and reimbursement under the insurance policy, and

(2) a premium cost that is more than 4% of the applicant's available household income, if the applicant's available household income is greater than 200% of the amount under the annual United States Depart-

ment of Health and Human Services poverty guidelines for the applicant's family size, and

(3) an employer contribution of 50% or more of the total cost of the health insurance premium, if the applicant is employed full time and eligible for employer sponsored health insurance.

Section 43-2.9 is amended to read:

[Issuance of Program eligibility cards. (a) The department or authorized parties shall issue a program eligibility card to each person determined eligible for benefits.

(b) The card shall include the following information:

(1) participant's full name;

(2) participant's identification number;

(3) participant's effective date of coverage;

(4) category of drugs for which the participant is eligible; and

(5) the effective date of coverage for each category.]

RESERVED

Section 43-2.10 is amended to read:

43-2.10 Investigation. The department official shall review and verify information received on applications, as required. Documents, personal observation, personal and collateral interviews and contacts, reports, correspondence and conferences are means of verification of information supplied. When information is sought from collateral sources*,* other than public records *or sources designated by the applicant on the application form* [because the applicant or participant cannot provide verification], the department will inform the applicant/participant or his/her representative of what information is desired, why it is needed and how it will be used.

Section 43-2.14 is amended to read:

43-2.14 Enrollment of providers. The department will contract with *or enter into provider agreements with* [pharmacies and health care] providers*, including providers of related laboratory and ancillary services,* which demonstrate that they are qualified to provide [prescriptions drugs] *program services*.

Section 43-2.15(a) and (b) are amended to read:

Audit and [claim] review. (a) Providers shall be subject to audit *and reviews for quality assurance and proper utilization* by the commissioner, his agents or designees. With respect to such audits *and reviews*, the provider may be required:

(1) to reimburse the department for overpayments discovered by audits; and

(2) to pay restitution for any direct or indirect monetary damage to the program resulting from their improperly or inappropriately furnishing covered drugs*, services, supplies or equipment*.

(b) The commissioner, his agents or designees may conduct audits and [claim] reviews, and investigate potential fraud or abuse in a provider's conduct.

Section 43-2.15(d) is amended to read:

(d) When audit findings indicate that a provider has provided covered drugs*, services, supplies or equipment* in a manner which may be inconsistent with regulations governing the program, or with established standards for quality, or in an otherwise unauthorized manner, the commissioner may summarily suspend a provider's participation in the program and/or payment of all claims submitted and of all future claims may be delayed or suspended. When claims are delayed or suspended, a notice of the withholding payment or recoupment shall be sent to the provider by the department. This notice shall inform the provider that within 30 days he/she may request in writing an administrative review of the audit determination before a designee of the commissioner. The review must occur and a decision rendered within a reasonable time after a request for *review. If the designee of the commissioner decides withholding or* recoupment is warranted, or if no request for review is made by the provider within the 30 days provided, the department shall continue to recoup or withhold funds pursuant to the audit determination.

Section 43-2.16(e) is amended to read:

(e) All claims made under the program shall be subject to audit by the commissioner, his agents or designees, for a period of [three] *six* years from the date of their filing*, or as required by state law, regulation or funding source.* [t]*T*his limitation shall not apply to situations in which fraud may be involved or where the provider or an agent thereof prevents or obstructs the performance of an audit pursuant to this Part.

Section 43-2.17 is amended to read:

43-2.17 Recoupment of overpayments. Overpayments determined to have been made pursuant to this section and section 43-2.16 of this Subpart shall be recovered by *billing the provider for reimbursement,* withholding the provider's current or *withholding* future payments on claims submitted or a percentage of payments otherwise payable on such claims, or such other remedies as may be available through a court of law.

A new section 43-2.18 is added to read:

Section 43-2.18 Claims submission. (a) Providers shall submit claims for drugs or services within ninety days of the date of service in the manner and form proscribed by the program in order to receive reimbursement.

(b) The department will not be obligated to pay claims submitted more than ninety days after the date of service. Claims submitted later than 90 days with written justification may be considered for payment if funds are available.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 43-2.15(d).

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

Proposed rule changes per the paragraph below were posted in the State Register on February 3, 2010 for a 45-day public comment period.

43-2 AIDS Drug Assistance Program - Amend the regulation to address the interrelated components of the HIV Uninsured Care Programs (ADAP, ADAP Plus, Home Care and ADAP Plus Insurance Continuation), tie income eligibility requirements to federal Poverty Levels; and eliminate the inclusion of federally recognized retirement accounts as a viable resource for access to ongoing health care.

Comments were received from:

1. The Village Center for Care, Emma DiVito, President (submitted via email). The comment is supportive of the proposed changes and ends with the following sentence:

''These proposed changes to the ADAP program are well overdue and strongly supported. We urge the State to enact these regulatory changes as proposed.''

2. The New York City HIV Planning Council, Charles Shorter, Community Co-Chair (submitted via email). The HIV Planning Council strongly recommended adoption and approval of the proposed regulations as soon as possible.

Two additional comments were received via email and sought clarifying technical information regarding the proposed changes. Those clarifications were made by the Program Director.

NOTICE OF ADOPTION

Ambulatory Patient Groups (APGs) Methodology

I.D. No. HLT-09-10-00007-A

Filing No. 539

Filing Date: 2010-05-18

Effective Date: 2010-06-02

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

Subject: Ambulatory Patient Groups (APGs) Methodology.

Purpose: Modifies existing APG transition provisions for new providers and the listing of APG reimbursable & non-reimbursable services.

Text or summary was published in the March 3, 2010 issue of the Register, I.D. No. HLT-09-10-00007-P.

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

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

Revised Regulatory Impact Statement

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, section 79(u) of part C of chapter 58 of the laws of 2008 and section 129(l) of part C of chapter 58 of the laws of 2009, which authorizes the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Further, part C of Chapter 58 of the laws of 2009, amended Public Health Law section 2807(2-a). Amendments pertinent to these proposed

regulations include: (1) section 14 of part C of chapter 58 of the laws of 2009 alters the schedule under which providers' reimbursement transitions fully to APG reimbursement (2) section 15 of part C of chapter 58 of the laws of 2009 provides authority for the commissioner of health to promulgate regulations establishing alternative payment methodologies, or utilize existing payment methodologies, when the APG methodology is not, or is not yet, appropriate or practical for specified services; and (3) sections 27 and 16-a of part C of chapter 58 of the laws of 2009 provides authority for APG reimbursement of cardiac rehabilitation services and for the commissioner of health to promulgate regulations establishing alternative payment methodologies for certain psychotherapy services.

Legislative Objective:

The Legislature's mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through APGs.

Needs and Benefits:

The proposed regulations are in conformance with statutory amendments to provisions of Public Health Law section 2807(2-a), which mandated implementation of a new ambulatory care reimbursement methodology based on APGs. This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. It also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treatment Centers). By linking payments to the specific array of services rendered, APGs will make Medicaid reimbursement more transparent. APGs provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

COSTS

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments. All expenditures under this regulation are fully budgeted in the SFY 09/10 enacted budget.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

There are no local government mandates.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-a). Alternatives would require statutory amendments.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The proposed amendment will become effective upon publication of a Notice of Adoption in the New York State Register.

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

NOTICE OF ADOPTION

The New York Higher Education Loan Programs (NYHELPs)

I.D. No. ESC-13-10-00007-A
Filing No. 537
Filing Date: 2010-05-18
Effective Date: 2010-06-02

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

Action taken: Amendment of section 2213.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 692(3)

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

Purpose: Amend the provision of the regulation relating to loan limits.

Text or summary was published in the March 31, 2010 issue of the Register, I.D. No. ESC-13-10-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

EMERGENCY RULE MAKING

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

I.D. No. LAB-09-10-00005-E
Filing No. 518
Filing Date: 2010-05-12
Effective Date: 2010-05-12

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

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

Statutory authority: Labor Law, section 860-f

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

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

The emergency promulgation of these regulations is necessitated by the dramatic job losses currently being suffered within the state and the need to ensure that the notice requirements detailed in the regulation are available to protect workers affected by such job losses and return them quickly to work. Between March 2009 and March 2010, New York State's private sector job count (not seasonally adjusted) decreased by 86,500, or 1.2 percent, to 6,904,200. The statewide total nonfarm job count (private plus public sectors) decreased over the year by 112,700, or 1.3 percent, to 8,412,400 in March 2010. New York State's unemployment rate (not seasonally adjusted) climbed over the year from 8.2 percent in March 2009 to 8.8 percent in March 2010. Over the same period, New York City's rate increased from 8.6 percent to 9.9 percent. The number of unemployed state residents increased from 793,800 in March 2009 to 844,300 in March 2010.

The impact of these job losses on workers, their families, and their communities can be staggering, more so if workers are unaware that plant closings and layoffs are coming. The state WARN Act is designed to give workers time to avoid long periods of unemployment by affording them time to search for new work, retrain for more secure

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

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

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

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

Substance of emergency rule: The proposed rule creates a new section of regulations designated as 12 NYCRR Part 921 entitled ''New York State Worker Adjustment and Retraining Notification Act'' created under Chapter 475 of the Laws of 2008. This Act requires employers of fifty (50) or more employees to provide at least ninety (90) days notice to affected employees and representatives of affected employees, the New York State Department of Labor, and local workforce partners before ordering a plant closing, mass layoff, or reduction in work hours that falls within the employment losses covered by the law. At least twenty-five (25) employees must be affected for the notice requirement to be triggered. The rule contains exceptions to the notice requirement for certain employers who are making good faith efforts to avoid employment losses and have reasonable expectation that these efforts will successfully forestall the plant closing, mass layoff, or reduction in work hours.

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

Subpart 921-1, entitled ''Purpose and Definitions'' sets forth the purpose and defines the terms used in the part. Section 921-1.1(d) defines ''employer'' as ''any business enterprise, whether for-profit or not-for-profit, that employs fifty (50) or more employees within New York State, excluding part-time employees, or fifty (50) or more employees within the state that work in aggregate at least 2,000 hours per week.'' Section 92 1-1.1(a) defines ''affected employee'' as ''an employee who may reasonably be expected to experience an employment loss as the result of a proposed plant closing, mass layoff, relocation, or covered reduction in hours by the employer.''

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

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

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

Subpart 921-5, entitled ''Temporary Employment,'' states that ''notice is not required if the closing is of a temporary facility, or if the closing or layoff results from the completion of a particular project or undertaking, and the affected employees were hired with the understanding that their employment was limited to the duration of the facility, project, or undertaking.'' This subpart also makes clear that the employer must demonstrate that the employee understood the job was temporary either from having received notice or industry practice.

Subpart 921-6, entitled ''Exceptions,'' provides exceptions to the 90-day notice period for which the employer bears the burden of proof. This subpart includes exceptions for faltering companies, unforeseeable business circumstances, natural disasters, strikes or lockouts, and economic strikers.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. LAB-09-10-00005-EP, Issue of March 3, 2010. The emergency rule will expire July 10, 2010.

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

Summary of Regulatory Impact Statement

1. Statutory authority:

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

The Department previously published a Notice of Proposed Rulemaking on February 18, 2009 and extended several times, which added a new Part 921 to 12 NYCRR entitled the New York State Worker Adjustment and Retraining Notification Requirements. The previously published proposed rulemaking prescribed rules to carry out Article 25-A of the Labor Law. The current proposed rulemaking incorporates much of the prior proposed rulemaking with revisions made based upon comments received from various interested parties.

2. Legislative objectives:

Article 25-A establishes the New York State Worker Adjustment and Retraining Notification (WARN) Act intended to provide more advance notice to a larger number of workers who are laid off from their jobs than under the federal WARN law. Under the State WARN, companies with at least 50 employees must provide at least 90 days' notice to affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where 25 or more employees where such number makes up at least 33% of the workforce, or 250 employees regardless of what percentage of the workforce is involved, will suffer an employment loss. This notice allows the Department to provide workers reemployment and retraining services in advance of their employment loss. This early intervention will reduce or avoid periods of unemployment, ensure that workers are aware of job placement and retraining services, and, if attempts to transition workers into new employment are unsuccessful, make them aware of the availability of unemployment insurance benefits as an economic safety net for them and their families. Under the Act, the Commissioner of Labor is required to enforce the law by recovering back wages and the value of the cost of any benefits to which the employee would have been entitled and by imposing penalties against such employers.

3. Needs and benefits:

Workers whose employment is affected as a result of plant closings, mass layoffs, or significant reduction of hours require early and adequate notice to find new employment and prepare for their future. As the downturn in the economy increasingly impacts companies large and small, larger numbers of workers are impacted by such events. At the time of this writing, New York State's seasonally adjusted unemployment rate climbed over the month from 8.6 percent in November to 9.0 percent in December 2009, matching a 26-year high. The number of unemployed state residents increased from 832,200 to 868,600 over the same period.

Certain job sectors in the state, such as manufacturing, continue to decline, signaling a growing need to retrain workers exiting jobs in this sector. All in all, the current economic climate makes it essential to provide the Department with early access to workers who will be losing employment so that they can receive information and assistance that will return them to work as soon as possible following their job loss. During 2009, the Department received 400 WARN notices involving approximately 41,000 employees. Many of these workers would not have received notice under the federal WARN Act which only applies to businesses with 100 or more employees.

Early intervention to assist workers with obtaining new jobs is also essential to avoiding the economic impact of large-scale employment losses on workers, their families, and their communities. Large-scale job losses addressed by the state law impact employee spending and lead to the general decline of the local economy. This affects businesses that serve the workforce, adversely impacts local sales and property taxes, housing values, and the like. Early intervention leading to reemployment also reduces dependence upon unemployment insurance benefits for laid-off workers. Although such benefits are a critical economic safety net for workers and their families, reemployment is always preferable and provides greater income to workers. Reemployment reduces UI charges to individual employers and also UI benefit costs. Reduction of UI benefit costs is particularly beneficial to the State at this point in time since the State's UI Trust Fund has a deficit balance which is expected to last for several years.

Finally, the state Act and regulations also meet a significant need by providing workers with an effective mechanism to seek redress for employer violations of the notice requirements. Currently, the federal WARN law requires aggrieved employees to bring private lawsuits to sue for redress, a remedy that has been infrequently used over the years. The State WARN Act and these regulations give the Commissioner of Labor the authority to recover back wages and benefits on behalf of such workers and to impose civil penalties against employers who fail to provide the required WARN notice.

Since the WARN Act took effect February 1, 2009, the Department has issued four (4) Notices of Violation and collected $7,500 in penalties. A number of employers also extended their notice period or voluntarily paid back wages and benefits to employees upon being notified of a potential violation by the Commissioner. There are approximately twenty (20) WARN investigations currently underway.

4. Costs:

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

For those employers who are subject to the rule, costs of providing notice include preparation of the notice and mailing or delivery of the notice to affected workers, their representatives, the Department, and the local Workforce Investment Boards. The rule minimizes costs by permitting delivery of the notice with employee paychecks or direct deposit statements or by employer-sponsored electronic mail. First class mail delivery costs would still be minimal as the notice is a one or two page document. Moreover, for those employers already required to provide notice under the federal WARN Act, additional costs will be limited to those associated with providing notice to more employees. The rule would not preclude an employer from utilizing the same notice to meet both state and federal notice requirements so long as all information required under the rule is included.

Apart from employee notice, only three other notices (Department of Labor, employee representatives, and local Workforce Investment Boards) are required. Where an employer has given notice of a mass layoff and extends the duration of that layoff, or where an employer has given notice of an employment loss and postpones that action, that employer must give notice of the extension or postponement as soon as possible. Finally, an employer who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required notice, must still provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services with the final paycheck or through a separate notice provided at the time of termination. The rule specifically provides the content of the notice for the convenience of regulated parties.

Employers who wish to assert an exception to the notice requirement must provide the Commissioner evidence establishing entitlement to such exception. Such evidence should already exist in many circumstances, e.g. copies of loan or grant applications soliciting capital to continue business operations. or be readily available, e.g. documentation of the effects of a unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay, and other damages, as well as costs associated with their defense. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who failed to provide notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees.

5. Paperwork:

The Department's enforcement will require paperwork associated with investigations and, where necessary, hearings to determine violations and to impose appropriate penalties.

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

6. Local government mandates:

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities except under circumstances where such otherwise exempt entities are engaging in commercial operations, as already provided in federal WARN regulations.

7. Duplication:

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

The Department's procedural rules for other Departmental hearings under 12 NYCRR Part 701 will be used for any administrative hearings conducted under the WARN Act, thereby avoiding duplication in this regard.

8. Alternatives:

The Department has considered a number of alternatives to various provisions of the proposed rule and, where possible, has selected those that will minimize the adverse impact of the rule. Wherever state and federal WARN laws contain identical requirements, these regulations track federal regulations. For example, rather than requiring a separate state and federal notice for employers subject to both notice requirements, the Department allows a single notice to be used so long as it contains all the information required under state regulation. The Department also chose optional methods of delivery of the notice including enclosing notice with employee paychecks or direct deposit slips to avoid costs associated with separate delivery. Notice may also be provided by electronic mail (e-mail), if certain requirements are met.

The Department also considered alternatives regarding the scope of employee notice under the proposed rule. The Department believes it is critical that the notice contain information which employees can use to hasten their return to work following termination of employment. While the Federal WARN rules encourage, but do not require the inclusion of useful information on dislocated worker assistance programs, the Department chose to require the notices to contain information on the potential availability of unemployment insurance and reemployment services. By providing the actual language which employers can use to satisfy this requirement, the Department minimized the impact of the requirement on the regulated community.

The Department recognized that, in computing the average regular rate of compensation, salary and commission employees may not work on a regular schedule. Instead of using the number of days worked to calculate the average regular rate of compensation, the number of days the salary or commission employee was in active employment status will be used. Otherwise, the average regular rate of compensation may be unrepresentative of the actual rate of compensation.

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

9. Federal standards:

Federal standards implementing the federal WARN law exist and are found at 29 USC § § 2101 - 2109 and 20 CFR 639. However, consistent with a less stringent federal law, such regulations provide a shorter period of notice, cover fewer employers, and do not permit administrative enforcement of the law. Since the Commissioner of Labor is required to enforce the Act, additional provisions not contained in the federal WARN regulations were included to ensure that information regarding notice requirements, investigations, and determinations in the state regulations sufficiently inform all affected parties of their rights and obligations and ensure a fair and thorough determination of violations based on the requirements of the Act.

10. Compliance schedule:

The Act took effect February 1, 2009.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Worker Adjustment and Retraining Notification (WARN) Act (Chapter of the Laws of 2008, effective February 1, 2009) requires businesses in New York with 50 or more employees to provide notice at least 90 days prior to a plant closing, mass layoff, relocation, or covered reduction in work hours where at least 25 of the employees will experience an employment loss from such event. Prior to the Act, only larger firms with at least 100 workers covered by the federal WARN law were required to provide 60 days notice of such events. The state WARN notice must be given to the affected employees and their representatives, the New York Department of Labor, and the local Workforce Investment Board(s) where the employment losses occur. During 2009, the Department received 400 WARN notices involving approximately 41,000 employees. These notices allowed the Department to deploy Rapid Response staff to assist workers with information regarding unemployment insurance benefits, and retraining or other reemployment services.

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

2. Compliance requirements:

Employers of 50 or more employees, other than part-time employees, will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete payroll records in order to comply with state laws relating to wages and unemployment taxes. These records help employers calculate the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff, relocation, or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information should be readily available to employers to assure compliance with the WARN notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information identifying specific individuals affected by bumping rights may not be available at the time notice is required. Consequently, the rule simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open. Where an employer asserts a right to an exemption, they must include the basis for such exemption in the notice provided to all parties.

3. Professional services:

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

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

The rule recognizes agreements for services entered into between employers and Professional Employer Organizations under Article 31 of the Labor Law and allows provisions in those agreements to address issues of WARN compliance and liability. Such agreements are entirely voluntary.

4. Compliance costs:

The adoption of the regulations is expected to result in minimal costs to employers. They will be required to file a WARN notice with the required parties; costs associated with providing the notice will depend upon the number of employees affected and the means of delivery selected by the employer. The rule minimizes costs associ-

ated with providing notice by permitting delivery of the notice with employee pay or direct deposit statements or by employer-sponsored electronic mail. Notice may also be personally delivered to individual employees at the workplace. Should employers choose to send the notice via first class mail, postage costs would still be minimal as the notice should be no more than a one or two page document. Apart from employee notice, which must be provided individually to all affected employees, notices to the Department of Labor, employee representatives, and local Workforce Investment Boards are required. Again, postage costs associated with such delivery should be nominal. In some circumstances, employees suffering an employment loss may be represented by different unions. In those cases, notices would be required to be sent to each of the different unions. In rare circumstances where places of employment are served by multiple Workforce Investment Boards, more than one notice may be required.

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

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

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who have failed to initially provide the requisite notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees who did not receive the requisite notice.

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

5. Economic and technological feasibility:

The adoption of these emergency regulations is not expected to create an undue burden on employers. Larger employers (i.e. those who employ 100 or more employees) will typically be required to file a notice with the Commissioner under the federal WARN Act in any case. Where this requirement overlaps with the state WARN requirements, the employer may file a single notice so long as it meets the notice requirements set forth in the regulations. Consistent with current federal WARN regulations, notice must be provided using a method that ensures the timely receipt of notice by the required parties. Delivery methods approved under the rule include personal delivery or first class mail. The rule also permits notice to be provided to affected employees along with paychecks or direct deposit receipts and by electronic mail (e-mail). The burden of proof is on the employer to show that each employee received the e- mail. The employee e-mail addresses must be addresses provided to the employees by the employer and used in the conduct of business. The e-mail notice must be identified as ''urgent.'' These alternative methods of delivery should provide sufficient alternatives to covered employers to address issues of both convenience and cost.

6. Minimizing adverse impact:

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

At the same time, the Department has taken a number of steps to minimize the adverse impact of the rule. With few exceptions that reflect the legislative intent of the state WARN Act, wherever state and federal WARN laws contain identical requirements, the provisions of this rule track federal regulations for the federal WARN which have been in place for more than a decade. This compatibility of provisions will allow for greater ease of compliance by regulated parties. For those employers who are subject to both state and federal notice requirements, the Department will allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. Where the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, the rule contains the actual language to be used by employers for this purpose. The rule allows delivery of the notice along with paychecks or direct deposit slips, by personal delivery, or by electronic transmission, in order to avoid costs associated with separate delivery by first class mail. The rule permits employers who already have Professional Employer Organization agreements to address issues related to WARN notice and liability in those agreements in order to facilitate compliance.

The statute and regulation also minimize adverse impact by including exceptions to the length of notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support that would allow it to remain open or avoid employment losses. Employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department and must notify affected employees of the basis for the claimed notice limitations. While the Department will strictly construe such limitations on notice requirements, numerous employers have successfully demonstrated to the Department over the past year that they met the statutory and regulatory criteria for notice limitations.

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

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities except under circumstances where such otherwise exempt entities are engaging in commercial operations. This limitation on the exemption from WARN that would otherwise apply to governmental entities also mirrors the language found in federal WARN regulations.

7. Small business and local government participation:

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

The Department intends to publish a copy of this rule on its website and to mail copies to organizations representing business and labor for distribution to their members. These information activities will be in addition to the formal publication of the proposed rule in the State Register. Department staff will also be available, where possible, to organizations that wish to have presentations on the changes to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

Rural area employers of 50 or more employees, other than part-time employees, who have a plant closing, mass layoff, relocation, or reduction in work hours covered by the Act will be required to provide a WARN notice to the required parties under the WARN Act containing information set forth in the rule. Such employers must also maintain records to support any exception they may claim from the notice requirement so that they may share this information with the Department should it commence an investigation into the employer's failure to provide timely notice. Employers in New York are already required to maintain accurate and complete payroll records in order to comply with state laws relating to wages and unemployment taxes. These records help aemployers calculate the size of their workforce and the hours worked by employees in order to determine whether a WARN notice is required. Information regarding employees who will be affected by a plant closing, mass layoff, relocation, or covered reduction in work hours would have been developed and documented during the planning phase for such actions; therefore necessary information would be readily available to employers to assure compliance with the WARN notice requirements. To the extent that bumping rights might exist in the place of employment, these rights would be established in the employer's collective bargaining agreement with the union representing its workers. The rule acknowledges that information specifically identifying individuals affected by bumping rights may not be available at the time notice is required and simply requires that the notice contain a statement whether bumping rights exist. Finally, the records required to support a WARN exception claim are records that should already be in the employer's possession as, for example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open.

Rural area employers covered by this rule are not expected to require professional services to comply with the rule. As noted above, information that must be included in the notice to the Department, the Workforce Investment Board, affected employees, and their representatives is simple, straightforward, and already available to the employer. It includes information regarding the planned action, the individuals who will be impacted, and employer contact information. The Department has included a requirement that the notice contain a statement for employees and their representatives regarding potential eligibility for unemployment insurance benefits and various reemployment services available from the Department. The Department has included the content of this notice in the rule to minimize the impact of the requirement on the employers. Where a rural area employer wishes to assert an exception to the WARN notice requirement, the records required to support such a WARN exception claim are records that should already be in the employer's possession. For example, under the faltering company exception where the employer applied for loans or was seeking clients or capital to keep its business open. Where an employer asserts a right to an exemption, it must include the basis for such exemption in the notice provided to all parties.

3. Costs:

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

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

Apart from employee notice, which must be provided individually to all affected employees, only three other notices (Department of Labor, employee representatives, and local Workforce Investment Boards) are typically required. The only exceptions to this would involve circumstances in which employees may be represented by different unions, or where covered employment sites are served by multiple Workforce Investment Boards. Under these circumstances, more than one notice may be required. In the event an employer has already given notice of a mass layoff and extends the duration of that layoff, or in the event an employer has given notice of a plant closing, mass layoff, relocation, or covered reduction in work hours and postpones that action for which notice was given, that employer must also give notice of the extension or postponement as soon as possible. Finally, the rule also requires that an employer, who elects to pay affected employees sixty days of pay and benefits to avoid liability and penalties for failure to provide the required 90-day notice, must provide notice to affected employees notifying them of the potential availability of unemployment insurance and reemployment services. This notice must be provided with the final paycheck or through a separate paper or electronic mail notice provided at the time of termination. As elsewhere, the rule specifically provides the content of the notice for the convenience of regulated parties.

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

employer's failure to provide timely notice, e.g. documentation of the effects of a unexpected, serious downturn in the economy on the employer's business operation.

Employers who fail to comply with the regulation would be subject to penalties, back pay and other damages, as well as costs associated with their defense. The rule allows the Commissioner to forego damages and penalties where the employer timely makes payment equivalent to sixty days of pay and benefits to employees within three weeks of termination. During the first year of its enforcement of the rule, the Department has assessed penalties in only a handful of cases; in most situations, employers who have failed to initially provide the requisite notice have either extended the notice period voluntarily to come into compliance or have paid back wages and benefits due under the rule to employees who did not receive the requisite notice.

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

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

4. Minimizing adverse impact:

The Department has sought to minimize adverse impact upon rural employers by including provisions in the rule that address the issues and concerns raised in inquiries received from regulated and interested parties throughout the first year of implementation of the WARN Act. While it is not possible to know whether individuals contacting the Department are rural employers or represent rural employers, we believe that the changes made to the rule clarifying certain provisions or adding alternatives for compliance would benefit rural employers. These changes will allow rural employers to better understand their obligations under the law and inform employees of their rights under the law. This proposal is intended to assist employers to avoid violations while ensuring that workers receive the notice that will provide them with an opportunity to plan for their futures and to support their families following employment termination.

At the same time, the Department has taken a number of steps to minimize the adverse impact of the rule upon employers. With few exceptions that reflect the legislative intent of the state WARN Act, wherever state and federal WARN laws contain identical requirements, the provisions of this rule track federal regulations for the federal WARN which have been in place for more than a decade. This compatibility of provisions will allow for greater ease of compliance by regulated parties. For those employers who are subject to both state and federal notice requirements, the Department will allow a single form of notice to be used so long as the notice contains all the information elements required under the state regulation. Where the Department included a requirement that the WARN notice apprise affected employees of the availability of unemployment insurance and reemployment services, the rule contains the actual language to be used by employers for this purpose. The rule allows delivery of the notice along with paychecks or direct deposit slips, by personal delivery, or by electronic transmission, in order to avoid costs associated with separate delivery by first class mail. The rule also permits employers who already have Professional Employer Organization agreements to address issues related to WARN notice and liability in those agreements in order to facilitate compliance.

The statute and regulation also minimize adverse impact by including exceptions to the length of notice requirement where the employer can demonstrate that providing the notice would adversely impact the business' efforts to obtain financing, customers, or other financial support that would allow it to remain open or avoid employment losses. Rural employers who assert this defense to a failure to provide timely notice must be able to demonstrate such efforts to the satisfaction of the Department and must notify affected employees of the basis for the claimed notice limitations. While the Department will strictly construe such limitations on notice requirements, numerous employers have successfully demonstrated to the Department over the past year that they met the statutory and regulatory criteria for notice limitations.

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

The state WARN Act and the proposed rule do not apply to state, local, or tribal governmental entities - including those located in rural areas - except under circumstances where such otherwise exempt entities are engaging in commercial operations. This limitation on the exemption from WARN that would otherwise apply to governmental entities also mirrors the language found in federal WARN regulations.

5. Rural area participation:

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

The Department intends to publish a copy of this rule on its website and to mail copies to organizations representing business and labor for distribution to their members. These information activities will be in addition to the formal publication of the proposed rule in the State Register. Department staff will also be available, where possible, to organizations that wish to have presentations on the changes to the rule.

Job Impact Statement

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

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. PSC-22-10-00002-EP
Filing Date: 2010-05-13
Effective Date: 2010-05-13

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

Proposed Action: The Public Service Commission adopted an order approving, on an emergency basis, the petition of Consolidated Edison Company of New York, Inc. to modify certain tariff provisions affecting its Rider U - Distribution Load Relief Program.

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

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

Specific reasons underlying the finding of necessity: It was necessary to adopt Consolidated Edison Company of New York, Inc.'s tariff provisions affecting its Rider U Distribution Load Relief Program to preserve the general welfare. Failure to adopt the modifications on an emergency basis would cause the Company to lose the opportunity to enroll customers in several service classes for the 2010 Summer Capability Period, from May through October. The Distribution Load Relief Program is an important component of the Company's efforts to reduce electric load during peak periods. By helping to ensure that system demand does not exceed supply during such periods, the Program assists in the reliable operation of New York State's and Con Edison's power systems. Having additional customers participate in the Program for the 2010 Summer Capability Period would help reduce load on the Company's system when the Program is called. This load reduction is expected to enhance system reliability, thus enhancing the general welfare of all of Con Edison's customers.

Subject: Amendment of tariff filings to allow for participation by the service classes 1, 2 and 7 in the program.

Purpose: To correct previous tariff filings to allow customer service classes 1, 2, and 7 to participate in the Rider U program.

Substance of emergency/proposed rule: The Public Service Commission adopted an order approving, on an emergency basis, the petition of Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to modify certain tariff provisions affecting its Rider U - Distribution Load Relief Program, subject to the terms and conditions set forth in the order.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 10, 2010.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is 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.

Rural Area Flexibility Analysis
A rural area flexibility analysis is 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.

Job Impact Statement
A job impact statement is 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-0169SA1)

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-33-99-00007-P	August 18, 1999
PSC-51-99-00025-P	December 22, 1999
PSC-52-99-00015-P	December 29, 1999
PSC-52-99-00016-P	December 29, 1999
PSC-02-00-00018-P	January 12, 2000
PSC-04-00-00023-P	January 26, 2000
PSC-10-00-00013-P	March 8, 2000
PSC-11-00-00005-P	March 15, 2000
PSC-14-00-00030-P	April 5, 2000
PSC-15-00-00012-P	April 12, 2000
PSC-15-00-00013-P	April 12, 2000
PSC-17-00-00008-P	April 26, 2000
PSC-23-00-00034-P	June 7, 2000
PSC-25-00-00006-P	June 21, 2000
PSC-26-00-00010-P	June 28, 2000
PSC-31-00-00025-P	August 2, 2000
PSC-33-00-00014-P	August 16, 2000
PSC-33-00-00015-P	August 16, 2000
PSC-35-00-00027-P	August 30, 2000
PSC-37-00-00002-P	September 13, 2000
PSC-37-00-00005-P	September 13, 2000
PSC-41-00-00021-P	October 11, 2000
PSC-45-00-00021-P	November 8, 2000
PSC-45-00-00025-P	November 8, 2000
PSC-47-00-00006-P	November 22, 2000

NOTICE OF ADOPTION

Deferral of Incremental Electric and Gas Net Write-Off Expense

I.D. No. PSC-50-09-00012-A
Filing Date: 2010-05-14
Effective Date: 2010-05-14

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

Action taken: On 5/13/10, the PSC adopted an order authorizing Central Hudson Gas & Electric Corporation to defer incremental electric and gas bad debt net write-off expense for 2009.

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

Subject: Deferral of incremental electric and gas net write-off expense.

Purpose: Authorizing the deferral of incremental electric and gas bad debt net write-off expense for 2009.

Substance of final rule: The Commission, on May 13, 2010, adopted an order authorizing Central Hudson Gas & Electric Corporation to defer, with carrying charges, incremental electric bad debt net write-off expense of $2,325,129 for the twelve months ended June 30, 2009 and incremental gas bad debt net write-off expense of $1,558,027 for the twelve months ended December 31, 2009, subject to the terms and conditions set forth in the order.

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

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

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

(09-M-0788SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-52-09-00007-A
Filing Date: 2010-05-17
Effective Date: 2010-05-17

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

Action taken: On 5/13/10, the PSC approved a request filed by Southside Water Inc. to make changes in the rates and charges contained in its tariff schedule P.S.C. No. 1—Water, to become effective to June 1, 2010.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To approve an increase in annual operating revenues by $10,806 or 16.8%.

Substance of final rule: The Commission, on May 13, 2010, adopted an order approving the request of Southside Water Inc. to increase its revenues by $10,806 or 16.8%, effective on June 1, 2010, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-W-0792SA1)

NOTICE OF ADOPTION

Regional Greenhouse Gas Initiative

I.D. No. PSC-06-10-00023-A
Filing Date: 2010-05-18
Effective Date: 2010-05-18

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

Action taken: On 5/13/10, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s Amendment to PSC No. 9 — Electricity, effective May 18, 2010.

Statutory authority: Public Service Law, sections 65(1), 66(1), (4), (5), (9), (10), (11), (19) and 113

Subject: Regional Greenhouse Gas Initiative.

Purpose: To approve recovery of Regional Greenhouse Gas Initiative costs.

Substance of final rule: The Commission, on May 13, 2010, adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) amendments to PSC No. 9, effective May 18, 2010, to recover through the Market Supply Charge Monthly Adjustment Clause Mechanism, Regional Greenhouse Gas Initiative costs related to certain non-company-owned generating facilities and reimbursed by Con Edison pursuant to a settlement agreement among the parties to a lawsuit *Indeck Corinth, L.P. v. Paterson et al*. Index No. 5280-09, (Sup. Ct. Alb. Co. 2009), 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.

(10-E-0025SA1)

NOTICE OF ADOPTION

Discontinuance of Water Service

I.D. No. PSC-10-10-00007-A
Filing Date: 2010-05-14
Effective Date: 2010-05-14

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

Action taken: On 5/13/10, the PSC adopted an order approving the petition of Edgewood Lakes, Inc. to abandon its water system, cancel its tariff schedule, and file a Certificate of Dissolution with the New York Department of State.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Discontinuance of water service.

Purpose: To authorize Edgewood Lakes, Inc. to abandon its water system and file a Certificate of Dissolution with the NY Dept. of State.

Substance of final rule: The Commission, on May 13, 2010, adopted an order approving the petition of Edgewood Lakes, Inc. to abandon its water system, cancel its tariff schedule, and file a Certificate of Dissolution with the New York Department of State, 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.

(10-W-0086SA1)

NOTICE OF ADOPTION

Granting AES ES Westover, LLC's Petition for Lightened Regulation and Approval for Financing

I.D. No. PSC-11-10-00009-A
Filing Date: 2010-05-14
Effective Date: 2010-05-14

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

Action taken: On 5/13/10, the PSC adopted an order granting AES ES Westover, LLC's petition for lightened regulation and approval for financing, up to a maximum amount of $20 million, to construct and operate a 20 MW energy storage system.

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

Subject: Granting AES ES Westover, LLC's petition for lightened regulation and approval for financing.

Purpose: To approve AES ES Westover, LLC's petition for lightened regulation and approval for financing.

Substance of final rule: The Commission, on May 13, 2010, adopted an order granting AES ES Westover, LLC's petition for lightened regulation and approval for financing, up to a maximum amount of $20 million, to construct and operate a 20 MW energy storage system, 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.

(10-E-0042SA1)

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Cost Allocation for Consolidated Edison's East River Repowering Project

I.D. No. PSC-22-10-00005-P

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

Proposed Action: Commission analysis under Case 09-S-0029 related to allocation of costs of Consolidated Edison Company of New York, Inc.'s (Consolidated Edison) East River Repowering Project.

Statutory authority: Public Service Law, sections 65, 66, 79, 80 and 81

Subject: Cost allocation for Consolidated Edison's East River Repowering Project.

Purpose: To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project.

Public hearing(s) will be held at: 11:00 a.m. (Evidentiary Hearing)*, June 8, 2010 and continuing from weekday to weekday until completed at Department of Public Service, 90 Church St. – Steam Rates, 4th Fl. Board Rm., New York, NY.

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case 09-S-0794.

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 Commission initiated a proceeding – Case 09-S-0029 -- to examine, among other things, the allocation of costs of Consolidated Edison Company of New York, Inc.'s (Consolidated Edison) East River Repowering Project (ERRP), between electric revenue requirements and steam revenue requirements. On May 7, 2009, Consolidated Edison filed an East River Repowering Project Cost Allocation Study that recommends continuation of the ''incremental method'' of allocation that is currently in use. The Cost Allocation Study (the Study) also presents a comparison of results using different fuel cost allocation methods. On January 6, 2010 the Secretary issued a Notice stating that the decision regarding ERRP allocation would be made with the ongoing steam rates proceeding – 09-S-0794. The proceeding will examine the Study, including the alternative allocation methods presented in the Study as well as other, related, alternative methods presented by other parties within the proceeding. Potential actions of the Commission are to continue the current allocation method, or to order the use of a different allocation method, effective not sooner than October 1, 2010. The Commission may also adopt rate mitigation options or other measures related to the issues presented by the Cost Allocation Study.

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

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

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

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

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

(09-S-0794SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Requirement that Noble Demonstrate that its Affiliated Electric Corporations Operating in New York Are Providing Safe Service

I.D. No. PSC-22-10-00006-P

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

Proposed Action: The Public Service Commission is considering requiring Noble Environmental Power, LLC (Noble) to demonstrate that its affiliated electric corporations operating in New York are providing safe wholesale electric service, instrumentalities and facilities.

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

Subject: Requirement that Noble demonstrate that its affiliated electric corporations operating in New York are providing safe service.

Purpose: Consider requiring that Noble demonstrate that its affiliated electric corporations in New York are providing safe service.

Substance of proposed rule: On May 13, 2010, the Commission issued an order directing Noble Environmental Power, LLC to show cause why it should not be required to demonstrate, through a third-party certification or otherwise, that its affiliated electric corporations operating in New York are providing safe wholesale electric service, instrumentalities and facilities and that all Quality Assurance/Quality Control program measures and manufacturer's recommendations for inspection and maintenance of turbines, towers and related facilities have been implemented for the facilities they are operating in New York State. The Commission issued its order in light of information provided in an investigation report on a March 6, 2009 incident at the Noble Altona Windpark, located in Clinton County.

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

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

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

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

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

(10-E-0149SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition of Verizon New York to Waive the Commission's Rules Requiring it to Distribute Telephone Directories

I.D. No. PSC-22-10-00007-P

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

Proposed Action: The PSC is considering whether to approve or reject a request by Verizon New York to waive the Commission's Rules and Regulations, 16NYCRR 602.10(b) pertaining to the distribution of telephone directories.

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

Subject: Petition of Verizon New York to waive the Commission's rules requiring it to distribute telephone directories.

Purpose: To review the merits of Verizon's Petition.

Substance of proposed rule: Verizon New York (the company) has filed a petition requesting that the Commission waive the provision of 16NYCRR 602.10(b) which requires the company to distribute a residential white page directory to all customers in its service territory. Citing technological advances, environmental concerns, and reduced subscriber interest in receiving white page directories, the company is requesting that it be allowed to discontinue blanket directory distribution and only provide white

page directories to customers who affirmatively opt to receive one. It will also provide a CD-ROM in lieu of a directory if requested by the customer. Its on-line white page listings will be available at no charge.

The company will continue to distribute directories containing government and business white pages listings and the yellow pages.

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

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

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

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

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

(10-01072SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-22-10-00008-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 to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(10-E-0216SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates, Charges, Rules and Regulations

I.D. No. PSC-22-10-00009-P

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

Proposed Action: The Public Service Commission is considering an investigation instituted by staff of the New York State Department of Public Service as to the rates, charges, rules and regulations of the Willsboro Bay Water Company.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-i

Subject: Water rates, charges, rules and regulations.

Purpose: To approve findings with respect to the rates, charges, rules and regulation of the Willsboro Bay Water Company.

Text of proposed rule: On May 11, 2010, the Willsboro Bay Water Company (Willsboro Bay or company) filed an electronic tariff schedule, P.S.C. No. 1 – Water, which sets forth the rates, charges, rules and regulations under which the company will provide water service, effective May 12, 2010. The Commission also received an inquiry from a customer of the system and is conducting an investigation to determine if the company's existing rates are reasonable. The company provides flat rate water service to 43 customers located in the Town of Willsboro, Essex County on a seasonal basis from April 15 to October 15. Willsboro Bay's tariff is available on the Commission's Home page on the World Wide Web at www.dps.state.ny.us/tariffs.html. The Commission may approve or reject, in whole or in part, or modify the company's rates.

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. Brilling, 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-W-0217SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to 16 NYCRR Parts 10 and 255

I.D. No. PSC-22-10-00010-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 Parts 10 and 225 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 2(10), (11), 64, 65, 66, 71, 72, 72-a, 75 and 79

Subject: Amendments to 16 NYCRR Parts 10 and 255.

Purpose: To consider proposed amendments to 16 NYCRR Parts 10 and 255.

Substance of proposed rule: The proposed changes to Title 16 NYCRR Part 10, Referenced Material and 16 NYCRR Part 255 Transmission and Distribution of Gas would bring Part 10 incorporated-by-reference materials up-to-date with editions of industry consensus standards incorporated by reference in the Federal Regulations contained in Title 49, Code of Federal Regulations, Part 192, Transportation of Natural Gas (49 CFR Part 192), and the proposed changes to Part 255 would incorporate recent rulemakings contained in 49 CFR Part 192.

Additionally, minor clarification and technical edits to Part 255 are being made. These involve the incorporation of metric equivalents, update of the reference to "Department" for the most current Staff organization and the correction of spelling errors.

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

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

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

Consensus Rule Making Determination

The proposed rule is considered to be a consensus rule because the changes are technical in nature and are believed to be non-controversial. The proposed amendments would bring 16 NYCRR Part 10 incorporated-by-reference materials up-to-date with the editions of industry consensus standards referenced in the Federal Regulations contained in Title 49, Code of Federal Regulations, Part 192, Transportation of Natural Gas (49 CFR Part 192). The proposed changes to 16 NYCRR Part 255 would update Part 255 with recent rulemakings contained in 49 CFR Part 192. Technical edits and housekeeping changes are also proposed to Part 255. No objections to the proposed amendments are anticipated.

Job Impact Statement

1. Nature of impact: It is believed will this rule will not have any impact on jobs and employment opportunities.

2. Categories and numbers affected: Not Applicable.

3. Regions of adverse impact: None.

4. Minimizing adverse impact: None needed.

5. (IF APPLICABLE) Self-employment opportunities: Not Applicable.

(09-G-0627SP1)

Department of State

EMERGENCY RULE MAKING

Qualifying Experience and Education for Real Estate Appraisers

I.D. No. DOS-22-10-00001-E

Filing No. 519

Filing Date: 2010-05-12

Effective Date: 2010-05-12

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

Action taken: Amendment of sections 1103.1, 1103.3, 1103.7, 1103.8 1103.10, 1103.12(a), 1103.21, 1103.22(f), 1107.2, 1107.4(b)-(d), 1107.5 and 1107.9; repeal of sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6, 1105.7 and 1105.8 and addition of new sections 1103.9, 1105.1, 1105.2, 1105.3, 1105.4, 1105.5, 1105.6 and 1105.7 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

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

Specific reasons underlying the finding of necessity: The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to do would have resulted in the State losing Federal recognition of the State program. Legislation was therefore passed permitting the Department of State to adopt the required revisions by rule making. The Department has adopted emergency rules which have been in place since January 1, 2008 so that New York's appraiser program would not lose federal recognition.

If New York were to lose Federal recognition of its appraiser program, federal financial institutions and many State financial institutions would be prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction and New York consumers would be forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant.

Subject: Qualifying experience and education for real estate appraisers.

Purpose: To amend current regulations in order to conform said regulations with recent statutory amendments.

Substance of emergency rule: Section 1103.1 of Title 19 NYCRR is amended to specify the course work and education required for licensure as an appraiser assistant, licensed real estate appraiser and certified real estate appraiser.

Section 1103.3(f) of Title 19 NYCRR is amended to specify that course waivers may only be granted in 15 hour segments.

Section 1103.7 of Title 19 NYCRR is amended to permit the Department of State to approve courses of study for appraiser assistants.

Section 1103.8 of Title 19 NYCRR is repealed and a new section 1103.8 is added to specify the course content and hours of study required for licensure as an appraiser assistant, licensed and certified real estate appraiser.

Section 1103.9 of Title 19 NYCRR is repealed and a new section 1103.9 is added to specify the course content and hours of study required for general real estate appraiser certification.

Section 1103.10 of Title 19 NYCRR is amended to specify the educational requirements for the 15 hour National USPAP course.

Section 1103.12(a) of Title 19 NYCRR is amended to provide that students must physically attend 90 percent of each course offering in order to satisfactorily complete said course.

Sections 1103.21 and 1103.22(f) of Title 19 NYCRR is amended to set forth the registration fees for schools and instructors.

Section 1105.1 of Title 19 NYCRR is repealed and a new section 1105.1 is adopted to permit test providers who are approved by the Appraiser Qualifications Board to administer appraiser examinations in New York State.

Section 1105.2 of Title 19 NYCRR is repealed and a new section 1105.2 is adopted to set forth the procedure for test providers to obtain approval from the Department of State to administer appraiser examinations in New York State.

Section 1105.3 of Title 19 NYCRR is repealed and a new section 1103 is adopted to set forth the procedure and requirements for registering and scheduling exam candidates for appraiser examinations.

Section 1105.4 of Title 19 NYCRR is repealed and a new section 1105.4 is adopted to permit the Department to prescribe New York State specific examination questions.

Section 1105.5 of Title 19 NYCRR is repealed and a new section 1105.5 is adopted to require exam providers to report examination results to the Department of State in such form and manner as prescribed by the Department of State.

Section 1105.6 of Title 19 NYCRR is repealed and a new section 1105.6 is adopted to set forth the procedures associated with suspension and denials of approval to offer appraiser examinations.

Section 1105.7 of Title 19 NYCRR is repealed and a new section 1105.7 is adopted to require test providers to copy the Department of State on any reports sent to the Appraisal Qualifications Board.

Section 1105.8 of Title 19 NYCRR is repealed.

Section 1107.2 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.4(b)-(d) of Title 19 NYCRR is amended to specify that no more than 14 hours of continuing education credit may be offered for authorship of an appraisal course of study or publication.

Section 1107.5 of Title 19 NYCRR is amended to specify that licensees must complete 28 hours of approved continuing education every two years, including the 7 hour National USPAP update course in order to renew their license or certification.

Section 1107.9 Title 19 NYCRR is amended to remove a dated provision that, for all licenses and certifications expiring on or before December 31, 2003, licensees were required to complete the 15 hour

Ethics and Professional Practice Program or a course prescribed by subdivision b of section 1107.9.

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 August 9, 2010.

Text of rule and any required statements and analyses may be obtained from: Whitney A. Clark, Esq., NYS Department of State, Division of Licensing Services, 80 South Swan Street, P.O. Box 22001, Albany NY 12231, (518) 473-2728

Regulatory Impact Statement

1. Statutory authority:

Executive Law section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers meet certain minimum requirements for licensure. To meet this purpose, the Department of State, in conjunction with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires prospective licensees to meet certain minimum requirements for licensure, including completion of approved qualifying education. These statutory requirements were changed during the 2007 Legislative Session in order to require the Department of State to implement such minimum requirements for licensure as are imposed on the State by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact such minimum standards for licensure and/or certification. The rule making advances the legislative objective by conforming the education regulations with the requirements of the Appraisal Subcommittee in accordance with the 2007 statutory amendment.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States were required to adopt these requirements by January 1, 2008. A failure to have done so would have resulted in the State losing Federal recognition of the State program.

During the 2007 legislative session, a bill was passed to require the Department of State to adopt education requirements that are no less stringent than those required by the AQB. In response to this bill, the Department has adopted emergency rules which have been in effect since January 1, 2008. If the Department had failed to adopt these requirements, the New York appraisal program would have lost Federal recognition. This would have resulted in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would have been prohibited from preparing an appraisal for any such transaction and New York consumers would have been forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would have been significant.

To ensure that the AQB mandate is met, and to conform the existing education regulations with the statutory amendments, this rule making is necessary.

4. Costs:

a. Costs to regulated parties:

The Department of State currently licenses and certifies 7,311 real estate appraisers. Prospective licensees will face increased education costs due to a greater number of required course hours. Currently, each appraiser course costs approximately $300 resulting in an anticipated cost of $2,100 for the assistant appraiser courses, $3,000 for the certified residential courses and $3,300 for the certified general courses. The costs for continuing education are not expected to increase as a result of this rule making.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete qualifying education, conforming the regulations with the recent statutory amendments will not result in additional paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State discussed the need to adopt the rule making at several meetings of the New York State Appraisal Board. Few comments were received that suggested alternatives to the current proposal. General comments were received, including the expressed concern that increasing the educational hours required for certification and licensure would make it more difficult to become licensed and certified. Because the Department is required to propose this rule making by Federal mandate, the hour requirements as set forth in the rule making could not be reduced.

One alternative that is being considered is a legislative amendment to permit on-line qualifying education. While this would not decrease the hours of education required for certification and licensure, it would provide an educational option and flexibility to prospective students.

9. Federal standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. This rule making conforms the education regulations with the required federal standard.

10. Compliance schedule:

Prospective licensees were required to comply with the rule on January 1, 2008. Insofar as the AQB conducted outreach to the regulated public about the relevant changes effected by this rule making, licensees and prospective licensees were notified about the changes and have been able to comply with the rule on the effective dates found in previous emergency adoptions of the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to prospective real estate appraisers who are applying for licensure pursuant to Article 6-E of the Executive Law after January 1, 2008. During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law to require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record- keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Licensees will not need to rely on any new professional services in order to comply with the rule. Licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of the Executive Law. Insofar as licensees must already attend and complete approved education courses, conforming the regulations with the statute will not result in the need to rely on any new professional services. The Department expects existing education providers to begin offering new approved courses in accordance with the amended statute and the rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in any new compliance costs. Prospective licensees are already required to complete, and pay for, qualifying education pursuant to Article 6-E of the Executive Law. Insofar as licensees must already complete and pay for approved education courses, conforming the education regulations with the recent statutory amendments will not result in any new compliance costs.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule does not provide any new record keeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Article 6-E of the Executive Law was amended during the 2007 legislative session, to, in relevant part, require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record- keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law. In pertinent part, the bill required the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee required States to enact certain minimum requirements for licensure and/or certification as a real estate appraiser. This rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Qualifying Education and Experience for Real Estate Appraisers

I.D. No. DOS-22-10-00004-P

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

Proposed Action: Repeal of Parts 1103 and 1105; addition of new Parts 1103 and 1105; and amendment of sections 1107.2, 1107.4, 1107.5 and 1107.9 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Qualifying education and experience for real estate appraisers.

Purpose: To conform regulations with recent statutory amendments.

Substance of proposed rule (Full text is posted at the following State website:www.dos.state.ny.us): Part 1103 is repealed and a new part enacted.

1103.1 is added to define frequently used terms.

1103.2 is added to set forth the education requirements for appraisal applicants.

1103.3 is added to require the approval of appraisal courses by the Department of State and to set forth the qualifications of appraisal schools and procedures for obtaining course approval.

1103.4 is added to provide the required qualifications for appraisal instructors.

1103.5 is added to set forth the procedures and basis for approval, denial, suspension and revocation of appraisal courses by the Department.

1103.6 is added to set forth the residential course outlines.

1103.7 is added to set forth the national Uniform Standards of Professional Appraisal Practice course requirements.

1103.8 is added to set forth the statistics, modeling and finance course outline.

1103.9 is added to set forth the residential elective course outlines.

1103.10 is added to set forth general course outlines.

1103.11 is added to set forth the course outlines for general elective courses.

Sections 1105.1 through 1105.8 are repealed and new sections 1105.1 through 1105.7 are added.

1105.1 and 1105.2 are added to set forth the procedures for obtaining approval to offer appraisal examinations.

1105.3 is added to set forth examination registration and scheduling requirements.

1105.4 is added to require examination administrators to include state specific examination questions as prescribed by the Department.

1105.5 is added to require examination administrators to report examination results in form and manner prescribed by the Department.

1105.6 is added to set forth when the Department may deny, suspend or revoke the approval of examination administrators.

1105.7 is added to require examination administrators to copy the Department on any Appraisal Qualifications Board reports.

Section 1107.4 is amended to set forth the number of continuing education credits which may be granted for the authorship of publications.

Sections 1107.2, 1107.5 and 1107.9 are amended to clarify that ap-

plicants seeking a renewal of their license/certificate must successfully complete the 7 hour USPAP update course.

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, Albany, NY 12231, (518) 473-2728, email: whitney.clark@dos.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 section 160-d authorizes the New York State Board of Real Estate Appraisal to adopt regulations in aid or furtherance of the statute. One of the purposes of Article 6-E is to ensure that licensed and certified real estate appraisers meet certain minimum requirements for licensure. To meet this purpose, the Department of State, in conjuncution with the New York State Board of Real Estate Appraisal, has issued rules and regulations which are found at Parts 1103, 1105 and 1107 of Title 19 NYCRR and is proposing this rule making.

2. Legislative objectives:

Executive Law, Article 6-E, requires the Department of State to license and regulate real estate appraisers. The statute requires prospective licensees to meet certain minimum requirements for licensure, including completion of approved qualifying education. These statutory requirements were changed during the 2007 Legislative Session in order to require the Department of State to implement such minimum requirements for licensure as are imposed on the State by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact such minimum standards for licensure and/or certification. The rule making advances the legislative objective by conforming the education regulations with the requirements of the Appraisal Subcommittee in accordance with the 2007 statutory amendment.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (AQB), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB.

In 2004, the AQB adopted significant revisions to the education requirements for real estate appraisers. States are required to adopt these requirements by January 1, 2008. A failure to do so could result in the State losing Federal recognition of the State program.

During the 2007 legislative session, a bill was passed to require the Department to adopt education requirements that are no less stringent than those required by the AQB. If the Department fails to adopt these requirements, the New York appraisal program could lose Federal recognition. This would result in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would include virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would be prohibited from preparing an appraisal for any such transaction and New York consumers would be forced to go out of state in order to obtain an appraisal. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant.

To ensure that the AQB mandate is met, and to conform the existing education regulations with the statutory amendments, this rule making is necessary.

4. Costs:

a. Costs to regulated parties:

The Department of State currently licenses and certifies 7,311 real estate appraisers. Prospective licensees will face increased education costs due to a greater number of required course hours. Currently, each appraiser course costs approximately $300 resulting in an anticipated cost of $2,100 for the assistant appraiser courses, $3,000 for the certified residential courses and $3,300 for the certified general courses. The costs for continuing education are not expected to increase as a result of this rule making.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local government for the implementation and continuation of the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule does not impose any new paperwork requirements. Insofar as prospective licensees are already required to satisfactorily complete qualifying education, conforming the regulations with the recent statutory amendments will not result in additional paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State discussed the need to adopt the rule making at several meetings of the New York State Appraisal Board. Few comments were received that suggested alternatives to the current proposal. General comments were received, including the expressed concern that increasing the educational hours required for certification and licensure would make it more difficult to become licensed and certified. Because the Department is required to propose this rule making by Federal mandate, the hour requirements as set forth in the rule making could not be reduced.

One alternative that is being considered is a legislative amendment to permit on-line qualifying education. While this would not decrease the hours of education required for certification and licensure, it would provide an educational option and flexibility to prospective students.

9. Federal standards:

Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 establishes the Appraisal Qualifications Board (AQB) which establishes the minimum education, experience and examination requirements for real property appraisers to obtain state certification. States are required to implement appraiser certification requirements that are no less stringent than those issued by the AQB. This rule making conforms the education regulations with the required federal standard.

10. Compliance schedule:

Prospective licensees will be required to comply with the rule on January 1, 2008. Insofar as the AQB has conducted outreach to the regulated public about the relevant changes effected by this rule making, licensees and prospective licensees have been notified about the changes and should be able to comply with the rule on its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to prospective real estate appraisers who are applying for licensure pursuant to Article 6-E of the Executive Law after January 1, 2008. During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law to require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require State's to enact require certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

The rule does not apply to local governments.

2. Compliance requirements:

Insofar as the existing statute and regulations already require mini-

mum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Licensees will not need to rely on any new professional services in order to comply with the rule. Licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of the Executive Law. Insofar as licensees must already attend and complete approved education courses, conforming the regulations with the statute will not result in the need to rely on any new professional services. The Department expects existing education providers to begin offering new approved courses in accordance with the amended statute and the rule making.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The rule making will not result in any new compliance costs. Prospective licensees are already required to complete, and pay for, qualifying education pursuant to Article 6-E of the Executive Law. Insofar as licensees must already complete and pay for approved education courses, conforming the education regulations with the recent statutory amendments will not result in any new compliance costs.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the rule does not provide any new record keeping requirements on prospective licensees, it will be technologically feasible for these persons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E.

7. Small business participation:

Prior to proposing the rule, the Department discussed the proposal at numerous public meetings of the New York State Real Estate Appraisal Board, the minutes of which were posted on the Department's website. The public was given an opportunity to issue comments during the public comment period of these meetings. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rule making. Additional comments will be received and entertained.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any new reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Article 6-E of the Executive Law was amended during the 2007 legislative session, to, in relevant part, require the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require States to enact require certain minimum requirements for licensure and/or certification as a real estate appraiser. The rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. Insofar as the existing statute and regulations already require minimum education and experience requirements for licensure, the rule making will not add any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for licensed or certified real estate appraisers.

During the 2007 legislative session, a bill was passed to amend Article 6-E of the Executive Law. In pertinent part, the bill requires the Department of State to enact such education and experience requirements for licensure or certification as a real estate appraiser that are no less stringent than those requirements imposed on States by the Federal Appraisal Subcommittee. Effective January 1, 2008, the Appraisal Subcommittee will require State's to enact require certain minimum requirements for licensure and/or certification as a real estate appraiser. The instant rule making merely conforms existing education regulations to the new statutory amendment and requirements of the Appraisal Subcommittee. The rule making will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

Department of Taxation and Finance

NOTICE OF ADOPTION

Statutory Interest Rates and Fraud Penalties

I.D. No. TAF-09-10-00002-A
Filing No. 535
Filing Date: 2010-05-17
Effective Date: 2010-06-02

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

Action taken: Amendment of Parts 7, 22, 38, 78, 185, 415, 416, 487, 488, 534, 536, 561, 575, 2393, 2395 and 2397 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 475 (not subdivided), 509(7), 697(a), 1096(a), 1142(1) and (8), 1250 (not subdivided) and 1415(a)

Subject: Statutory interest rates and fraud penalties.

Purpose: To update the regulations concerning statutory rates of interest and the computation of certain fraud penalties.

Text or summary was published in the March 3, 2010 issue of the Register, I.D. No. TAF-09-10-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-09-10-00003-A
Filing No. 536
Filing Date: 2010-05-17
Effective Date: 2010-05-17

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2010 through June 30, 2010.

Text or summary was published in the March 3, 2010 issue of the Register, I.D. No. TAF-09-10-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-22-10-00003-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2010 through September 30, 2010.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lix) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lviii) April - June 2010					
16.0	24.0	40.3	16.0	24.0	38.55
(lix) July - September 2010					
16.0	*24.0*	*40.3*	*16.0*	*24.0*	*38.55*

Text of proposed 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

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, 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.