

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.

Education Department

EMERGENCY RULE MAKING

Relating to the Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

I.D. No. EDU-18-10-00015-E

Filing No. 470

Filing Date: 2010-04-30

Effective Date: 2010-04-30

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

Action taken: Amendment of section 100.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided) and 305(4)

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

Specific reasons underlying the finding of necessity: The proposed amendment relates to annual professional performance reviews of teachers in the classroom teaching service.

As part of the current Annual Professional Performance Review (“APPR”) set forth in section 100.2 of the Commissioner’s regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation

of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher’s APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district’s efforts to address the performance of teachers whose performance is rated as unsatisfactory.

An emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of the proposed amendment to provide school districts and BOCES with timely notice of the new requirements before the 2011-2012 school year. School districts and BOCES will be required to update their professional performance review plans and may be required to negotiate with their unions on certain provisions before the start of the 2011-2012 school year.

Subject: Relating to the annual professional performance reviews for teachers in the classroom teaching service.

Purpose: To require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation.

Substance of emergency rule: The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner’s regulations, relating to the Annual Professional Performance Review (APPR) for teachers in New York State. The following is a summary of the substance of the proposed amendment.

Annual Professional Performance Review for Teachers

Section 100.2(o) will be repealed effective May 1, 2010.

A new subdivision 100.2(o) will be added, effective May 1, 2010.

A new paragraph (1) of subdivision (o) of section 100.2 shall be added and shall apply for school years commencing on or after July 1, 2000 and ending prior to June 30, 2001. This paragraph shall contain the same provisions as the prior version of 100.2(o) that expires on May 1, 2010, except the requirement that school districts and BOCES report on an annual basis information related to the school district’s efforts to address the performance of teachers whose performance is unsatisfactory has been eliminated.

A new paragraph (2) of subdivision (o) shall be added for school years commencing on or after July 1, 2011. The requirements for the annual professional performance reviews of teachers shall be the same as in paragraph (1) of this subdivision, except for the following changes:

Section 100.2 (o) (2) (b) will add a new definition of “teacher providing instructional services” to be a teacher in the classroom teaching service as defined in section 80-1.1 of the Commissioner’s regulations.

Section 100.2 (o) (2) (iii) creates four quality rating categories/criteria to be used in the annual professional performance review of teachers

(Highly Effective, Effective, Developing and Ineffective) and defines each of these categories.

Section 100.2 (o)(2)(iii)(a) defines a teacher rated as Highly Effective being a teacher who is performing at a higher level than is typically expected based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(b) defines a teacher rated as Effective being a teacher who is performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(c) defines a teacher rated as Developing as one who is not performing at a level that is typically expected of a teacher based on the evaluation criteria listed in the subdivision, including less than acceptable rates of student growth.

Section 100.2 (o)(2)(iii)(d) defines a teacher rated as Ineffective as one whose performance is unacceptable based on the evaluation criteria listed in the subdivision, including unacceptable or minimal rates of student growth.

Professional Performance Review Plan

Section 100.2 (o)(2)(iv)(a)(1) requires the governing body of each school and BOCES to adopt a professional performance review plan of its teachers by September 1, 2011.

Content of the Plan

Section 100.2 (o)(2)(iv)(b)(1)(vii) adds student growth as a new evaluation criteria. This item defines student growth as follows: the teacher shall demonstrate a positive change in student achievement for his or her students between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities and/or disabilities of each student, including English language learners. Student achievement is defined as a student's scores on State assessments for tested grades and subjects and other measures of student learning, including student scores on pre-tests and end-of-course tests, student performance on English language proficiency assessments and other measures of student achievement determined by the school district or BOCES to be rigorous and comparable across classrooms.

Section 100.2 (o)(2)(iv)(b)(4) requires the APPR plan to describe how the new rating categories (Highly Effective, Effective, Developing and Ineffective) are used to differentiate professional development, compensation, and promotion for teachers providing instructional services. The procedures for implementation of the rating categories shall be consistent with the requirements of article 14 of the Civil Service Law.

Section 100.2 (o)(2)(iv)(b)(5) requires the plan to describe how the school district or BOCES will provide timely and constructive feedback to teachers on all criteria evaluated as part of their annual evaluation, including providing teachers with data on student growth for each of their students, the class and the school as a whole. The plan must also describe how the school or BOCES will provide feedback and training on how the teacher can use such data to improve instruction.

Section 100.2(o)(2)(iv)(b)(6) requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as ineffective, and shall require a teacher improvement plan for teachers so evaluated or documentation of a prior teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

Variance

Section 100.2 (o)(2)(vii)(a) grants a variance from the requirements of this paragraph, upon a finding by the commissioner that a school district or BOCES has executed prior to May 1, 2010 an agreement negotiated pursuant to article 14 of Civil Service Law whose terms continue to effect and are inconsistent with such requirement.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-18-10-00015-P, Issue of May 5, 2010. The emergency rule will expire July 28, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by requiring school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; implementing uniform designated rating categories for

the evaluation of teachers, and requiring that school districts and BOCES include a ninth evaluation criteria, i.e., student growth, in the evaluation of their teachers.

3. NEEDS AND BENEFITS:

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments: The proposed amendment will not impose any additional costs on local governments, including school districts and BOCES.

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data. Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES. The State Education Department has determined that uniform requirements are necessary to ensure the quality of the State's teaching workforce and consistency in the evaluations of teachers in the classroom teaching service across the State.

6. PAPERWORK:

The proposed amendment requires school districts and BOCES to include in their professional performance plan a description of how it will

provide timely and constructive feedback to its teachers, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

7. **DUPLICATION:**

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

8. **ALTERNATIVES:**

The proposed amendment establishes the evaluation criteria for teachers employed in the classroom teaching service in school districts and BOCES. Because these requirements apply to teachers, school districts and BOCES located in all areas of the State, no viable alternatives were considered.

9. **FEDERAL STANDARDS:**

There are no Federal standards that establish procedures for the evaluation of teachers.

10. **COMPLIANCE SCHEDULE:**

School districts and BOCES will be required to comply with the proposed amendments by the 2011-2012 school year.

Regulatory Flexibility Analysis

(a) **Small Businesses:**

The proposed amendment applies to school districts and boards of cooperative educational services (BOCES) and relates to the annual professional performance reviews for teachers in the classroom teaching service. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) **Local Governments:**

The proposed amendment relates to the criteria for the evaluation of teachers in the classroom teaching service in school districts and BOCES across New York State.

1. **EFFECT OF RULE:**

The proposed amendment applies to school districts and BOCES located in New York State and relates to the evaluation of teachers in the classroom teaching service.

2. **COMPLIANCE REQUIREMENTS:**

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

3. **PROFESSIONAL SERVICES:**

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

4. **COMPLIANCE COSTS:**

In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data.

Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

Finally, the proposed amendment requires the district/BOCES to provide timely and constructive feedback to teachers as part of their annual evaluation. This feedback should already be provided to teachers to guide their analysis of student progress. If teacher training is necessary, all districts are already required to provide professional development to improve the quality of teaching within the district. Therefore, providing training to teachers to interpret and use student growth data to improve instruction should be incorporated into their current professional development plan, thus avoiding any additional training costs.

5. **ECONOMIC AND TECHNOLOGICAL FEASIBILITY:**

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed under the Compliance Costs section above.

6. **MINIMIZING ADVERSE IMPACT:**

The proposed amendment applies to school districts and BOCES and relates to the criteria for the evaluation of teachers in the classroom teaching service. The State Education Department has determined that uniform annual professional performance review standards are necessary to ensure the quality of the State's teaching workforce across the State for teachers in the classroom teaching service. Therefore, no exemption from these requirements has been provided for local governments. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

7. **LOCAL GOVERNMENT PARTICIPATION:**

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES across the State. Comments on the proposed rule were also solicited from the BOCES District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators.

Rural Area Flexibility Analysis

1. **TYPES AND ESTIMATE OF THE NUMBER OF RURAL AREAS:**

The proposed amendment will affect teachers in school districts and boards of cooperative services in all areas of New York State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes to the current requirements for the annual professional performance reviews of teachers.

First, the proposed amendment requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The proposed amendment defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the proposed amendment requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The proposed amendment also defines each of these quality rating categories/criteria.

The proposed amendment also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The proposed amendment requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement

was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes uniform evaluation standards for teachers employed in the classroom teaching service in school districts and BOCES across the State. The State Education Department has determined that uniform standards for the evaluation of teachers should be applied across the State. Therefore, no exemption has been provided from these requirements for school districts and BOCES located in rural areas of the State. However, the Department has eliminated the current reporting requirement which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated unsatisfactory.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES located in rural areas of New York State. Comments on the proposed rule were also solicited from the District Superintendents, New York State Council of School Superintendents, New York State United Teachers, New York State School Boards Association, School Administrators Association of New York State, and New York State Association of School Personnel Administrators, the constituencies of which include those from rural areas.

Job Impact Statement

The purpose of the proposed amendment is to require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; designate uniform quality rating categories/criteria for the evaluation of teachers; and mandate that a ninth evaluation criteria, i.e., student growth be utilized in the evaluation of teachers. Because it is evident from the nature of this regulation that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Establishment of Clinically Rich Graduate Level Teacher Preparation Program

I.D. No. EDU-18-10-00016-E

Filing No. 471

Filing Date: 2010-04-30

Effective Date: 2010-04-30

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

Action taken: Amendment of sections 52.1, 52.21 and 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 208, 210, 214, 216, 224, 305(1), (2), (7), 3004(1) and 3006(1)

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

Specific reasons underlying the finding of necessity: The proposed amendment is designed to 1) address immediate personnel shortages facing New York high need schools and school districts; and 2) promote student growth and achievement. The proposed amendment increases the number of qualified individuals who will be attracted to teaching careers through graduate level clinically rich pilot programs.

Emergency action is necessary for the preservation of the general welfare to address immediate and continuing personnel shortages that New York State public schools are facing. Educational leaders have advised the State Education Department that they are having difficulty recruiting certified, qualified teaching staff in many schools but particularly in high need schools. The proposed amendment provides two teacher preparation tracks: Track A is a residency program where the candidate

works with a teacher of record in a high need school and Track B is a residency program that leads to a Transitional B certificate where the candidate is the teacher of record in a high need school. Track B of this pilot program provides districts with the opportunity to hire individuals for teaching positions who are well grounded in the subject to be taught and who have completed the necessary coursework and examinations to receive a transitional B certificate for employment in the public schools for the 2010-2011 school year. However, in order for candidates in this program to obtain a Transitional B certificate for employment in the 2011-2012 school year, they need to complete a pre-service component and submit evidence of having achieved a satisfactory level of performance on the New York State teacher certification examination liberal arts and sciences test, and the content specialty test(s) in the area of the certificate sought, if required. Therefore, in order to fill these personnel shortages in high need schools in the 2011-2012 school year, an emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of the proposed amendment to provide school districts and BOCES with timely notice of the new requirements and to complete the competitive bidding process for the selection of program providers before the 2011-2012 school year.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its July 20, 2010 meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period mandated by the State Administrative Procedures Act.

Subject: Establishment of clinically rich graduate level teacher preparation program.

Purpose: Establishes program registration standards for pilot program and authorizes certain non-collegiate institutions to participate.

Substance of emergency rule: To maximize student growth and achievement in high need schools, the Board of Regents propose an amendment to the regulations to establish a clinically rich teacher preparation pilot program. Presented below is a summary of the proposed amendment.

Registration Requirement for the Pilot Program

Paragraph (5) of subdivision (a) of section 52.1 of the Commissioner's regulations is added to require a clinically rich pilot program to meet the program registration standards outlined in Section 52.21(b)(5) of the Regulations of the Commissioner of Education.

Definition of Transitional B certificate

Subparagraph (xvi) of paragraph (1) of subdivision (b) of section 52.1 of the Regulations of the Commissioner of Education is amended to revise the definition of Transitional B certificate to include a teaching certificate obtained by a candidate enrolled in the Model-B track of a clinically rich graduate level teacher preparation pilot program.

Program Registration Standards for Clinically Rich Pilot Program

Paragraph (5) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is added to establish the program registration requirements for the clinically rich pilot program.

The proposed amendment authorizes certain institutions with an educational mission, other than colleges and universities and institutions of higher education, that are selected by the Board of Regents, to offer two models of the clinically rich graduate level teacher preparation pilot program. The Model A- residency teacher preparation track is for candidates working with a teacher of record and the Model B residency teacher preparation track is for candidates employed as the teacher of record.

Subparagraph (i) of paragraph (5) states that the purpose of the program is to increase the supply of highly effective teachers in high need subject in high need schools.

Subparagraph (ii) provides a sunset date of June 30, 2016 for the pilot program.

Subparagraph (iii) defines high need school, institution, teacher of record and teacher-mentor.

Subparagraph (iv) establishes the general requirements for both tracks of the pilot program. Specifically, this subparagraph makes the general requirements in section 52.1 and 52.2 applicable and the general requirements for registration of curricula in teacher education as set forth under section 52.21(b)(1), (b)(2)(i), (b)(ii)(a), (b)(2)(ii)(b), (b)(2)(ii)(c)(1) and (b)(2)(iv) of the Commissioner's regulations. This subparagraph also requires program to meet the following requirements.

Clause (a) of this subparagraph requires collaboration between institutions participating in the program and partnering high needs schools, specifying the roles of each partner in the design, implementation, and evaluation of the pilot programs; the selection and evaluation criteria and recruitment process for teacher-mentors and the various types of assessments used to evaluate candidates.

Clause (b) of this subparagraph requires programs to meet certain admission requirements, including a requirement that candidates hold a baccalaureate or graduate degree with a 3.0 cumulative grade point aver-

age; an undergraduate or graduate major in the subject of the certificate sought; that candidates provide a written commitment to teach for at least four years in a high need school upon graduation and that candidates seeking certification in early childhood education, childhood education, middle childhood education-generalist, or a candidate seeking to teach students with disabilities at those developmental levels complete an undergraduate or graduate major in a liberal arts and sciences subject or interdisciplinary field.

Clause (c) establishes the requirements for the curriculum and clinical experience for both tracks of the pilot program.

Subclause (1) of clause (c) requires the curriculum to include research-based skills and best practices aligned with the newly developed teacher standards. In addition, the curriculum shall be offered by qualified faculty who demonstrate that they understand high need schools; and the pedagogical preparation shall include graduate study designed to permit the candidate to obtain the pedagogical core requirements for programs leading to an initial certificate.

Subclause (2) of clause (c) establishes the requirements for the clinically rich experience component. Prior to assigning the candidate to a classroom, the institution shall enter into a written agreement with the high need school to establish a plan for at least one continuous school year of mentored clinical experience by the assigned teacher-mentor for the candidate and a support by a team comprised of certain individuals. Program faculty shall supervise the candidate at least twice each month and work in collaboration with the teacher-mentor to evaluate candidates and provide feedback. The program shall also provide courses and seminars designed to link educational theory with clinical experiences.

Clause (d) provides that successful completion of the pilot program shall lead to a professional Master of Arts in Teaching degree. The Board of Regents will issue a professional Master of Arts in Teaching degree to candidates who complete the requirements in an institution other than an institution of higher education.

Clause (e) states that upon completion of the program, a designated officer of the institution shall recommend the candidate for an initial certificate.

Clause (f) requires program providers to have a formal written agreement with partnering high need schools to provide continued mentoring support for program graduates during their first year of teaching.

Subparagraph (v) requires candidates in the Model A track to complete the clinical experience component with an assigned teacher of record who shall also be the candidate's teacher-mentor.

Subparagraph (vi) sets for specific requirements that apply to only the Model B track in addition to the general requirements described above.

Clause (a) of subparagraph (vi) requires candidates in the Model B track to complete an introductory component, leading to a Transitional B certificate in a certificate title in the classroom teaching services.

Clause (b) of subparagraph (vi) requires program candidates in Track B of the pilot program who are teaching with a Transitional B certificate to receive weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

Clause (c) of subparagraph (vi) requires candidates to meet program standards for good academic progress in order to retain the Transitional B certificate.

Requirements for a Transitional B certificate

Section 80-5.13 of the Commissioner's regulations is amended to revise the requirements for a transitional B certificate to include the program registration requirements for the Model B-residency teacher preparation track of the clinically rich graduate level teacher preparation pilot program.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-18-10-00016-P, Issue of May 5, 2010. The emergency rule will expire July 28, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 208 of the Education Law authorizes the Regents to award and confer diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Section 210 of the Education Law authorizes the Regents to register domestic and foreign institutions in terms of New York standards, and fix

the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and the professions in this state.

Section 214 of the Education Law provides that institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the university.

Section 216 of the Education Law authorizes the Regents to incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way.

Section 224 of the Education Law prohibits any individual, partnership or corporation not holding university, college or other degree conferring powers by special charter from the Legislature or the Regents from conferring any degree or using the designation college or university unless specifically authorized by the Regents to do so.

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

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

Subdivision (7) of section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

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

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by modifying the requirements in the Regulations of the Commissioner of Education for teacher education programs, by establishing a graduate level clinically rich pilot program.

3. NEEDS AND BENEFITS:

The purpose of creating the graduate level clinically rich pilot program is to address the retention issue in high need schools and improve student growth and achievement. New York State will need 100,000 new teachers within the next five to ten years. Fifty percent of New York's teachers will be eligible to retire this decade and 70 percent within 20 years. The teacher shortage is already evident. Educational leaders have advised the State Education Department that they are having difficulty recruiting certified, qualified teaching staff in any schools but particularly in high need schools.

The proposed amendment would authorize institutions, other than institutions of higher of education, to offer the graduate level clinically rich pilot program. Such institutions shall include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Commissioner for participation through the RFP process.

To prepare effective teachers for high need schools, the graduate level clinically rich pilot program shall include at least one continuous school year of mentored clinical experience, grounded in the teaching standards currently being developed, and centered on practicing research-based teaching skills that make a difference in the classroom. Pedagogical study linking theory and practice will be embedded in the clinical experience.

4. COSTS:

(a) Cost to State government: The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to select program providers for the pilot programs through a Request for Proposal (RFP) process.

(b) Cost to local government: The proposed amendment is permissive in nature and only affects high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. The proposed amendment requires such school districts to provide mentoring for the candidates in the pilot program. The State Education Department estimates that, on average, it will cost a school district about \$6,200 for each teacher per year to provide the mentoring, while they are in the graduate level clinically rich pilot program.

(c) Cost to private regulated parties. The proposed amendment is permissive in nature. The Department anticipates that institutions who elect to participate in this program will incur the same costs for the development and implementation of this a program as they would for a traditional teacher education program.

(d) Costs to the regulatory agency: As stated above in Costs to State Government, the amendment does not impose any additional costs on the State Education Department. The Department anticipates that it will be able to use existing faculty and resources to approve these programs and for the selection of participating institutions.

5. LOCAL GOVERNMENT MANDATES:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

6. PAPERWORK:

Any institution that participates in this program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

An institution shall also have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with graduate level clinically rich program requirements qualifying individuals to teach in the New York State public schools, the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the April Regents meeting, the proposed amendment will become effective on May 1, 2010. A second emergency adoption will be necessary at the July Regents meeting to ensure that the regulations remain continuously in effect until the regula-

tion becomes effective on August 11, 2010. It is unnecessary to delay implementation of the proposed amendment because of its permissive nature.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, with an education mission and that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. Some of these institutions may be small businesses.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Small business participation:

The conceptual framework of the graduate level clinically rich pilot

program was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

b) Local Governments:

1. Effect of rule:

The purpose of the proposed amendment is to establish program registration standards for a clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents, to offer teacher preparation programs under this pilot program. High need schools and school districts may opt to participate and collaborate with institutions that are selected by the Board of Regents to participate in this program.

2. Compliance requirements:

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

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

4. Compliance costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

The proposed amendment is expected to have a positive impact on high need schools and school districts by increasing the supply of highly effective teachers in high need subjects in high need schools. As stated above,

the proposed amendment is permissive in nature. It only applies to high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on school districts.

7. Local government participation:

The conceptual framework of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives from school districts across the State.

Rural Area Flexibility Analysis

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a graduate level clinically rich teacher preparation program under this pilot program, which may include colleges and universities and institutions other than institutions of higher education that are selected by the Board of Regents to participate in this program. Such institutions may include cultural institutions, libraries, research centers, and other organizations with an educational mission. The proposed amendment will also impact high need schools and school districts in New York State that elect to participate in this program. These high need schools and institutions may be located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Any institution that participates in this pilot program shall execute a written agreement with each partnering high need school which shall include the following: (1) the specific roles of the institution and the high need school in the recruitment, preparation, and mentoring of candidates, as well as their roles in sustaining this pilot program in the long term; (2) the selection and evaluation criteria and the recruitment process for teacher-mentors; and (3) the various types of assessments that will be used to evaluate candidates throughout the program, and how such assessments will be utilized to prescribe study and experiences that will enable candidates to develop the knowledge, understanding, and skills necessary to successfully meet the requirements of this program and to obtain certification upon completion of the program.

These institutions will also be required to enter into a written agreement with the high need school, prior to assigning the candidate to a classroom in such high need school, wherein the high need school must agree to establish a plan for at least one continuous school year of mentored clinical experience by an assigned teacher-mentor and provide support by a team comprised of a faculty member of the program, the school principal or designee, the assigned teacher-mentor, and a school curriculum supervisor or specialist. Program faculty will also be required to supervise the candidate and promote the linking of theory and practice by observing and advising the candidate at least twice each month during the clinical experience and shall work in collaboration with the assigned teacher-mentor to evaluate candidates and provide feedback. During the clinical experience component of the program, the institution shall also provide courses and seminars that are designed to link educational theory with clinical experiences.

An institution that elects to participate in this program will also be required to have a formal written agreement with partnering schools or districts to provide continued mentoring support for graduates of the pilot program during their first year of teaching, which shall include, but not be limited to, setting selection criteria, and the recruitment and training processes for mentors; and developing plans to provide research-based professional development programs for mentors and graduates.

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Costs:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to institutions and high need schools that elect to participate in the pilot program. However, for each teacher certification candidate in the pilot program, the State Education Department estimates that it will cost a high need school or school district that elects to participate in the program approximately \$6,200 per year to provide mentoring. The Department also anticipates that for any institution that elects to participate in the pilot program, it will incur the same costs for the development and implementation of both tracks of this program as they would for a traditional teacher education program and

that such institutions could use existing faculty to meet supervision requirements of the proposed amendment.

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer graduate level clinically rich pilot programs are required to meet the new requirements for such programs. High need schools and school districts that elect to participate in the pilot program will benefit by having access to a larger pool of teacher candidates, although they will have the expense of providing mentoring support.

The proposed amendment relates to requirements for teaching certification to qualify for service in the State's public schools. The State Education Department does not believe that establishing a different standard for teachers who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

The concept of the graduate level clinically rich pilot programs was shared with the State Professional Standards and Practices Board for Teaching and comments were solicited from this board. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts.

Job Impact Statement

The purpose of the proposed amendment is to create a clinically rich graduate level teacher preparation pilot program to address the retention issues in high need schools and improve student growth and achievement. The purpose of the proposed amendment is to establish program registration standards for the clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, that are selected by the Board of Regents to offer teacher preparation programs under this pilot program. Such institutions may include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Board of Regents to participate in the program.

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

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

Duties of the Senior Deputy Commissioner for P-12 Education

I.D. No. EDU-20-10-00016-P

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

Proposed Action: Amendment of section 3.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 101(not subdivided)

Subject: Duties of the Senior Deputy Commissioner for P-12 Education.

Purpose: To designate the Senior Deputy Commissioner for P-12 Education as the Deputy Commissioner of Education pursuant to Education Law section 101.

Text of proposed rule: Subdivision (b) of section 3.8 of the Rules of the Board of Regents is amended, effective August 11, 2010, as follows:

(b) The [counsel] *senior deputy commissioner for p-12 education* shall be the deputy commissioner of education as specified in section 101 of the Education Law. In the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, [the counsel] *such senior deputy commissioner* shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by statute and by rule of the Regents.

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

Data, views or arguments may be submitted to: Erin M. O'Grady-Parent, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 101 of the Education Law designates the Board of Regents as the head of the State Education Department and the Commissioner of Education as Chief administrative officer. The statute provides that the Regents may also appoint and, at pleasure, remove a deputy commissioner of education, who shall perform such duties as the Regents may assign by rule and who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the Commissioner by the Education Law.

LEGISLATIVE OBJECTIVES:

Consistent with the authority granted to the Board of Regents pursuant to Education Law section 101, the proposed amendment designates the State Education Department's Senior Deputy Commissioner for P-12 Education as the deputy commissioner of education as specified in Education Law section 101: "... who shall perform such duties as the regents may assign to him by rule and who, in the absence or disability of the commissioner or when a vacancy exists in the office of commissioner, shall exercise and perform the functions, powers and duties conferred or imposed on the commissioner by this chapter."

NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, relating to the designation of the Senior Deputy Commissioner for P-12 Education as the deputy commissioner of education as specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner.

COSTS:

(a) Costs to State: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, and will not impose any costs on the State, local government, private regulated parties or the regulating agency.

PAPERWORK:

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

LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

DUPLICATION:

The proposed amendment relates solely to the internal administration of the State Education Department. There are no relevant statutes, rules or other legal requirements of the State and Federal governments, including those which may duplicate, overlap or conflict with the rule.

ALTERNATIVES:

The proposed amendment is necessary to conform the Rules of the Board of Regents to changes in the internal organization of the State Education Department, relating to the designation of the Senior Deputy Commissioner for P-12 Education as the deputy commissioner of education as specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner. There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no applicable standards of the Federal government for the subject area of the proposed amendment, which relates solely to the internal administration of the State Education Department.

COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal administration of the State Education Department and does not impose any compliance requirements on any regulated parties.

Regulatory Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for

small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates solely to the internal organization of the State Education Department and does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on public and private sector interests in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect such interests, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates solely to the internal organization of the State Education Department and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that no substantial impact will occur, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Regulations for the CWSRF Program Co-Administered by DEC and the NYS Environmental Facilities Corporation (EFC)

I.D. No. ENV-20-10-00015-P

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

Proposed Action: Amendment of Part 649 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 17-1909(3); Public Authorities Law, sections 1284(5) and 1285-j(4); State Finance Law, section 243

Subject: The proposed regulations for the CWSRF program co-administered by DEC and the NYS Environmental Facilities Corporation (EFC).

Purpose: To set forth rules to implement the the statutory provisions of the Water Pollution Control Linked Deposit Act.

Substance of proposed rule (Full text is posted at the following State website: www.dec.state.ny.us; www.nysefc.org): 1. SUBJECT

The proposed revised regulations are for the New York State Water Pollution Control Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), co-administered by the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC") and established by the Legislature pursuant to Chapter 565 of the Laws of 1989.

2. PURPOSE

The proposed regulations set forth rules and procedures whereby DEC and EFC can implement the statutory provisions of the Water Pollution Control Linked Deposit Program Act ("Act"), which was created by the Legislature pursuant to Chapter 262 of the Laws of 2007. The Act created a new program, the Linked Deposit Program ("LDP"), under the CWSRF. The Act allows for LDP investments to be made from the CWSRF to offset interest on loans made by certain lenders for: (i) repairs/replacements of septic systems or abandonment of on-site wastewater management systems and connections to sewers, when a sewer becomes available, for residences and small businesses; and (ii) the implementation of management programs for agricultural projects established under Section 319 of the Federal Water Pollution Control Act.

3. GENERAL SUBSTANCE

It is proposed to amend the CWSRF regulations found within 6 NYCRR Part 649 in the following manner (companion regulations found within 21 NYCRR Part 2602 will also be amended):

The proposed regulatory amendments add new Sections 649.5 and 649.14 to the CWSRF regulations, as well as important definitions to conform to and implement the provisions of the Act. The proposed amendments will also set forth the eligibility criteria for prospective borrowers,

as well as the eligibility criteria for prospective lenders to participate in the LDP.

A new definition of "Linked loan recipient" will be added, which means any person who is an individual or small business eligible to undertake an eligible project related to residential and small business on-site wastewater treatment systems, or an entity receiving or eligible to receive an agricultural assessment pursuant to article twenty-five AA of the Agriculture and Markets Law which is eligible to undertake an eligible project. Small businesses are defined under the proposed regulations as New York businesses which are independently owned and operated, not dominant in their field and which employ no more than 100 persons.

Under the LDP, EFC provides a deposit with a qualified lender who will provide a loan to the LDP borrower in the same amount of the deposit at a reduced interest rate offset by certain investment earnings on EFC's linked deposit. "Linked Deposit" is defined under the proposed regulations as financial assistance undertaken by EFC for the construction of an eligible project through an investment eligible to be held by an eligible lender. "Lender" is defined under the proposed regulations to mean any state or federally-chartered savings bank, savings and loan association, federal savings bank, federal savings and loan association, farm credit institution, or commercial bank or trust company approved by EFC to accept linked deposits. EFC is also required under the regulations to develop and maintain a list of eligible lenders and develop a LDP application to be provided to eligible lenders.

In order to implement the expansion of the types of projects eligible for CWSRF assistance to include LDP projects, certain definitions will have to be added to the regulations. It is proposed to add a new definition of "Linked loan project", which includes: (i) projects for the implementation of a management program under Section 319 of the Federal Water Pollution Control Act related to agricultural operations; (ii) the upgrade or replacement of residential and small business on-site water treatment systems with a system approved by the state or local government department of health; or (iii) the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available.

The proposed new regulations also establish procedures for the submission of LDP applications by the lender and governmental approvals. Under the proposed regulations, the lender is required to forward a completed application along with all the material terms and conditions of the linked loan to EFC for its review. Upon receipt of a completed application from the lender, EFC has the authority to either approve or deny such application based on its eligibility for LDP assistance. Upon approval of the application by EFC, the application is required to be forwarded by EFC to the Department of Agriculture and Markets ("DAM") for concurrent approval for agricultural projects and to the Department of State ("DOS") for concurrent approval of residential and small business on-site wastewater treatment systems.

It is also proposed that EFC's Project Priority System be expanded to include a new Category (Category F) for LDP projects allowed under the Act. Pursuant to the proposed regulations, CWSRF funds available for Category F shall be distributed in the form of linked deposits on a first-come, first-served basis as completed applications are received and approved by EFC. If a completed application is received by EFC which exceeds the amount remaining in Category F, EFC may reject the application or fund the linked deposit up to the amount remaining in Category F. Under the Act, a maximum of \$10 million from the CWSRF can be used in the LDP program per fiscal year.

DEC, EFC, DAM and DOS have all been involved in a coordinated drafting and review of the LDP regulations from the start and have all reviewed and approved of the provisions of these proposed regulations and the provisions of this rulemaking package.

The full text of this rule is available at DEC's website at www.dec.ny.us

Text of proposed rule and any required statements and analyses may be obtained from: Robert J. Simson, Division of Water, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, New York 12207-2997, (518) 402-8271, email: rjsimson@gw.dec.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

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Water Pollution Control Revolving Fund ("CWSRF") and, in part, amended the State's Public Authorities Law ("PAL") creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Environmental Conservation Law Section 17-1909(3), the New York State Department of Environmental Conservation ("DEC") is given statutory authority to promulgate regulations to fulfill its purposes

under the CWSRF. Under Section 1285-j of the PAL, the New York State Environmental Facilities Corporation (“EFC”) is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4) of the PAL, the Legislature provided that moneys in the CWSRF be applied by EFC to provide financial assistance to municipalities for the construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner of DEC, for such other purposes permitted by the Federal Water Pollution Control Act, as amended.

Section 1284, which sets forth the general powers of EFC, states that EFC has the power “...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title...” PAL Section 1284(5). Section 243 of the State Finance Law, set forth in the Linked Deposit Program (“LDP”) legislation, gives EFC the authority to promulgate rules and regulations necessary and reasonable for the operation of the LDP. In addition, EFC is empowered to provide financial assistance for the types of projects covered under the LDP under Section 319 of the Federal Water Pollution Control Act, which authorizes states to implement nonpoint source management plans.

2. LEGISLATIVE OBJECTIVES

In creating the LDP under the State Finance Law, the Legislature directed EFC, DEC, the Department of State (“DOS”) and the Department of Agriculture and Markets (“DAM”) to provide financial assistance in support of the types of projects permitted under the LDP in order to encourage and assist eligible borrowers within the state to undertake eligible projects to reduce, control or prevent water pollution. The United States Environmental Protection Agency (“EPA”) has also consistently encouraged the states to expand the types of projects and borrowers eligible for funding under the CWSRF. The proposed rulemaking is compatible with and mirrors the provisions and requirements of Chapter 262 of the Laws of 2007, which created the LDP. This compatibility includes: (i) matching the defined terms in the proposed regulations to those set forth in the LDP legislation; (ii) setting forth procedures for the submittal and approval of LDP applications which conform to the requirements mandated by the Legislature; and (iii) requiring consultation and cooperation with DEC, DOS and DAM in connection with administration of the LDP program.

The Legislature also specifically authorized EFC to use funds in the CWSRF program to provide financial assistance for the LDP program and to promulgate rules and regulations in connection with the LDP. Since the Legislature empowered EFC to use a specific fund to finance LDP projects and to promulgate regulations necessary and reasonable for the operation of the LDP program, the proposed amendments to the CWSRF regulations are entirely consistent with and advance the public policy objectives sought by the Legislature when the LDP legislation was enacted.

3. NEEDS AND BENEFITS

The purpose of these proposed amendments to the CWSRF regulations is to set forth rules and procedures whereby DEC and EFC can implement the statutory provisions of the Water Pollution Control Linked Deposit Program Act (the “Act”). These amended regulations are needed because DEC and EFC need to set forth clear and concise internal regulatory guidelines as to what types of projects are eligible for financing under the LDP, what procedures need to be followed in connection with the submittal and approval of LDP applications, what type of consultation is needed among DEC, EFC, DAM and DOS for administering the program and what types of lenders are eligible to participate in the LDP. The proposed regulations also add a new Category F under the CWSRF Intended Use Plan (“IUP”), which is needed in order to comply with the Act’s requirement that the Commissioner of DEC establish and maintain a list of potentially eligible projects and eligible borrowers for the LDP under the IUP. Also, based upon guidance issued by EPA beginning in 1993 and thereafter, states have been encouraged by EPA to further expand the types of projects eligible for financing through the CWSRF. By encouraging financing through the CWSRF, EPA has effectively requested that states fund a vast range of water quality projects, including those carried out by private entities, through the CWSRF. Accordingly, pursuant to these policy objectives and the LDP legislation, DEC has prepared amendments to such regulations and is now submitting the same for review and adoption.

The benefits from the promulgation of these proposed regulations is that DEC, EFC, DOS and DAM staff will find it easier and less confusing to administer the program and provide financial assistance because there will be specific guidelines as to what constitutes eligible projects, eligible lenders and what procedures are required for submittal and approval of LDP applications. These proposed regulatory amendments will benefit prospective borrowers and lenders by making low-cost financing available to fund these environmental projects. These amendments will also benefit the residents of New York State by encouraging and assisting the undertaking of projects that improve the environmental quality within the state, which is entirely consistent with EFC’s statutory purposes set forth in Section 1283, PAL.

4. COSTS

The proposed amendments will not result in any additional costs to any regulated parties, to DEC or to state and local governments for the implementation and continuation of the rule.

5. PAPERWORK

None. The proposed amendments do not require any additional paperwork. Participation in the LDP through the CWSRF is entirely voluntary. Anyone choosing to apply for financial assistance from the LDP and any lender willing to participate under the LDP would simply have to submit the documentation required for a complete application to EFC for its consideration and review.

6. LOCAL GOVERNMENT MANDATES

None. Participation in the LDP through the CWSRF is entirely voluntary. Anyone choosing to apply for financial assistance from the LDP and any lender willing to participate under the LDP would simply have to submit the documentation required for a complete application to EFC for its consideration and review.

7. DUPLICATION

The proposed amendments to 6 NYCRR Part 649 will be mirrored in EFC’s CWSRF regulations found in 21 NYCRR Part 2602 with the exception of the provisions pertaining to new Project Priority List Category F.

8. ALTERNATIVES

Three alternatives for modification of the CWSRF regulations with respect to the LDP have been considered, including: (i) taking no action; (ii) delaying changes to the CWSRF program regulations for implementation of the LDP; and (iii) instituting changes to the CWSRF regulations now for implementation of the LDP. In light of the clear requirement of the Act that each project be listed in the IUP, it is necessary to amend the CWSRF regulations now to accommodate the LDP. Therefore, the last alternative is the only acceptable and viable option.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

EFC is required under the Water Pollution Control Linked Deposit Act to submit on or before February 1, 2010 and annually thereafter, to the governor, the temporary president of the senate and the speaker of the assembly a report regarding the activities of the LDP. In addition, the Act provides that LDP loans may not be made after September 30, 2011.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (“DEC”) has determined that, pursuant to Section 202-b(3)(a) of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed regulations in connection with the Clean Water State Revolving Fund (“CWSRF”) Program to provide financial assistance for linked deposit projects will not impose an adverse economic impact on small businesses or local governments and will not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The CWSRF provides a process whereby low-cost financial assistance may be obtained by municipalities and private borrowers for the construction of treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state’s approved non-point source (“NPS”) management plan or a state’s approved estuary management plan. The proposed CWSRF regulations in connection with the Linked Deposit Program (“LDP”) will extend this low-cost financing to agricultural operations, the upgrade or replacement of residential and small business on-site wastewater treatment systems or the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available, which will have positive impacts on small businesses and no adverse impacts on local governments. Participation in the program is intended to result in a financial benefit for the borrower applying for assistance and the lender participating in the LDP. Participation in the program is also voluntary and any reporting, recordkeeping or other requirements are imposed only if the borrower and the lender elect to participate in the program.

DEC will assist the New York State Environmental Facilities Corporation (“EFC”) in planning an extensive outreach program in order to make prospective small business borrowers aware of the benefits of low-cost financing available through the LDP. EFC, in conjunction with the DEC, the New York State Department of Agriculture and Markets (“DAM”), the New York State Department of State (“DOS”) and the New York State Department of Health (“DOH”) is planning on contacting various lenders, including banks and farm credit institutions, and providing written materials, such as brochures, that the lenders can provide to homeowners, small businesses and farmers seeking financial assistance for on-site wastewater treatment systems and agricultural operations. Also, should the appropriate DOH be required to inspect a septic system and determine that the system is defective, such agency can provide the homeowner, small business owner or farmer with information regarding the financing of the upgrade or replacement of the system through the LDP.

For the same reasons, it is economically and technically feasible for small businesses and local governments to comply with these regulations. This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation has determined that, pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act, a rural area flexibility analysis is not required. The proposed regulations in connection with the Clean Water State Revolving Fund ("CWSRF") Program to provide financial assistance for linked deposit projects will not impose an adverse economic impact on rural areas and will not impose reporting, recordkeeping or other compliance requirements on rural areas.

The CWSRF provides a process whereby low-cost financial assistance may be obtained by municipalities and private borrowers for the construction of treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed CWSRF regulations in connection with the Linked Deposit Program ("LDP") will extend this low-cost financing to agricultural operations, the upgrade or replacement of residential and small business on-site wastewater treatment systems or the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available, which will have positive impacts on rural areas, especially those areas engaged in agricultural operations. Participation in the program is intended to result in a financial benefit for the borrower applying for assistance and the lender participating in the LDP. Participation in the program is also voluntary and any reporting, recordkeeping or other requirements are imposed only if the borrower and the lender elect to participate in the program.

This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Job Impact Statement

The New York State Department of Environmental Conservation has determined that, pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act, a job impact statement is not required. It is apparent from the nature and purpose of the proposed rulemaking in connection with the Linked Deposit Program ("LDP") that it will not have an adverse impact on jobs and employment opportunities.

Under the LDP, EFC provides a deposit with an eligible lender who then provides a loan to the LDP borrower in the same amount of the deposit at a reduced interest rate to offset certain investment earnings on EFC's linked deposit. EFC's linked deposit is the financial assistance undertaken by EFC for the construction of an eligible project through an investment eligible to be held by such eligible lender. The proposed amendments to the CWSRF regulations concerning the LDP will make low-cost financial assistance available to small businesses for on-site wastewater treatment systems, which will result in savings to such businesses for capital related expenditures and have a positive impact on job opportunities and employment. The regulations will also make such financing available to agricultural operations, particularly with respect to agricultural management plans, resulting in overhead savings for businesses engaging in such activities. In addition, these proposed amendments will result in the planning, design and construction of a new category of environmental projects to reduce, control or prevent water pollution. This will have a positive impact on job opportunities for any engineers, accountants, attorneys and various consultants working in conjunction with the borrowers and lenders engaged in such projects.

This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Environmental Facilities Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Regulations are for the CWSRF Program Co-administered by EFC and the NYS Department of Environmental Conservation

I.D. No. EFC-20-10-00003-P

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

Proposed Action: Amendment of Part 2602 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1284(5) and 1285-j(4); State Finance Law, section 243

Subject: The proposed regulations are for the CWSRF Program co-administered by EFC and the NYS Department of Environmental Conservation.

Purpose: To set forth rules to implement the statutory provisions of the Water Pollution Control Linked Deposit Act.

Substance of proposed rule (Full text is posted at the following State website: www.nysefc.org): 1. SUBJECT

The proposed revised regulations are for the New York State Water Pollution Control Revolving Fund ("CWSRF"), Section 1285-j of the Public Authorities Law ("PAL"), co-administered by the New York State Environmental Facilities Corporation ("EFC") and the New York State Department of Environmental Conservation ("DEC") and established by the Legislature pursuant to Chapter 565 of the Laws of 1989.

2. PURPOSE

The proposed regulations set forth rules and procedures whereby DEC and EFC can implement the statutory provisions of the Water Pollution Control Linked Deposit Program Act ("Act"), which was created by the Legislature pursuant to Chapter 262 of the Laws of 2007. The Act created a new program, the Linked Deposit Program ("LDP"), under the CWSRF. The Act allows for LDP investments to be made from the CWSRF to offset interest on loans made by certain lenders for: (i) repairs/replacements of septic systems or abandonment of on-site wastewater management systems and connections to sewers, when a sewer becomes available, for residences and small businesses; and (ii) the implementation of management programs for agricultural projects established under Section 319 of the Federal Water Pollution Control Act.

3. GENERAL SUBSTANCE

It is proposed to amend the CWSRF regulations found within 21 NYCRR Part 2602 in the following manner (companion regulations found within 6 NYCRR Part 649 will also be amended):

The proposed regulatory amendments add new Section 2602.5 to the CWSRF regulations, as well as important definitions to conform to and implement the provisions of the Act. The proposed amendments will also set forth the eligibility criteria for prospective borrowers carrying out certain water quality improvement projects, as well as the eligibility criteria for prospective lenders to participate in the LDP.

A new definition of "Linked loan recipient" will be added, which means any person who is: (i) an individual or small business eligible to undertake an eligible project related to residential and small business on-site wastewater treatment systems; (ii) an entity receiving or eligible to receive an agricultural assessment pursuant to article twenty-five AA of the Agriculture and Markets Law, which is eligible to undertake an eligible project; (iii) any two or more of the foregoing which are acting jointly in connection with an eligible project; or (iv) another recipient as may be approved by the Corporation and permitted by applicable law. Small businesses are defined under the proposed regulations as New York businesses which are independently owned and operated, not dominant in their field and which employ no more than 100 persons.

Under the LDP, EFC provides a deposit with a qualified lender who will provide a loan to the LDP borrower in the same amount of the deposit at a reduced interest rate offset by certain investment earnings on EFC's linked deposit. "Linked deposit" is defined under the regulations as financial assistance undertaken by EFC for the construction of an eligible project through an investment eligible to be held by an eligible lender. "Lender" is defined under the proposed regulations to mean any state or federally-chartered savings bank, savings and loan association, federal

savings bank, federal savings and loan association, farm credit institution, or commercial bank or trust company approved by EFC to accept linked deposits. EFC is also required under the regulations to develop and maintain a list of eligible lenders and develop a LDP application to be provided to eligible lenders.

In order to implement the expansion of the types of projects eligible for CWSRF assistance to include LDP projects, certain definitions will have to be added to the regulations. It is proposed to add a new definition of "Linked loan project", which includes: (i) projects for the implementation of a management program under Section 319 of the Federal Water Pollution Control Act related to agricultural operations; (ii) the upgrade or replacement of residential and small business on-site water treatment systems with a system approved by the state or local government department of health; or (iii) the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available.

The proposed new regulations also establish procedures for the submittal of LDP applications by the lender and governmental approvals. Under the proposed regulations, the lender is required to forward a completed application along with all the material terms and conditions of the linked loan to EFC for its review. Upon receipt of a completed application from the lender, EFC has the authority to either approve or deny such application based on its eligibility for LDP assistance. Upon approval of the application by EFC, the application is forwarded by EFC to the Department of Agriculture and Markets ("DAM") for concurrent approval for agricultural projects and to the Department of State ("DOS") for concurrent approval of residential and small business on-site wastewater treatment systems.

It is also proposed that EFC's Project Priority System be expanded to include a new Category (Category F) for LDP projects allowed under the Act. Pursuant to the proposed regulations, CWSRF funds available for Category F shall be distributed in the form of linked deposits on a first-come, first-served basis as completed applications are received and approved by EFC. If a completed application is received by EFC which exceeds the amount remaining in Category F, EFC may reject the application or fund the linked deposit up to the amount remaining in Category F. Under the Act, a maximum of \$10 million from the CWSRF can be used in the LDP program per fiscal year.

EFC, DEC, DAM and DOS have all been involved in a coordinated drafting and review of the LDP regulations from the start and have all reviewed and approved of the provisions of these proposed regulations and the provisions of this rulemaking package.

The full text of this rule is available on EFC's website at: www.nysefc.org

Text of proposed rule and any required statements and analyses may be obtained from: Michael P. Hale, Esq., Associate Counsel, New York State Environmental Facilities Corporation, 625 Broadway, 7th Floor, Albany, New York 12207-2997, (518) 402-6968, email: hale@nysefc.org

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

When the Legislature enacted Chapter 565 of the Laws of 1989, it created the New York State Water Pollution Control Revolving Fund ("CWSRF") and, in part, amended the State's Public Authorities Law ("PAL") creating Section 1285-j, which sets forth the provisions of the CWSRF. Under Environmental Conservation Law Section 17-1909(3), the New York State Department of Environmental Conservation ("DEC") is given statutory authority to promulgate regulations to fulfill its purposes under the CWSRF. Under Section 1285-j of the PAL, the New York State Environmental Facilities Corporation ("EFC") is given the statutory authority to administer the CWSRF. Pursuant to Section 1285-j(4) of the PAL, the Legislature provided that moneys in the CWSRF be applied by EFC to provide financial assistance to municipalities for the construction of eligible projects and, upon consultation with the director of the division of the budget and the commissioner of DEC, for such other purposes permitted by the Federal Water Pollution Control Act, as amended.

Section 1284, which sets forth the general powers of EFC, states that EFC has the power "...to make and alter by-laws for its organization and internal management, and rules and regulations governing the exercise of its powers and fulfillment of its purposes under this title..." PAL Section 1284(5). Section 243 of the State Finance Law, set forth in the Linked Deposit Program ("LDP") legislation, gives EFC the authority to promulgate rules and regulations necessary and reasonable for the operation of the LDP. In addition, EFC is empowered to provide financial assistance for the types of projects covered under the LDP under Section 319 of the Federal Water Pollution Control Act, which authorizes states to implement nonpoint source management plans.

2. LEGISLATIVE OBJECTIVES

In creating the LDP under the State Finance Law, the Legislature directed EFC, DEC, the Department of State ("DOS") and the Department of Agriculture and Markets ("DAM") to provide financial assistance in support of the types of projects permitted under the LDP in order to encourage and assist eligible borrowers within the state to undertake eligible projects to reduce, control or prevent water pollution. The United States Environmental Protection Agency ("EPA") has also consistently encouraged the states to expand the types of projects and borrowers eligible for funding under the CWSRF. The proposed rulemaking is compatible with and mirrors the provisions and requirements of Chapter 262 of the Laws of 2007, which created the LDP. This compatibility includes: (i) matching the defined terms in the proposed regulations to those set forth in the LDP legislation; (ii) setting forth procedures for the submittal and approval of LDP applications which conform to the requirements mandated by the Legislature; and (iii) requiring consultation and cooperation with DEC, DOS and DAM in connection with administration of the LDP program.

The Legislature also specifically authorized EFC to use funds in the CWSRF program to provide financial assistance for the LDP program and to promulgate rules and regulations in connection with the LDP. Since the Legislature empowered EFC to use a specific fund to finance LDP projects and to promulgate regulations necessary and reasonable for the operation of the LDP program, the proposed amendments to the CWSRF regulations are entirely consistent with and advance the public policy objectives sought by the Legislature when the LDP legislation was enacted.

3. NEEDS AND BENEFITS

The purpose of these proposed amendments to the CWSRF regulations is to set forth rules and procedures whereby DEC and EFC can implement the statutory provisions of the Water Pollution Control Linked Deposit Program Act (the "Act"). These amended regulations are needed because DEC and EFC need to set forth clear and concise internal regulatory guidelines as to what types of projects are eligible for financing under the LDP, what procedures need to be followed in connection with the submittal and approval of LDP applications, what type of consultation is needed among DEC, EFC, DAM and DOS for administering the program and what types of lenders are eligible to participate in the LDP. The proposed regulations also add a new Category F under the CWSRF Intended Use Plan ("IUP"), which is needed in order to comply with the Act's requirement that the Commissioner of DEC establish and maintain a list or potentially eligible projects and eligible borrowers for the LDP under the IUP. Also, based upon guidance issued by EPA beginning in 1993 and thereafter, states have been encouraged by EPA to further expand the types of projects eligible for financing through the CWSRF. By encouraging financing through the CWSRF, EPA has effectively requested that states fund a vast range of water quality projects, including those carried out by private entities, through the CWSRF. Accordingly, pursuant to these policy objectives and the LDP legislation, EFC has prepared amendments to such regulations and is now submitting the same for review and adoption.

The benefits from the promulgation of these proposed regulations is that DEC, EFC, DOS and DAM staff will find it easier and less confusing to administer the program and provide financial assistance because there will be specific guidelines as to what constitutes eligible projects, eligible lenders and what procedures are required for submittal and approval of LDP applications. These proposed regulatory amendments will benefit prospective borrowers and lenders by making low-cost financing available to fund these environmental projects. These amendments will also benefit the residents of New York State by encouraging and assisting the undertaking of projects that improve the environmental quality within the state, which is entirely consistent with EFC's statutory purposes set forth in Section 1283, PAL.

4. COSTS

The proposed amendments will not result in any additional costs to any regulated parties, to EFC or to state and local governments for the implementation and continuation of the rule.

5. PAPERWORK

None. The proposed amendments do not require any additional paperwork. Participation in the LDP through the CWSRF is entirely voluntary. Anyone choosing to apply for financial assistance from the LDP and any lender willing to participate under the LDP would simply have to submit the documentation required for a complete application to EFC for its consideration and review.

6. LOCAL GOVERNMENT MANDATES

None. Participation in the LDP through the CWSRF is entirely voluntary. Anyone choosing to apply for financial assistance from the LDP and any lender willing to participate under the LDP would simply have to submit the documentation required for a complete application to EFC for its consideration and review.

7. DUPLICATION

The proposed amendments to 21 NYCRR Part 2602 will be mirrored in DEC's CWSRF regulations found in 6 NYCRR Part 649 with the exception of the provisions pertaining to new Project Priority List Category F.

8. ALTERNATIVES

Three alternatives for modification of the CWSRF regulations with respect to the LDP have been considered, including: (i) taking no action; (ii) delaying changes to the CWSRF program regulations for implementation of the LDP; and (iii) instituting changes to the CWSRF regulations now for implementation of the LDP. In light of the clear requirement of the Act that each project be listed in the IUP, it is necessary to amend the CWSRF regulations now to accommodate the LDP. Therefore, the last alternative is the only acceptable and viable option.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any minimum federal government standards.

10. COMPLIANCE SCHEDULE

EFC is required under the Water Pollution Control Linked Deposit Program Act to submit on or before February 1, 2010 and annually thereafter, to the governor, the temporary president of the senate and the speaker of the assembly a report regarding the activities of the LDP. In addition, the Act provides that LDP loans may not be made after September 30, 2011.

Regulatory Flexibility Analysis

The New York State Environmental Facilities Corporation ("EFC") has determined that, pursuant to Section 202-b(3)(a) of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed regulations in connection with the Clean Water State Revolving Fund ("CWSRF") Program to provide financial assistance for linked deposit projects will not impose an adverse economic impact on small businesses or local governments and will not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

The CWSRF provides a process whereby low-cost financial assistance may be obtained by municipalities and private borrowers for the construction of treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed CWSRF regulations in connection with the Linked Deposit Program ("LDP") will extend this low-cost financing to agricultural operations, the upgrade or replacement of residential and small business on-site wastewater treatment systems or the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available, which will have positive impacts on small businesses and no adverse impacts on local governments. Participation in the program is intended to result in a financial benefit for the borrower applying for assistance and the lender participating in the Linked Deposit Program ("LDP"). Participation in the program is also voluntary and any reporting, recordkeeping or other requirements are imposed only if the borrower and the lender elect to participate in the program.

EFC is planning an extensive outreach program in order to make prospective small business owners aware of the benefits of low-cost financing available through the LDP. EFC, in conjunction with the New York State Department of Environmental Conservation ("DEC"), the New York State Department of Agriculture ("DAM"), the New York State Department of State ("DOS") and the New York State Department of Health ("DOH") is planning on contacting various lenders, including banks and farm credit institutions and providing written materials, such as brochures, that the lenders can provide to homeowners, small businesses and farmers seeking financial assistance for on-site wastewater treatment systems and agricultural operations. Also, should the appropriate DOH be required to inspect a septic system and determine that the system is defective, such agency can provide the homeowner, small business owner or farmer with information regarding the financing of the upgrade or replacement of the system through the LDP.

For the same reasons, it is economically and technically feasible for small businesses and local governments to comply with these regulations. This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Rural Area Flexibility Analysis

The New York State Environmental Facilities Corporation has determined that, pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act, a rural area flexibility analysis is not required. The proposed regulations in connection with the Clean Water State Revolving Fund ("CWSRF") Program to provide financial assistance for linked deposit projects will not impose an adverse economic impact on rural areas and will not impose reporting, recordkeeping or other compliance requirements on rural areas.

The CWSRF provides a process whereby low-cost financial assistance may be obtained by municipalities and private borrowers for the construction of treatment works, such as water pollution control facilities and wastewater treatment plants, the implementation of a state's approved non-point source ("NPS") management plan or a state's approved estuary management plan. The proposed CWSRF regulations in connection with the Linked Deposit Program ("LDP") will extend this low-cost financing to agricultural operations, the upgrade or replacement of residential and small business on-site wastewater treatment systems or the abandonment of residential and small business on-site wastewater treatment systems and connection to a sewer, when a sewer becomes available, which will have positive impacts on rural areas, especially those areas engaged in agricultural operations. Participation in the program is intended to result in a financial benefit for the borrower applying for assistance and for the lender participating in the LDP. Participation in the program is also voluntary and any reporting, recordkeeping or other requirements are imposed only if the borrower and the lender elect to participate in the program.

This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Job Impact Statement

The New York State Environmental Facilities Corporation has determined that, pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act, a job impact statement is not required. It is apparent from the nature and purpose of the proposed rulemaking in connection with the Linked Deposit Program ("LDP") that it will not have an adverse impact on jobs and employment opportunities.

Under the LDP, EFC provides a deposit with an eligible lender who then provides a loan to the LDP borrower in the same amount of the deposit at a reduced interest rate to offset certain investment earnings on EFC's linked deposit. EFC's linked deposit is the financial assistance undertaken by EFC for the construction of an eligible project through an investment eligible to be held by such eligible lender. The proposed amendments to the CWSRF regulations will make low-cost financial assistance available to small businesses for on-site wastewater treatment systems, which will result in savings to such businesses for capital related expenditures and have a positive impact on job opportunities and employment. The regulations will also make such financing available to agricultural operations, particularly with respect to agricultural management plans, resulting in overhead savings for businesses engaging in such activities. In addition, these proposed amendments will result in the planning, design and construction of a new category of environmental projects to reduce, control or prevent water pollution. This will have a positive impact on job opportunities for any engineers, accountants, attorneys and various consultants working in conjunction with the borrowers and lenders engaged in such projects.

This conclusion is based upon the express nature and purpose of the statutes authorizing the CWSRF, the LDP and the regulations proposed herein.

Department of Health

EMERGENCY RULE MAKING

Ambulatory Patient Groups (APGs) Methodology

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

Filing No. 500

Filing Date: 2010-05-03

Effective Date: 2010-05-03

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)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the statutory timeframes prescribed by Chapter 58 of the Laws of 2009, related to altering the phase-in schedule for health care providers to transition to the Ambulatory Patient Groups (APGs) reimbursement methodology for outpatient and clinic services, implementing cardiac rehabilitation as a Medicaid reimbursable service, and amending the listing of APG

reimbursable and non-reimbursable services. Further, the regulation prescribes a methodology for reimbursement of out-of-state providers.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: Ambulatory Patient Groups (APGs) Methodology.

Purpose: Makes refinements to APG methodology, including provisions for reimbursement of out-of-state providers.

Substance of emergency rule: General Summary for 86-8.1 through 86-8.12

The amendments to Part 86 of Title 10 (Health) NYCRR are required to update the Ambulatory Patient Groups (APGs) methodology, implemented on December 1, 2008, which governs reimbursement for certain ambulatory care fee-for-service (FFS) Medicaid services. APGs group procedures and medical visits that share similar characteristics and resource utilization patterns so as to pay for services based on relative intensity.

86-8.1 - Scope of services and effective dates

Section 86-8.1 of Title 10 (Health) NYCRR defines the categories of facilities subject to APGs and the time frames for implementation. The revision to subdivision (a) clarifies that ambulatory services provided by diagnostic and treatment centers and ambulatory surgery services provided by free-standing ambulatory surgery centers will be reimbursed on APGs commencing September 1, 2009. The revision to subdivision (b) deletes language that prohibits APG payments to out-of-state facilities.

86-8.2 - Definitions

The proposed amendments to section 86-8.2 of Title 10 (Health) NYCRR provide revised definitions for “discounting”, “packaging”, and “visit”. Additionally, two new subdivisions, (p-1) and (p-2), are proposed to be created to define what constitutes an episode payment and when it is appropriate to use.

86-8.6 - Rates for new facilities during the transition period

The proposed revision to section 86-8.6 of Title 10 (Health) NYCRR stipulates that the operating component of rates shall reflect:

- for general hospital outpatient clinics, effective for the period December 1, 2008 through November 30, 2009, 75% of the historical 2007 average payment per visit as calculated by the department, and 25% of APG rates as computed in accordance with this Subpart, and effective December 1, 2009 through December 31, 2010, 50% of the historical 2007 average payment per visit as calculated by the department, and 50% of APG rates as computed in accordance with this Subpart;

- for diagnostic and treatment centers, effective for the period September 1, 2009 through November 30, 2009, 75% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 25% of such rates shall reflect APG rates as computed in accordance with this Subpart, and effective for the period December 1, 2009 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average peer group payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

- for free-standing ambulatory surgery centers, effective for the period September 1, 2009 through November 30, 2009, 75% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 25% of such rates shall reflect APG rates as computed in accordance with this Subpart, and for the period December 1, 2009 through December 31, 2010, 50% of such rates shall reflect the historical 2007 regional average payment per visit as calculated by the department, and 50% of such rates shall reflect APG rates as computed in accordance with this Subpart;

86-8.10 Exclusions from payment

The proposed amendment to section 86-8.10 of Title 10 (Health) NYCRR removes the following APGs from the list of services that are not eligible for reimbursement pursuant to this subpart: APG 094 - Cardiac Rehabilitation; APG 371 - Level I orthodontics; and APG 372 level II Orthodontics.

86-8.13 Out-of-State Providers

The proposed amendment adds a new section 86-8.13, which stipulates how out-of-state providers will be reimbursed for services under this subpart.

86-8.14 Non-APG Payments

The proposed amendment adds a new section 86-8.14, which stipulates that the following services will be reimbursed based on specified rates and fees established by the Department: psychotherapy services; wheelchair evaluation services; and eyeglass dispensing services.

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. HLT-09-10-00007-P, Issue of March 3, 2010. The emergency rule will expire July 1, 2010.

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

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 filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009, and June 10, 2009.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Rural areas were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009 and June, 10, 2009.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Assessment of Public Comment

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

**EMERGENCY
RULE MAKING**

Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology

I.D. No. HLT-12-10-00012-E

Filing No. 467

Filing Date: 2010-04-28

Effective Date: 2010-04-28

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)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts. Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology.

Purpose: To refine APG payment methodology regarding new APG weights, new procedure-based weights & minor changes in APG payment rules.

Substance of emergency rule: General Summary for amendments to 86-8.2, 86-8.7, 86-8.9 and 86-8.10

The amendments to Part 86 of Title 10 (Health) NYCRR are required to update the Ambulatory Patient Groups (APGs) methodology, implemented on December 1, 2008, which governs reimbursement for certain ambulatory care fee-for-service (FFS) Medicaid services. APGs group procedures and medical visits that share similar characteristics and resource utilization patterns so as to pay for services based on relative intensity.

86-8.2 - Definitions

The proposed amendments to section 86-8.2 of Title 10 (Health)

NYCRR provide an amended subdivision (c) defining procedure-based APG weights and a new subdivision (u) defining no blend APGs.

86-8.7 - APGs and relative weights

The proposed revision to section 86-8.7 of Title 10 (Health) NYCRR provides revised APG weights and also sets forth procedure-based weights to be used under APG reimbursement.

86-8.9 - Diagnostic coding and rate computation

The proposed amendments to section 86-8.9 removes the restriction on allowing a capital add-on for ancillary-only visits and replaces that with a list of APGs with which a capital add-on will not be allowed, specifically: 94 Cardiac Rehabilitation; 274 Physical Therapy, Group; 275 Speech Therapy and Evaluation, Group; 322 Medication Administration and Observation; 414 Level I Immunization and Allergy Immunotherapy; 415 Level II Immunization; 416 Level III Immunization; 428 Patient Education, Individual; 429 Patient Education, Group. The list of no blend APGs is also provided, those being: 94 Cardiac Rehabilitation; 310 Developmental and Neuropsychological Testing; 312 Full Day Partial Hospitalization for Mental Illness; 321 Crisis Intervention; 322 Medication Administration and Observation; 414 Level I Immunization and Allergy Immunotherapy; 415 Level II Immunization; 416 Level III Immunization; 426 Medication Management; 428 Patient Education, Individual; 429 Patient Education, Group; 448 After Hours Services; 451 Smoking Cessation Treatment.

86-8.10 Exclusions from Payment

The proposed amendments removes 118 Nutrition Therapy from the "never pay" APG list set forth in subdivision (h) and places it on the "if stand alone do not pay" list set forth in subdivision (i). The following additional APGs are added to the never pay APG list; 441 Class VI Chemotherapy Drugs; 442 Class VII Combined Chemotherapy and Pharmacotherapy. The following additional APGs are added to the if stand alone do not pay list: 281 Magnetic Resonance Angiography - Head and/or Neck; 282 Magnetic Resonance Angiography - Chest; 283 Magnetic Resonance Angiography - Other Sites; 292 MRI - Abdomen; 293 MRI - Joints; 294 MRI - Back; 295 MRI - Chest; 296 MRI - Other; 297 MRI - Brain; 373 Level I Dental Film; 374 Level II Dental Film; 375 Dental Anesthesia; 440 Class VI Pharmacotherapy.

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. HLT-12-10-00012-P, Issue of March 24, 2010. The emergency rule will expire June 26, 2010.

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

Regulatory Impact Statement

Statutory Authority:

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.

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 filing with the Department of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009, and June 10, 2009.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan

Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:
 No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.
Professional Services:
 No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.
Compliance Costs:
 No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.
Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Rural Area Participation:
 Rural areas were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009 and June, 10, 2009.

Job Impact Statement
 A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation of Residential Treatment Facilities for Children and Youth

I.D. No. OMH-20-10-00001-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 Part 584 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Operation of Residential Treatment Facilities for Children and Youth.

Purpose: To continue the existing capacity of Residential Treatment Facilities serving children and youth who are residents of NYC.

Text of proposed rule: Subdivision (e) of section 584.5 of Title 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no [less]fewer than 14 and no more than 56

residents; provided, however, that for the period commencing April 1, 2000 through [September 30, 2010] *September 30, 2013*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8 of this Title.

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

Consensus Rule Making Determination

This rulemaking is filed as a Consensus rule on the grounds that it is non-controversial and makes a technical correction. No person is likely to object to this rulemaking since it merely continues the existing capacity of Residential Treatment Facilities (RTF) serving children and youth who are residents of New York City and who have a diagnosis of serious emotional disturbance.

14 NYCRR Part 584 sets forth standards for the operation of RTFs. This amendment to Section 584.5(e) of this Part allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program. The Office of Mental Health has determined that it is necessary to continue the existing capacity of RTFs serving primarily New York City residents by up to 10 additional beds over the permitted maximum of 56 per facility.

To expand capacity in 2000, a total of 21 temporary beds were added to five existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Three of the facilities (Hillside Auburn, Ittleson, Goldsmith) that were not at the 56-bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Otilie, had been at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Otilie added five beds; Linden Hill added three beds. Therefore, seven beds were permitted to be added under 14 NYCRR Section 584.5(e). Since 2009, St. Christopher Otilie (now known as SCO) is back to 56 beds through a transfer of five beds to Linden Hill. Hillside Auburn is back to 40 beds through a transfer of one bed to Goldsmith and one bed to Linden Hill. Currently Linden Hill at 64 beds is the only RTF over 56 beds. Eight beds are permitted to be added under 14 NYCRR Section 584.5(e). That permission will expire on September 30, 2010. Although significant improvements in development of residential alternatives, including supervised community residences and the family-based treatment beds, have been made in the past three years, the current need for children's services is such that these beds must continue to be available resources. The expiration date must be changed to September 30, 2013, in order to permit the continued necessary increase in RTF capacity for an additional three years.

Statutory Authority: 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because this consensus rule merely continues the existing capacity of residential treatment facilities for children and youth in New York City. There will be no impact on jobs and employment opportunities as a result of this rule making.

Office of Mental Retardation and Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Community Residence Service Delivery and Documentation Requirements

I.D. No. MRD-20-10-00017-P

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

Proposed Action: Amendment of Parts 671 and 686 of Title 14 NYCRR.

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

Subject: Community residence service delivery and documentation requirements.

Purpose: To revise requirements for the delivery and documentation of residential habilitation services in community residences.

Text of proposed rule: Subdivision 671.7(a) -- clauses (a) and (b) of subparagraph (3)(ii) are amended as follows:

(3)(ii) Countable service days.

(a) The full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (5)(i) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's [plan of services] *ISP (Individualized Service Plan)* and community residential habilitation plan on [each] *four separate days* of the 22 days of the enrollment requirement. These are known as countable service days.

(b) One-half of the full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (5)(ii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's [plan of services] *ISP* and community residential habilitation plan on [each] *two separate days* of the 11 days of the enrollment requirement. These are known as countable service days.

(c) *Compliance. For the period from January 1, 2010 through August 1, 2010, a supervised community residence will be considered to have met the requirements in this subdivision for countable service days for a full month supervised IRA price if appropriately supervised staff members of the community residence have delivered at least four documented community residential habilitative services to an individual and that individual was enrolled for at least 22 days in the calendar month.*

(d) *Compliance. For the period from January 1, 2010 through August 1, 2010, a supervised community residence will be considered to have met the requirements in this subdivision for countable service days for a half month supervised IRA price if appropriately supervised staff members of the community residence have delivered at least two documented community residential habilitative services to an individual and that individual was enrolled for at least 11 days in the calendar month.*

Subdivision 671.7(a) -- clauses (a) and (b) of subparagraph (4)(ii) are amended as follows:

(4)(ii) Countable service days.

(a) The full month supportive IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (5)(i) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's *ISP* and community residential habilitation plan on *four separate days* of the 22 days of the enrollment requirement. *No more than two services may be counted in a week. Services provided on these four days must be initiated, delivered, or concluded at the site.* These are known as countable service days.

(b) One-half of the full month supportive IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (5)(ii) of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's *ISP* and community residential habilitation plan on *two separate days* of the 11 days of the enrollment requirement. *No more than one service may be counted in a week. Services provided on these two days must be initiated, delivered, or concluded at the site.* These are known as countable service days.

(c) *Compliance. For the period from January 1, 2010 through August 1, 2010, a supportive community residence will be considered to*

have met the requirements in this subdivision for countable service days for a full month supportive IRA price if appropriately supervised staff members of the community residence have delivered at least four documented community residential habilitative services to an individual and that individual was enrolled for at least 22 days in the calendar month.

(d) *Compliance. For the period from January 1, 2010 through August 1, 2010, a supportive community residence will be considered to have met the requirements in this subdivision for countable service days for a half month supportive IRA price if appropriately supervised staff members of the community residence have delivered at least two documented community residential habilitative services to an individual and that individual was enrolled for at least 11 days in the calendar month.*

Subdivision 671.7(a) - clauses (a) and (b) of subparagraph (6)(iii) are deleted:

(6) Standards for countable service days.

(i) In computing the countable service days, the provider cannot include days that the individual is in a hospital, nursing home, ICF/DD or other certified, licensed or government funded residential setting.

(ii) The day the individual is admitted or discharged from one of the other residential settings listed in subparagraph (i) of this paragraph may be a countable service day if, on that day, community residence staff deliver residential habilitation services to the individual at the community residence.

(iii) For supervised community residences only: in determining countable service days the provider may include days when an individual is away from the community residence, for purposes such as vacations and visits with family or friends, only when staff from the individual's community residence deliver and document services to that individual that are similar in scope, frequency and duration to the residential habilitation services typically delivered to the individual at the community residence.

[(a) No more than 14 days in a calendar month that meet the conditions of this subparagraph may be countable service days for a full month supervised IRA price.]

[(b) No more than seven days in a calendar month that meet the conditions of this subparagraph may be countable service days for one-half of a full month supervised IRA price.]

Subdivision 671.6(a), paragraphs (7) and (8) are deleted and the rest of the subdivision is renumbered.

[(7) Service delivery documentation shall include written information contained in the plan of services that indicates:

(i) what services (in terms of the categories set forth at section 671.5[a] of this Part) were delivered;

(ii) the date(s) of service delivery;

(iii) who delivered the services; and

(iv) where the services were provided, if not physically delivered at the certified physical site.]

[(8) Such documentation shall indicate at least four occasions (see glossary) of service delivery per month for which a full month's claim for reimbursement (see section 671.7 of this Part) has been made (or at least two occasions of service delivery, if a half-month claim has been made).]

Subdivision 671.6(b), paragraph (5) is deleted.

[(5) OMRDD shall verify that there is documentation of at least four instances of service(s) delivery per month, or at least two such instances of service delivery if making a half month claim for reimbursement in the plan of services, of the delivery date, the service delivery location (if different from the certified site), the staff member delivering the service, and the outcome progress note.]

Subdivision 671.99(m) is deleted and the rest of the section is renumbered.

[(m) Occasions of service delivery. The minimum duration of service contact, wherein the provider staff and recipient(s) is/are engaging in a distinct plan-of-services specified activity, therapy or intervention. This minimum duration is relevant exclusively to those specific service contacts the provider has selected to meet the minimum documentation requirements necessary to sustain a claim for reimbursement.]

Subparagraph 686.13(d)(1)(i) is amended as follows:

(i) In order for an individual to be considered in residence [for the purpose of enrollment], that person shall be present between the census-taking hours of the community residence on two successive days; the day of admission as well as the day of discharge shall be counted. An individual shall be considered in residence if that person is discharged on the same day as admitted, providing there was an expectation that the admission would have had at least a 24-hour duration.

Subdivision 686.13(d)(2) is deleted and a new subdivision 686.13(d)(2) is added as follows:

[(2) Reimbursement for allowable respite shall be calculated in accordance with section 635-10.5(h) of this Title. This price shall be billed through the community residence billing system.]

(2) *For a community residence that provides respite services to individuals who do not reside in it, reimbursement of those services is in*

accordance with subdivision 635-10.5(h). A community residence may provide respite services to individuals who do not reside in it by utilizing temporary use beds and/or vacant certified beds.

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

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b) and 43.02 of the Mental Hygiene Law by establishing appropriate requirements for the delivery and documentation of community residential habilitation services delivered in community residences and by deleting redundant and anachronistic provisions related to reimbursement methodology and service documentation in that service.

3. Needs and Benefits: Effective January 1, 2010, OMRDD promulgated regulations that changed the method for the computation of prices for Community Residences. Using the methodology for Individual Residential Alternatives, it merged the price determination mechanism for both residential programs to effect a blended price. In so doing, OMRDD achieved efficiencies of operation. In conjunction with this, the new regulations governing Community Residences incorporated IRA requirements associated with service delivery and documentation. The proposed regulations correct this error by virtue of reverting to service delivery and documentation requirements similar to those that existed for Community Residences prior to January 1, 2010.

The proposed regulations also include additional changes that require documented services to residents of supportive community residences be initiated, delivered or concluded at the site. This facilitates monitoring of the certified site by provider staff and providers. Conforming amendments are also included to eliminate redundant service documentation requirements in the community residence regulations.

Two non-funding changes are preserved from the January 1, 2010 regulations. Therapeutic leave has been eliminated. Reimbursement is predicated in part on days of enrollment and the days in residence standard will no longer apply.

New provisions also allow providers to be considered to be in compliance for the period from January 1, 2010 through August 1, 2010 if they have conformed to service documentation requirements which parallel the historical requirements and also comply with the enrollment standard even if they were not in compliance with the service documentation requirements contained in the regulations effective January 1, 2010.

4. Costs:

a. Costs to the Agency and to the State and its local governments: New York State and OMRDD will not incur any new costs as a result of these amendments.

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

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There will be no financial or other impacts on private regulated parties associated with the amendments.

c. Costs to individuals and families: The amendments will result in no impacts on individuals and families.

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

6. Paperwork: There may be a minor reduction in paperwork requirements associated with changes in service documentation requirements.

7. Duplication: The proposed amendments do not duplicate any exist-

ing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives: OMRDD had considered retaining redundant service documentation standards in the community residence regulations. However, it considered that having multiple standards which utilized slightly different language to be confusing and has consequently proposed the deletion of those standards in this rulemaking.

9. Federal Standards: The proposed regulations do not exceed any applicable federal standards.

10. Compliance Schedule: OMRDD intends to adopt these regulations as soon as possible in accordance with the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide residential developmental disabilities services under the auspices of OMRDD. While most services are provided by non-profit agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites (i.e., community residences) employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of March 2010, OMRDD estimates that there are approximately 35 provider agencies which serve approximately 435 people in approximately 123 sites certified as community residences that would be affected by the proposed amendments.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not have any negative effects on these small business providers of residential developmental disabilities services.

Effective January 1, 2010, OMRDD promulgated regulations that changed the method for the computation of prices for Community Residences. Using the methodology for Individual Residential Alternatives, it merged the price determination mechanism for both residential programs to effect a blended price. In so doing, OMRDD achieved efficiencies of operation. In conjunction with this, the new regulations governing Community Residences incorporated IRA requirements associated with service delivery and documentation. The proposed regulations correct this error by virtue of reverting to service delivery and documentation requirements similar to those that existed for Community Residences prior to January 1, 2010.

The proposed regulations also include additional changes that require documented services to residents of supportive community residences be initiated, delivered or concluded at the site. This facilitates monitoring of the certified site by provider staff and providers. Conforming amendments are also included to eliminate redundant service documentation requirements in the community residence regulations.

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2. Compliance requirements: The proposal requires community residences to comply with revised service delivery and documentation standards as discussed above.

The amendments will have no effect on local governments.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: OMRDD does not anticipate that providers will incur any additional costs to comply with the proposed regulations.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts.

7. Small business and local government participation: The proposed regulations were suggested by a provider association and were subsequently discussed at a meeting of provider associations held on January 25, 2010 at OMRDD Central Office. Provider associations generally expressed support for the proposal.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse

impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

The amendments in this proposed regulation are primarily concerned with changing the service delivery and documentation requirements for community residences to a standard that more closely parallels the historical community residence requirements. The amendments will have no adverse impacts on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because OMRDD does not anticipate any adverse impact on jobs and employment opportunities.

The amendments in this proposed regulation are primarily concerned with changing the service delivery and documentation requirements for community residences to a standard that more closely parallels the historical community residence requirements. The amendments should have no effect on jobs and employment opportunities in New York State.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Post-Revocation Conditional License

I.D. No. MTV-20-10-00014-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 Part 140 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 1198

Subject: Post-revocation conditional license.

Purpose: To make technical changes regarding the issuance of the post-revocation conditional license.

Text of proposed rule: Section 140.2 is amended to read as follows:

140.2 Participants in the program.

The court [may] *shall* require that any person who has been convicted of a violation of subdivision two, two-a or three of Section 1192 of the Vehicle and Traffic Law [may] *shall* participate in the program and may be eligible for a post-revocation conditional license as provided for in section 140.4. In addition, a court [may] *shall* require a defendant who is convicted of any crime defined by such law or the Penal Law of which an alcohol-related violation of any provision of Section 1192 of this chapter is an essential element, and has been sentenced to a period of probation, to install and maintain as a condition of probation, a functioning ignition interlock device. Such defendants, however, shall not be eligible for the post-revocation conditional license.

Section 140.3 is amended to read as follows:

140.3 Post-revocation conditional license.

The Commissioner may issue a post-revocation conditional license to a person, who as a condition of probation *or conditional discharge*, is prohibited from operating a motor vehicle unless such vehicle is equipped with an ignition interlock device, if such person is eligible for such license under Section 140.4 of this Part.

Paragraph (2) of subdivision (a) of Section 140.4 is amended to read as follows:

(2) such person has been sentenced to a period of probation *or conditional discharge* by the court;

Paragraph (5) of subdivision (b) of Section 140.4 is amended to read as follows:

(5) The person has been penalized under Section [1193(1)(d)(1)] *1193(1)(d)* of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, 4 or 4-a of such section.

Paragraph (1) of subdivision (c) of Section 140.4 is amended to read as follows:

(1) The persons has been convicted of homicide, assault, criminal negligence, [or] criminally negligent homicide, aggravated vehicular assault, aggravated vehicular homicide, *aggravated vehicular manslaughter*, or *aggravated vehicular murder* arising out of the operation of a motor vehicle.

Paragraph (d) of section 140.5 is amended to read as follows:

(d) Revocation of post-revocation conditional license. A post-revocation

conditional license shall be revoked for failure to comply with the terms of the condition of probation *or conditional discharge set forth by the court*, [or] for any conviction for any traffic offense other than one involving parking, stopping or standing *or conviction of any alcohol or drug related offense, misdemeanor of felony or failure to install or maintain a court ordered ignition interlock device.*

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

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

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

Consensus Rule Making Determination

Chapter 496 of the Laws of 2009, known as Leandra's Law, made several significant changes to New York State's drunk driving laws. The law provides that if a person is convicted of Vehicle and Traffic Law Section 1192(2), (2-a) or (3), the court must sentence such person to probation or a conditional discharge and a condition of such sentence must be that the person install an ignition interlock device on vehicles owned or operated by such person. Such person, after serving the minimum period of revocation, may apply to the Commissioner of Motor Vehicles for a post-revocation conditional license.

This consensus rulemaking makes conforming changes to the regulation to align with the statutory revisions. Most significantly, the regulation is amended to provide that a person sentenced to a conditional discharge may apply for the post-revocation conditional license. The eligibility criteria for such license is also strengthened to prohibit issuance of such license to someone convicted of aggravated vehicular assault, aggravated vehicular homicide, aggravated vehicular manslaughter, or aggravated vehicular murder.

Since these proposed amendments largely reflect current statutory provisions, this is submitted as a consensus rulemaking.

Job Impact Statement

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

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Access Pass - A Program that Waives Base Patron Fees for New York State Residents with Certain Disabilities

I.D. No. PKR-11-10-00012-A

Filing No. 502

Filing Date: 2010-05-04

Effective Date: 2010-05-19

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

Action taken: Repeal of Part 382 and addition of new Part 382 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8), 13.15(1), (3) and 13.19

Subject: The Access Pass - a program that waives base patron fees for New York State residents with certain disabilities.

Purpose: To conform the Access Pass Program to statutory requirements in PRHPL Section 13.19 and reduce its annual cost.

Text or summary was published in the March 17, 2010 issue of the Register, I.D. No. PKR-11-10-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, 19th floor, Albany, New York 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

Assessment of Public Comment

The New York State Office of Parks, Recreation and Historic Preservation (OPRHP or Agency) has proposed changes to the regulations (9

NYCRR Part 382) that implement the Access Pass program, established pursuant to § 13.19 of the Parks, Recreation and Historic Preservation Law (PRHPL). Notice of the proposed new Part 382 regulation and a Regulatory Impact Statement describing the changes to the program were published in the March 17, 2010 State Register. The formal public comment period regarding the proposed regulation closed on May 3, 2010. This document summarizes and analyzes the issues contained in the public comments and provides OPRHP's response to each issue.

For the purposes of the regulation and this Assessment the term "free use" means the waiver of base fees (excluding amenities) at a campsite, cabin, park, other public place of recreation or historic site operated by OPRHP or the New York State Department of Environmental Conservation (DEC).

1. Comments from the New York State Department of Environmental Conservation endorsed the changes to the Access Pass program. The comments stated that DEC has long valued the original intent of the program and that, in the last two decades, DEC has invested significant resources in upgrading facilities and educating staff to comply with the Americans with Disabilities Act (ADA). The comments stated that the Access Program has a significant financial impact on DEC's Recreation Account budget and noted a disproportionate growth in recent years in the use of passes issued that are not specifically authorized by statute. During the 2009 summer season, Access Pass use at DEC facilities exceeded \$430,000 in value. This represents a 17 percent increase in the value of free services provided to pass holders when compared to the previous year. Increases in Access Pass use is growing at a much greater rate than the increase in general use of DEC facilities. Similar to OPRHP, the current fiscal crisis has required DEC to reduce its operating budget by proposing facility closures and reducing public services and programming.

Response: OPRHP will work closely with DEC to implement the Access Pass changes on a coordinated basis.

2. Comments from the New York State Developmental Disabilities Planning Council asked for clarification on the documentation individuals with mental disabilities who live independently (e.g. not in congregate care settings) are required to submit to receive an Access Pass.

Response: The Agency accepts a letter on the letterhead of the New York State Office of Mental Retardation & Developmental Disabilities (OMRDD) or the New York State Office of Mental Health (OMH) stating that the individual receives services from OMH, ORRDD, or a service provider authorized by either agency. The majority of Access Passes in this category, however, are issued for groups of persons who receive services under the auspices of one of these state agencies, and the passes are used for group outings to state recreational facilities.

3. Comments from the New York Association on Independent Living, Inc. raised three concerns: a) The comments sought clarification on the semi-ambulatory category that is being deleted from the regulation, questioning whether an individual who is non-ambulatory but uses a mobility aid other than a wheelchair (such as a scooter) could receive an Access Pass under the new regulation; b) The comments noted that individuals receiving Social Security Disability (SSD) Insurance and Supplemental Security Income (SSI) are economically disadvantaged and live on a fixed income, meaning that they may not be able to afford fees charged by OPRHP and DEC at state park facilities; and c) The comments stated that individuals receiving SSD and SSI have been found to be fully disabled by the Social Security Administration and therefore should continue to receive Access Passes.

Response: a) Individuals who are non-ambulatory will continue to receive Access Passes. For the purpose of the regulation, OPRHP interprets "non-ambulatory" to include only those individuals who have a permanent disability which prevents them from being able to walk and who, therefore, require a wheelchair at all times. Because technology is continually improving, OPRHP's Access Pass application form acknowledges that some individuals who are non-ambulatory may use other power operated mobility-assistive devices in addition to or as alternatives to wheelchairs.

b) The issue of the affordability of state park facilities for individuals who are economically disadvantaged or live on a fixed income is addressed in comment No. 6 below.

c) The issue of discontinuing the practice of recognizing SSD and SSI for Access Passes is addressed in comment No. 9 below.

4. Comments from the Association for the Rights of Disabled Consumers stated that: a) OPRHP should implement a means test (requiring applicants to file a financial disclosure or tax statement) to continue to provide Access Pass eligibility for economically disadvantaged individuals; b) In order to protect personal privacy, individuals with mental disabilities should not be required to disclose their medical records or the nature of their disability; and c) Individuals who are semi-ambulatory or have an "unseen disability" should continue to be eligible to receive the Access Pass.

Response: a) Regarding the implementation of a financial means test,

PRHPL § 13.19 does not contemplate a financial analysis in determining whether an individual should receive an Access Pass. Moreover, OPRHP does not have the resources to implement an administrative program to evaluate the economic status of the 34,000 individuals that currently hold Access Passes.

b) Regarding personal privacy, OPRHP does not require individuals with mental disabilities to submit documentation describing their specific disability. Instead, as described in the response to comment No. 1 above, OPRHP relies on letters issued by OMRDD or OMH stating that the individual receives services from their agency or a service provider authorized by either agency. This letter does not disclose specific medical conditions. Although some individuals with mental disabilities may voluntarily submit medical information to the Agency when they apply for the Access Pass, OPRHP does not request or require this information.

c) Regarding persons who are semi-ambulatory or have an "unseen" disability, due to fiscal budgetary constraints OPRHP and DEC can no longer provide the access pass benefit to persons with these disabilities.

5. OPRHP received comments supporting the changes to the Access Pass program. Supportive comments often noted that significant numbers of rounds of free golf are played by individuals with Access Passes at state parks golf courses, creating an unfair and inequitable situation for the paying public. Other comments noted that significant free use of campsites and cabins by Access Pass holders is unfair.

Response: OPRHP believes that the changes to the Access Pass program will in large part address these comments.

6. Comments from individuals who will no longer receive Access Passes stated that they are economically disadvantaged as a result of their disability and/or medical expenses and will no longer be able to afford to visit state parks, utilize state campgrounds, or play golf at state facilities. Many of these individuals also stated that they are retired and live on a fixed or limited income.

Response: The Agency acknowledges that individuals who no longer receive an Access Pass will now be required to pay vehicle use fees and camping, cabin, golf and other recreational fees. However, state parks user fees remain very reasonably priced. Vehicle use fees range from \$6 to \$10 per car, with no additional per-person charge. Individuals aged 62 and older, which make up a significant portion of existing Access Pass holders, do not have to pay the vehicle use fees on weekdays. No vehicle use fee is charged during the off-season (the vehicle use fee is charged only during the summer season and on weekends during the spring and fall). No fee is charged for people accessing state parks by public transportation or by pedestrian access (many parks are located within urban areas or villages and have significant walk-in visitorship). Additionally, the base rate for OPRHP-operated state campgrounds is \$15 per night. DEC-operated campsites are \$16 to \$25 per night. The base rate for OPRHP-operated cabins is from \$145 to \$255 per cabin per week. OPRHP believes this fee system is reasonable given the budget constraints we must operate under. Finally, weekday fees for most state parks golf courses range from \$18 to \$28 (this is the 18-hole rate; 9-hole rates are lower), and seniors receive a 20 percent discount. Higher rates are charged at premium golf courses at Bethpage, Montauk Downs, Rockland Lakes, and Saratoga Spa State Parks, but less expensive options are available at nearby state park courses.

Note: On April 1, 2010 the Agency implemented modest fee increases at selected state park facilities - these increases are reflected in the fees described above.

7. Comments from individuals who will no longer receive Access Passes stated they have serious disabilities that may result in greater physical limitations than some categories of people who will continue to qualify under the statute. Examples cited of disability categories not eligible include heart and lung conditions, neuromuscular conditions, back injuries, cancer or other diseases, other medical conditions, and organ transplants which may not require a wheelchair but nonetheless could significantly inhibit an individual's physical or financial ability to enjoy park facilities.

Response: PRHPL § 13.19 specifies that individuals with four categories of disabilities - persons who are blind, non-ambulatory, an amputee, or veterans who have service-related disabilities - shall receive free use of state parks, campgrounds, and other places of public recreation. OPRHP will continue to provide the Access Pass to these individuals. However, PRHPL § 13.19 does not provide free use to individuals who are semi-ambulatory, who receive federal disability benefits, or who have other medical conditions. Given fiscal constraints, the Agency is unable to provide free vehicle use, camping, cabin and golf course and other recreational fees to individuals who are semi-ambulatory, have other medical conditions, or who receive federal SSD, SSI or Railroad Disability.

8. Comments from some individuals recommended that, as an alternative to eliminating certain Access Pass categories, OPRHP should instead eliminate free golf for all Access Pass holders in order to secure increased revenues.

Response: OPRHP considered, but rejected, interpreting the statutory

phrase "other public places of recreation" to exclude free golf course usage from the Access Pass program. At this time, OPRHP's goal is to continue to maintain free use of the range of public recreational opportunities available to persons with disabilities specified in PRHPL § 13.19 through the Access Pass program, within the fiscal constraints facing the Agency.

9. Comments from some individuals stated that "disability" is already defined by the Social Security Administration (SSA), and that OPRHP's regulations should adopt the SSA's definition for issuance of the Access Pass.

Response: SSD is not included in the statute (PRHPL § 13.19) that defines the categories of individuals with disabilities who may receive free use of state recreational facilities. SSD is a federal occupational designation, administered by SSA, that relates to an individual's ability to work; it is too broad a category for determining individuals who qualify for the waiver of base fees at campsites, cabins, parks and other recreational facilities under PRHPL § 13.19. Similarly, SSI is not included in the statutory list of individuals who may receive free use. To the extent that individuals receiving SSD or SSI benefits have one of the six specific disabilities retained in the new rule, they remain eligible to apply for an Access Pass under those specific categories.

10. Comments from individuals stated that eliminating the SSD, SSI, Railroad Disability, or semi-ambulatory categories from the regulation is discriminatory.

Response: OPRHP policy prohibits any act of discrimination against any individual, including visitors to the State Park System, on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, or marital status. PRHPL § 13.19 directs OPRHP to provide the Access Pass to individuals with four categories of disabilities. The SSD, SSI, Railroad Disability, and semi-ambulatory are not among those categories. The Agency disagrees that eliminating these categories from the regulation is discriminatory. In the three decades since the Access Pass was established, OPRHP and DEC have made significant capital investments and have taken advantage of technological innovation, consistent with the Americans with Disabilities Act allow persons with disabilities to enjoy equal access to State recreational facilities.

11. Comments from individuals suggested OPRHP should retain all existing Access Pass categories and implement the following alternatives: a) Charge a reduced fee rather than providing free use of state park facilities; b) Institute a set annual fee for the Access Pass; c) Institute a financial "means test" so that only economically disadvantaged individuals would qualify; or d) Limit use of the Access Pass to a certain number of days annually for each recreational activity.

Response: PRHPL § 13.19 does not authorize OPRHP to charge partial (reduced) fees, implement a financial means test, or restrict the number of times of use for individuals who are blind, non-ambulatory, amputees, or are veterans with service-related disabilities. Moreover, the suggested administrative alternatives would not meet OPRHP's revenue needs as established in the Agency's FY2010-11 budget.

12. Comments questioned how OPRHP determined that the proposed changes to the Access Pass program will generate an additional \$1 million in annual revenue for the Agency.

Response: As set forth in the RIS released with the proposed regulation, approximately 34,000 individuals currently hold an Access Pass. The discretionary eligibility categories OPRHP removed from the Access Pass program in the new rule account for 65 percent of all Access Passes.

Based on 2009 data, Access Pass holders receive approximately \$3,000,000 in waived fees and charges for use of state recreational facilities, as follows:

Access Pass Camping Usage = \$1,085,000
 Access Pass Golf Usage = \$1,550,000
 Vehicle Use Fees = \$395,000

Note: On April 1, 2010 OPRHP increased vehicle use fees at selected facilities and is currently advancing a separate rule-making that includes some of the increased fees (i.e., those more than \$100) included above to calculate costs and savings.

Some individuals may continue to be eligible for the Access Pass under one of the six remaining categories or they will be eligible for the Golden Park Program that provides individuals age 62 and above with a waiver of the vehicle use fee on weekdays. A conservative estimate, therefore, is that the State will realize \$1 million to \$1.5 million in increased revenue from the proposed rule. This is roughly 50 percent of the \$3 million in waived fees under the current Access Pass program. This assumes that many former Access Pass holders will continue to visit state parks, and now will pay the required fees, and that other patrons will utilize camping, cabin rentals, and golf tee times that previously had been reserved by Access Pass holders no longer eligible for the program.

13. Comments indicated that Access Pass holders who currently play golf at no charge at state parks courses will no longer be able to afford to do so, and therefore the State will lose other revenue - such as golf cart

rentals, purchase of golf equipment, and meal expenses - which these individuals purchase when playing golf. Similar comments were made that without Access Passes people will no longer be able to afford state campgrounds and therefore will not make other park-related expenditures.

Response: Based on the number of patrons using the reservation system and consultation with parks operations staff, the Agency does not believe that the proposed changes to the Access Pass program will result in a net loss of Agency revenue. As noted in the response to comment No. 6 above, park fees are modest and reasonable, and therefore the Agency has concluded that many individuals who no longer receive Access Passes will continue to utilize state park facilities, now paying park fees. To the extent that some individuals reduce their use of state park facilities, other members of the public will take their places, and the Agency's analysis concluded that both groups would continue to purchase related equipment and services at park facilities.

14. Comments from individuals with internal hip, knee, or joint replacements that increase mobility stated these disabilities were comparable to amputees using prosthetic devices to increase mobility, and that individuals with internal joint replacements should continue to receive the Access Pass.

Response: The Agency disagrees that a person who has received an internal joint replacement meets the definition of an "amputee" as used in PRHPL § 13.19. OPRHP has never interpreted the term "amputee" under either the prior or new rule to include persons with internal hip, knee or joint replacements.

15. Comments stated that because OPRHP currently issues Access Passes for four-year terms, the Agency should continue to accept existing passes until their terms expire. Comments also stated that the Access Pass represents a contractual agreement that the Agency has an obligation to honor.

Response: OPRHP considered but rejected this implementation timeline, which would result in inequitable situations where some individuals (whose current pass had not yet expired) would continue to receive benefits under the program for as long as four years, while other individuals with identical types of disabilities would not. Moreover, a four year phase-in period would preclude OPRHP from meeting its revenue needs. OPRHP disagrees that an existing Access Pass represents a contractual agreement. The Guidelines that accompany the Access Pass application clearly state: "[t]he Individual Access Pass ("pass") is the property of the State of New York and must be returned upon our request. It is issued as a personal benefit, providing free or discounted facility use for the pass holder only. If it is misused or if the pass holder is found not to meet the Access Pass qualifications, it will be revoked."

16. Comments from several individuals stated that the public controversy over high rate of disability claims submitted by Long Island Rail Road employees should not result in removing the Railroad Disability Access Pass category.

Response: Although public controversy and government investigations of Long Island Rail Road employees were factors in OPRHP's review of the Access Pass regulation, they were not major factors requiring the proposed changes to the program. The primary factors for the regulatory change are budgetary constraints, statutory requirements, and changed circumstances since the Access Pass regulation was originally enacted more than three decades ago. Finally, the Railroad Disability category is not authorized in either PRHPL § 13.19 or the prior Access Pass regulation that is being repealed.

17. Comments from many individuals emphasized that the Access Pass creates opportunities for older citizens with disabilities to engage in physical exercise, promoting public health. Golf was often cited as an activity that promotes healthy lifestyles.

Response: As described in the response to comment No. 6 above, OPRHP believes that the fees charged for state park facilities are reasonable and provide affordable opportunities for public recreation. In addition, the Golden Park Program provides seniors with free vehicle use access to state parks on weekdays and a 20 percent discount at state golf courses.

18. Comments stated there is waste and fraud in other parts of the state budget that should be targeted for reductions in order to increase state revenue, rather than changing the Access Pass program. Other comments stated that New York residents pay high levels of taxes and, therefore, should continue to receive the Access Pass.

Response: All parts of state government are experiencing funding reductions as a result of the fiscal crisis facing New York State. To date, OPRHP and DEC have absorbed budget cuts resulting in reduced public services and programming at park facilities. OPRHP has reduced services at more than 100 state parks and historic sites and further reductions are pending. OPRHP and DEC, therefore, have been required to pursue all possible cost-saving measures, including changes to the Access Pass program.

19. Comments stated that military veterans, police and firefighters that

were injured in the line of duty, all emergency responders, and 9-11 World Trade Center Workers should receive Access Passes.

Response: A veteran who has a service-related disability will continue to receive the Access Pass as provided under PRHPL § 13.19. However, the law does not provide free use to police or firefighters injured in the line of duty (unless they have one of the specific categories of disability set forth in that statute). Due to fiscal constraints OPRHP cannot provide free use of recreational facilities for police, firefighters, 9-11 World Trade Center workers and emergency responders.

20. Comments suggested other ways for OPRHP to raise revenue, as alternatives to eliminating Access Pass categories. Examples included implementing an on-line reservations fee, ending existing concessions for golf cart rentals with OPRHP directly managing rentals; and selling one or more state parks in order to generate revenue.

Response: Legal, administrative and/or practical constraints preclude OPRHP from adopting the proposed alternative mechanisms for raising additional revenue.

21. Comments asked for an explanation of OPRHP's time schedule for implementing the new Access Pass rule.

Response: The changes to the Access Pass program will become effective May 19, 2010. Implementation will occur in two phases:

Fees for Golf, Camping, and Cabin Rentals, Swimming Pool, Tennis, Marina and Other Recreational Activities and Historic Sites Tours. Effective May 19, 2010, previously-issued Access Passes granted on the basis of the "semi-ambulatory," SSD, SSI, or Railroad Disability categories will no longer be valid for the waiver of base fees for these activities. Note: In instances where camping or cabin rental reservations were made prior to May 19, 2010, the Access Pass refund will still be provided even if the actual camping date is after that date.

Vehicle Use Fee. Effective November 11, 2010, Access Passes granted on the basis of the "semi-ambulatory," SSD, SSI, or Railroad Disability categories will no longer be valid for vehicle use fees (which is the day-use fee for vehicles entering state parks and historic sites) or any other park fees. The "semi-ambulatory" category includes individuals whose Access Passes indicate they use a cane, leg brace, walker, crutches or carry contained oxygen or have knee or hip replacements.

22. Comments asked whether OPRHP will hold a public hearing prior to implementing changes to the Access Pass program.

Response: OPRHP is not required to hold a formal public hearing on the rule. The Agency has concluded that the 45-day written comment period has provided ample opportunity for public input.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Renewable Portfolio Standard Program

I.D. No. PSC-20-10-00004-P

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

Proposed Action: The Commission will consider the petition of Catalyst Renewables, LLC for a determination that behind the meter bilateral contracts are eligible for Renewable Portfolio Standard (RPS) Program funding.

Statutory authority: Public Service Law, section 66

Subject: Renewable Portfolio Standard Program.

Purpose: To consider a modification to the Commission's RPS program.

Substance of proposed rule: Catalyst Renewables, LLC has asked for a determination that behind the meter bilateral contracts are eligible for Renewable Portfolio Standard (RPS) funding. The Commission has determined that such sales are not eligible for participation in the RPS program by declaratory ruling dated June 26, 2009 in Case 08-E-0909. In this case, the Commission may affirm its prior determination or may modify it in whole or in part or take other action necessary to address the issue posed by Catalyst Renewables, LLC.

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

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

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

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

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

(10-E-0195SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00005-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 9.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (the Company) to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate these updates to PSL Sections 66-j and 66-l. The company also modified provisions regarding when a site-specific study will be conducted and when a net-metered account is closed. The filing has an effective date of July 23, 2010.

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

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

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

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

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

(10-E-0134SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Standardized Facility and Equipment Transfer (SAFE-T) Program

I.D. No. PSC-20-10-00006-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 evaluating the potential benefits of a standardized facility and equipment transfer (SAFE-T) program for transfers between utility poles and conduit owned by electric and telephone corporations.

Statutory authority: Public Service Law, sections 2(12), (18), 4(1) and 5(1)

Subject: Standardized facility and equipment transfer (SAFE-T) program.

Purpose: To evaluate the potential benefits of a standardized facility and equipment transfer (SAFE-T) program.

Substance of proposed rule: The Public Service Commission (Commission) is evaluating the potential benefits of a standardized facility and equipment transfer (SAFE-T) program to enhance record keeping, communication, coordination, monitoring, and notification related to facility transfers between utility poles and conduit by electric and telephone corporations, attaching entities and the public. In connection with this issue the Commission has instituted Case 08-M-0593 to evaluate development of a SAFE-T program. The Commission may approve, reject or modify, in whole or in part, any programs or recommendations which are developed in connection with this proceeding.

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

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

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

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

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

(08-M-0593SP1)

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

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00007-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 15.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate these updates to PSL Sections 66-j and 66-l. The filing has an effective date of July 23, 2010.

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-0133SP1)

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

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00008-P

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

Proposed Action: The Commission is considering a proposed tariff filing by New York State Electric & Gas Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 120.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate these updates to PSL Sections 66-j and 66-l. The filing has an effective date of July 23, 2010.

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-0133SP1)

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

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00009-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 220.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modi-

fied to incorporate these updates to PSL Sections 66-j and 66-l. The filing has an effective date of July 23, 2010.

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

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

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

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

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

(10-E-0136SP1)

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

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00010-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Rochester Gas and Electric Corporation to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 19.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate these updates to PSL Sections 66-j and 66-l. The filing has an effective date of July 23, 2010.

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

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

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

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

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

(10-E-0137SP1)

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

Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems

I.D. No. PSC-20-10-00011-P

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

Proposed Action: The Commission is considering a proposed tariff filing by Orange and Rockland Utilities, Inc. to make various changes in rates, charges, rules and regulations contained in Schedule for Electric Service, PSC No. 2.

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

Subject: Net Energy Metering for Non-Residential Photovoltaic, and Non-Residential and Farm Service Wind Electric Generating Systems.

Purpose: To effectuate changes to Public Service Law Sections 66-j and 66-l in relation to Net Energy Metering.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to effectuate changes to Public Service Law (PSL) Sections 66-j and 66-l in relation to net energy metering for non-residential photovoltaic, and non-residential photovoltaic and farm service wind electric generating systems. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate these updates to PSL Sections 66-j and 66-l. The filing has an effective date of July 23, 2010.

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

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

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

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

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

(10-E-0138SP1)

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

**Approval of the Transfer of Ownership of Hydro Facilities
Totaling 26 MW and Other Electric and Steam Corporation
Assets**

I.D. No. PSC-20-10-00012-P

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

Proposed Action: The Commission is considering a petition from Alliance Energy New York LLC, Eagle Creek Hydro Power LLC, and others requesting approval of the transfer of three hydro facilities totaling 26 MW and other electric and steam corporation assets.

Statutory authority: Public Service Law, sections 2(2-b), (2-c), 70 and 83

Subject: Approval of the transfer of ownership of hydro facilities totaling 26 MW and other electric and steam corporation assets.

Purpose: Consideration of approval of the transfer of ownership of hydro facilities totaling 26 MW and other electric and steam assets.

Substance of proposed rule: The Public Service Commission is considering a petition from Alliance Energy Renewables LLC, AER NY Gen LLC, AG-Energy, L.P., Alliance Energy New York LLC, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources LLC, Eagle Creek Land Resources LLC, Eagle Creek Ogdensburg (LP) LLC, and Eagle Creek Ogdensburg (GP) LLC requesting approval of the transfer of ownership interests in three hydroelectric generating facilities totaling 26 MW located in Forestburgh and Glen Spey, New York, and a determination that the hydroelectric facilities will no longer be subject to Public Service Law regulation. Approval of the transfer ownership interests AG-Energy, LLC, an electric corporation and a steam corporation located in Ogdensburg, New York, and a determination on the Public Service Law regulation applicable to it, is also sought. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(10-M-0186SP1)

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

Approval of the Transfer of Ownership of an Electric and Steam Corporation Located in Ogdensburg, NY and Hydro Assets

I.D. No. PSC-20-10-00013-P

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

Proposed Action: The Commission is considering a petition from AG-Energy, L.P., Eagle Creek Ogdensburg (LP) LLC, and others requesting approval of the transfer of an electric and steam corporation located in Ogdensburg, NY and hydro assets.

Statutory authority: Public Service Law, sections 2(2-b), (2-c), 70 and 83

Subject: Approval of the transfer of ownership of an electric and steam corporation located in Ogdensburg, NY and hydro assets.

Purpose: Consideration of approval of the transfer of ownership of an electric and steam corporation and other hydro assets.

Substance of proposed rule: The Public Service Commission is considering a petition from Alliance Energy Renewables LLC, AER NY Gen LLC, AG-Energy, L.P., Alliance Energy New York LLC, Eagle Creek Hydro Power LLC, Eagle Creek Water Resources LLC, Eagle Creek Land Resources LLC, Eagle Creek Ogdensburg (LP) LLC, and Eagle Creek Ogdensburg (GP) LLC requesting approval of the transfer of ownership interests in AG-Energy, L.P., an electric corporation and a steam corporation located in Ogdensburg, New York, and a determination that it continue to be subject to lightened and incidental regulation as a steam corporation and that it continue to be lightly regulated as an electric corporation until such time as the electric generating facility owned by AG-Energy is converted to an alternate energy production facility. Approval of the transfer of ownership interests in three hydroelectric generating facilities totaling 26 MW located in Forestburgh and Glen Spey, New York, and a determination that the hydroelectric facilities will no longer be subject to Public Service Law regulation, is also sought. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(10-M-0186SP2)

Department of State

EMERGENCY RULE MAKING

Installation of Carbon Monoxide Alarms in Residential Buildings

I.D. No. DOS-20-10-00002-E

Filing No. 469

Filing Date: 2010-04-28

Effective Date: 2010-04-28

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

Action taken: Addition of sections 1220.1(d)(13) and 1225.1(d)(3) to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1), 378(1) and (5-a)

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

Specific reasons underlying the finding of necessity: Adoption of this rule on an emergency basis is required to preserve public safety by requiring the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouse dwellings, dwelling accommodations in buildings owned as condominiums or cooperatives, and multiple dwellings, without regard to the date of construction or sale of such buildings, as required by Amanda's Law (Chapter 367 of the Laws of 2009), which will reduce the number of deaths and injuries caused by carbon monoxide poisoning and, in the words of the sponsor of the bill that became Amanda's Law, "create safer homes for New Yorkers;"

Subject: Installation of carbon monoxide alarms in residential buildings.

Purpose: To implement Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009.

Substance of emergency rule: Provisions relating to the installation of carbon monoxide alarms in residential buildings are currently found in section RR313.4 of the Residential Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1220) and section F611 of the Fire Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1225). The current provisions require the installation of carbon monoxide alarms in one- and two-family dwellings, townhouses and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005. This rule implements Amanda's Law (Chapter 367 of the Laws of 2009) by amending section RR313.4 of the Residential Code of New York State and section F611 of the Fire Code of New York State to require the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings, without regard to the date of construction or sale.

The rule adds definitions of terms relevant to the carbon monoxide alarm provisions.

The requirements for newly building constructed after January 1, 2009 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) Carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a building of any age that has no commercial or on-site power source, the alarms must be battery operated and need not be interconnected.

Carbon monoxide alarms are not required if no carbon monoxide source is located in or attached to the building.

All carbon monoxide alarms must be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, and must be installed in accordance with the manufacturer's installation instructions.

Carbon monoxide alarms shall not be removed or disabled, except for service or repair purposes.

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 July 26, 2010.

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377 section 377(1) authorizes the State Fire Prevention and Building Code Council to amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code") from time to time. Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions. Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009, provides that the Uniform Code must require one- and two-family dwellings, dwelling accommodations in a building owned as a condominium or cooperative, and multiple dwellings to be equipped with carbon monoxide alarms.

2. LEGISLATIVE OBJECTIVES.

Memoranda accompanying the bills that most recently amended subdivision (5 a) of Executive Law section 378 included the following justifications:

"This legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . As with smoke detector/fire alarms many years ago, carbon monoxide alarms have earned the respect of the fire service as a valuable tool in the saving of lives. Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life. . . . This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well."

"Current law requires residential dwellings that are constructed or offered for sale after July 30, 2002 to be updated with a carbon monoxide detector. This legislation would remove the construction and sale provisions, leaving it a new requirement that all homes regardless of construction or sale date be outfitted with a carbon monoxide detector. On January 17th, 2009 Amanda Hansen, a 16 year old from West Seneca, New York, died from carbon monoxide poisoning from a defective boiler while at a sleepover at her friend's house. This legislation would create safer homes for New Yorkers and also prevent future tragedies from occurring."

The Legislative objective sought to be achieved by this rule is a reduction in the number of deaths and injuries caused by CO poisoning.

3. NEEDS AND BENEFITS.

CO is an invisible, odorless gas that is generated by the incomplete

combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non fire situations, elevated CO levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, the consensus standards for single and multiple station CO alarms in the United States and Canada. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 and CAN/CSA 6.19 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent, which earlier studies indicated would have no significant effects on human subjects.

A number of different sources were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non fire, building source CO poisoning. The sources reviewed contain estimates ranging between 200 and 1200, nationally. The sources include the U.S. Consumer Product Safety Commission (CPS), California Air Resources Board, the Journal of the American Medical Association, the Morbidity and Mortality Weekly Report (published by the U.S. Centers for Disease Control) and studies by Dr. David Penney (Wayne State University School of Medicine). Extrapolating these data to New York State, excluding New York City, leads the Code Council to expect between 8 and 48 annual fatalities. Using specific coding in the Vital Statistics Death File prepared by its Bureau of Injury Prevention, the New York State Department of Health (DOH) estimates 14 fatalities annually.

In situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. In an observation in Archives of Neurology (Vol. 57, No. 8, August 2000), Sohn et al noted the incidence of Parkinsonism and intellectual impairment in a married couple who experienced CO poisoning simultaneously. While it was noted that both individuals showed complete recovery after thirteen months, the observation is suggestive of additional potential consequences. It should also be noted that CPS has estimated an average of 10,000 injuries or hospital emergency room visits annually from CO poisoning. Based solely on population, New York State (excluding New York City) could experience approximately 400 injuries annually.

In an article in the American Journal of Forensic Medicine and Pathology (Vol. 10, No. 1, 1989), I. R. Hill notes that fine discriminatory functions begin to be impaired at 5 percent saturations, with significant decrements being noted at the 10 percent saturation level. Hill also notes that headaches occur at 20 to 30 percent saturation, and that nausea, dizziness and muscular weakness occur at 30 to 40 percent. Thus, CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels.

4. COSTS.

The Uniform Code's current requirements regarding the installation of CO alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings.

Under this rule, owners of residential buildings constructed prior to January 1, 2008 will also be required to install one or more CO alarms in the places specified in this rule. The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a CO alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a CO alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a CO alarm must be installed in each dwelling unit or sleeping unit where a CO source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a CO source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) CO alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarm(s). Cord or plug connected and

battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions to be added by this rule, except as follows:

First, if the State or any local government owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms, the State or such local government, as the case may be, will be required to install one or more CO alarms in the building.

Second, the authorities responsible for administering and enforcing the Uniform Code (typically, cities, towns, villages and, in some cases, counties) will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify the installation of required CO alarms will not have a significant impact on the permitting process or inspection process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms will be required to install one or more CO alarms in the building.

Second, cities, towns, villages and counties that administer and enforce the Uniform Code will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

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

7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

Consideration was given to adopting a rule requiring all CO alarms, including those to be installed in buildings constructed prior to January 1, 2008, to be hard wired and interconnected. This alternative was rejected as it would have unnecessarily increased the cost of bringing pre-2008 buildings into compliance with the new statutory mandate as set forth in subdivision (5 a) of section 378 of the Executive Law.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons who own buildings constructed prior to 2008 will be able to comply with this rule by purchasing and installing readily available, battery operated CO alarms.

Requirements for installing CO alarms in newly constructed buildings have been in place since January 1, 2008 and are not changed by this rule. Regulated persons constructing new buildings will continue to be able to comply with this rule by installing hard-wired CO alarms as part of the construction process.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The State Uniform Fire Prevention and Building Code (Uniform Code) currently requires that all residential buildings (one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings) constructed after January 1, 2008, and certain residential buildings constructed prior to January 1, 2008, be equipped with one or more carbon monoxide alarms. This rule will amend the Uniform Code to require that all one- and two-family dwellings, all townhouses, all dwelling units in condominiums and cooperatives and all

multiple dwellings, without regard to the date of construction or sale, be equipped with one or more carbon monoxide alarms. Therefore, this rule will affect any small business or local government that owns a residential building in which carbon monoxide alarms were not previously.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or recordkeeping requirements are imposed upon regulated parties by the rule.

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

In addition, small businesses and local governments the own or construct one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, or multiple dwellings will be required to install, use and maintain carbon monoxide alarms in accordance with the rule's provisions. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been

offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT:

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties (including small businesses or local governments) who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such buildings. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums or cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to dwellings owned or operated by small businesses or local governments.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009, by adding provisions to the State Uniform Fire Prevention and Building Code (the Uniform Code) requiring that carbon monoxide (CO) alarms be installed in all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will impose the following compliance requirement: owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings will be required to install one or more carbon monoxide alarms in the places or places specified in this rule. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code

on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

4. MINIMIZING ADVERSE IMPACT.

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such building. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The rule also permits the use of battery operated alarms in buildings without a commercial or on-site power source.

Executive Law section 378(5-a) makes no distinction between one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings located in rural areas and those located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas.

Executive Law section 378(5-a) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on

jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings be equipped with carbon monoxide alarms. This amendment is required to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in certain situations since at least 2002. The current requirements relating to installation of alarms in newly constructed buildings have been in effect since January 1, 2008, and are continued without substantial change by this rule. For newly constructed buildings, the carbon monoxide alarms will continue to be installed as part of the construction process.

Under the current version of the Uniform Code and under prior versions of the Uniform Code, an existing building that was not required to have carbon monoxide alarms installed at the time of construction would be required to have carbon monoxide alarms installed at the time the building was offered for sale. Under this rule, existing residential buildings will be required to have carbon monoxide alarms installed, even if they are not being offered for sale. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by provisions that permit the use of battery operated carbon monoxide alarms in buildings without a commercial or on-site power source.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

Existing provisions in the Uniform Code require the installation of carbon monoxide alarms in newly constructed residential buildings. Those requirements are continued without substantial change by this rule. Therefore, this rule adds no new requirements relating to newly constructed buildings, and this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of purchasing, owning, and operating an existing residential building. Therefore, this rule should have no substantial adverse impact on sales, purchases, ownership or operation of existing residential buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the sale, purchase, ownership or operation of existing residential buildings.