

# 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.

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## Office for the Aging

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### NOTICE OF ADOPTION

#### Expanded In-Home Services for the Elderly Program Ancillary Services

**I.D. No.** AGE-07-10-00003-A

**Filing No.** 514

**Filing Date:** 2010-05-10

**Effective Date:** 2010-05-26

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

**Action taken:** Amendment of sections 6654.6 and 6655.7; repeal of section 6654.19; and addition of new section 6654.19 to Title 9 NYCRR.

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

**Subject:** Expanded In-home Services for the Elderly Program Ancillary Services.

**Purpose:** The purpose of the proposed rule is to increase the flexibility that Area Agencies on Aging have in administering EISEP.

**Text or summary was published** in the February 17, 2010 issue of the Register, I.D. No. AGE-07-10-00003-P.

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

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

#### Assessment of Public Comment

The agency received no public comment.

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## Office of Alcoholism and Substance Abuse Services

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### EMERGENCY RULE MAKING

#### Opioid Treatment Services

**I.D. No.** ASA-21-10-00005-E

**Filing No.** 506

**Filing Date:** 2010-05-06

**Effective Date:** 2010-05-06

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

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

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

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

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

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

**Subject:** Opioid Treatment Services.

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

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

#### Changes for Opioid Treatment Programs

- Conform OASAS regulations to federal regulations (42 CFR Part 8) regarding certification of opioid treatment programs (OTP).
- Adds regulations related to buprenorphine (methadone alternative) treatment, removing an obstacle to physicians to administer buprenorphine in OTPs where clients may receive supportive services.
- Provides for opioid medical maintenance (OMM), pursuant to federal waiver, for certain qualified opioid patients and providers.
- Provides guidelines for certified providers to provide services at additional locations.
- Requires medical directors to become certified in an area of addiction medicine.
- Requires testing for Hepatitis and makes testing for STDs optional.
- Increases flexibility in toxicology testing.
- No longer requires OASAS approval for methadone dosage increases above 200 milligrams.
- Recognizes that treatment for opioid addiction may be provided in a residential or in-patient setting and makes provisions for regulation of such services.

- Greater consistency between federal and state regulations will benefit both providers and clients.
- Adds language that states only clients with a primary diagnosis of opioid addiction may be admitted to an OTP.
- Annual physical still required however at clinics discretion patient may be able to go to their private MD.
- New language added for transfer patients.
- More flexibility for counselor to patient staffing ratios.
- Greater flexibility in providing patients with take home medication and removes agency approval on a one-time basis for up to 30 days take home dose.
- Adds recall to reduce diversion.
- Defines role of security guards at the OTP.
- Defines aftercare.
- States specialized services that are not defined by regulation must be approved by OASAS prior to implementation.
- States providers must establish a community relations policy and committee.
- Providers must establish a quality improvement policy.
- Requires 50% of the counseling staff to be CASAC or CASAC-T within four years.

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

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

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

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

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

The proposed amendments will result in a reduction in paperwork for both OASAS and its certified providers. For example, the proposed regula-

tions will reduce the number of individual patient exemptions and general waivers from current regulation, saving providers and the agency costly administrative time. An estimated monthly average of 10 requests for waivers would be eliminated. The proposed regulation allows more flexibility in take home medication and clinic schedule changes, areas of the highest number of individual patient exemptions.

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

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

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 3, 2010.

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

#### **Regulatory Impact Statement**

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

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

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

#### **1. Statutory Authority:**

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

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

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

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

MHL § 19.15(a) bestows upon the Commissioner the responsibility for promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of chemical abuse or dependence.

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

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

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

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

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

#### 2. Legislative Objectives:

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

#### 3. Needs and Benefits:

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

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

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

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

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

#### 4. Costs

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

##### a. Costs to regulated parties:

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

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

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

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

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

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

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

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

#### 5. Local Government Mandates:

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

#### 6. Paperwork / Reporting:

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

#### 7. Duplications:

There are no duplications of other state or federal requirements.

#### 8. Alternatives:

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

State's Council of Local Mental Hygiene Directors, New York State's Advisory Council, and Alcoholism and Substance Abuse Providers of NYS (ASAP).

#### 9. Federal Standards:

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

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

#### 10. Compliance Schedule:

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

#### References

Bell, J, & Zador D.A. (2000). A risk-benefit analysis of methadone maintenance treatment. *Drug Safety* 2000, 22(3):179-190.

Breslin K.T. & Malone S. (2006). Maintaining the viability and safety of the methadone maintenance treatment program. *Journal of Psychoactive Drugs* 2006, 38(2):157-160.

Center for Substance Abuse Treatment. (2004). Methadone associated mortality: Report of a national assessment, May 8-9, 2003. CSAT Publication No. 28-03. Rockville, MD: Center of Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration.

Cicero T.J. (2005). Diversion and abuse of methadone prescribed for pain management. *Journal of American Medical Association*, 293(3): 297-298.

Leavitt, S.B. (2003). Methadone dosing and safety in the treatment of opioid addiction. *Addiction Treatment Forum* (special report), Available at: <http://www.atforum.com>

Lewis D. (1997). Credibility, support for methadone treatment-finally. *Brown University Digest of Addiction: Theory & Application*, 1997.

Maddux, J.F., Prihoda, T.J., & Vogtberger, K.N. (1997). The relationship of methadone dose and other variables to outcomes of methadone maintenance. *The American Journal on the Addictions*, Vol. 6, No. 3, 246-255.

National Institute of Health. (1998). National Consensus Development Panel on Effective Medical Treatment of Opiate Addiction. *Journal of the American Medical Association*, 280 (1998): 1936-43.

Ritter, A. & Di Natalie, R. (2005). The relationship between take-away methadone policies and methadone diversion. *Drug and Alcohol Reviews*, 24:347-352.

Tenore, P. (2004). DINO-VAMP: A helpful acronym in determining optimal methadone dosing and brief review of dosing literature. *Journal of Maintenance in the Addictions*, Vol. 2(4), 29-45.

Varenbut, M., Teplin, D., Daiter, J., Raz, B., Worster, A, Emadi-Konjin, P., Frank, N., Konyer, A., Greenwald, I., & Snider-Adler, M. (2007) "Tampering by office-based methadone maintenance patients with methadone take home privileges: a pilot study", *Harm Reduction Journal* 2007, 4:15 doi:10.1186/1477-7517-4-15. Available at: <http://www.pharmreductionjournal.com/content/4/1/15>

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

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

#### Regulatory Flexibility Analysis

Effect of the Rule: The proposed Part 828 will impact certified and/or funded providers. It is expected that the development of opioid treatment programs will require providers to amend some of their policies and procedures in their treatment modality. These new services will result in better patient treatment outcomes. Local health care providers may see an increase in patients seeking medication assisted treatment for opioid dependency due to less restrictive procedures for medication assisted

treatment. As a result of patients receiving these services, local governments may see a decrease in services associated with active illicit drug use such as arrests and emergency room visits. Also, local governments and districts will not be affected because any nominal increase in cost will be offset by better patient outcomes.

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

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

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

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

**Minimizing Adverse Impact:** Part 828 has been carefully reviewed to ensure minimum adverse impact to providers. Alcoholism and Substance Abuse Providers of NYS, Inc., Greater New York Hospital Association, Healthcare of New York, The Federal Center for Substance Abuse Treatment, The Federal Drug Enforcement Agency, the OASAS Methadone Transformation Team, the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services and approximately 50 opioid treatment programs were given the opportunity to comment on this proposal. Any impact this rule may have on small businesses and the administration of state or local governments and agencies will either be a positive impact or the nominal costs and compliance are small and will be absorbed into the already existing economic structure. The positive impact for our patients and our health care system, out weigh any potential minimal costs.

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

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

# New York State Canal Corporation

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Public Access to Canal Corporation Records

I.D. No. NCC-21-10-00004-P

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

**Proposed Action:** Addition of Part 157 to Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 382(7); Public Officers Law, sections 87 and 89

**Subject:** Public Access to Canal Corporation Records.

**Purpose:** To add Canal Corporation FOIL regulations, as required by Article 6 of the Public Officers Law.

**Text of proposed rule:** Part 157 is added to Title 21 NYCRR to read as follows:

*Public Access to Canal Corporation Records*

Section 157.1 is added to read as follows:

§ 157.1 Records available for inspection and copying; fees

1. Subject Matter List.

The Canal Corporation will keep a reasonably detailed current list, by subject matter, of all records in the possession of the Canal Corporation, whether or not available under the Freedom of Information Law.

2. Availability of records.

The Canal Corporation shall produce its records for inspection by appointment during those days and hours that it is regularly open for business, as follows: Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. (excluding observed holidays). Written requests for copies of records should be directed to the Canal Corporation's Records Access Officer at 200 Southern Boulevard, Albany, New York 12209.

3. Fees.

a. The fee for copies of records not exceeding 9 x 14 inches in size shall be 25 cents per page.

b. The fees for searching the records of the Canal Corporation for an accident report, for furnishing a copy of an accident report, and for furnishing a copy of an accident reconstruction report shall not exceed the fees charged by the division of state police pursuant to section sixty-six-a of the public officers law and/or by the department of motor vehicles pursuant to section two hundred two of the vehicle and traffic law; provided, however, that no fee shall be charged to any public officer, board or body, or volunteer fire company, for searches or copies of accident reports to be used for a public purpose.

c. Except when a different fee is otherwise prescribed by statute, the fee for a copy of any other record shall be the actual cost of reproducing such record, as determined by the Records Access Officer in accordance with Public Officers Law section 87.

d. The Canal Corporation Executive Director, or his or her designee may, at his or her discretion, waive all or any portion of the fees authorized by this subdivision.

Section 157.2 is added to read as follows:

§ 157.2 Rights of party denied access to records.

If access to a record is denied, such denial may be appealed to the Canal Corporation Executive Director, or his or her designee.

**Text of proposed rule and any required statements and analyses may be obtained from:** Marcy Pavone, Thruway Authority, Legal Department, 200 Southern Boulevard, Albany, NY 12209, (518) 436-2860, email: marcy\_pavone@thruway.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:

Public Authorities Law section 382, subdivision 7(d) authorizes the Canal Corporation to "make and alter by-laws for its organization and internal management and make rules and regulations governing the use of its property and facilities..." Subdivision 1(b) of Public Officers Law (POL) section 87 provides "each agency shall promulgate rules and regulations" in conformity with the Freedom of Information Law, including "i. the times and places such records are available; ii. the persons from whom such records may be obtained, and iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of

nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute." Subdivision 2 of POL section 87 provides "each agency shall, in accordance with its published rules, make available for public inspection and copying all records..." Subdivision 3(c) of POL section 87 provides that an agency shall keep "a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not available" under the Freedom of Information Law. Subdivision 5(a) of POL section 87 provides "an agency shall provide records on the medium requested by a person, if the agency can reasonably make such copy or have such copy made by engaging an outside professional service." Subdivision 4(a) of POL section 89 provides "any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefore designated by such head, chief executive, or governing body..."

2. Legislative Objectives:

The addition of Part 157 to Title 21 NYCRR will allow the Canal Corporation to adopt its own FOIL regulations, as it is required to so pursuant to Public Officers Law section 87(1)(b). The Canal Corporation has been following the Thruway Authority FOIL regulations. These regulations would require the Canal Corporation to keep a reasonably detailed current list, by subject matter, of all records in its possession, provide the times and places where Canal Corporation records are available, provide whom written requests for records shall be made to and the street address where such requests must be sent and provide the fees charged for copies of records. It would also provide those who have been denied access to records with a right to appeal.

3. Needs and Benefits:

Despite the requirement in Public Officers Law section 87(1)(b) that provides "each agency shall promulgate rules and regulations" in conformity with the Freedom of Information Law, the Canal Corporation has never promulgated such regulations. These regulations would ensure Canal Corporation compliance with the Freedom of Information Law statutes contained in Article 6 of Public Officer's Law. As a result of these changes, the Corporation will be able to easily adjust its subject matter list of records so that it more accurately reflects current records. Also, individuals or entities who seek Corporation records will know the times and places where records are available and to whom a request for records shall be made.

4. Costs:

In accordance with Public Officers Law section 87(1)(b), those who seek copies of Canal Corporation records will be required to pay twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by statute. Pursuant to Public Officers Law section 87(1)(c), the actual cost of reproducing a record includes an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record; the actual cost of the storage devices or media provided to the person making the request in complying with such request; and the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy. Preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

The fees for searching the records of the Canal Corporation for an accident report, for furnishing a copy of an accident report, and for furnishing a copy of an accident reconstruction report shall not exceed the fees charged by the division of state police pursuant to section sixty-six-a of the public officers law and/or by the department of motor vehicles pursuant to section two hundred two of the vehicle and traffic law. No fee shall be charged to any public officer, board or body, or volunteer fire company, for searches or copies of accident reports to be used for a public purpose.

The Corporation will continue to have to pay the associated administrative fees, and employees or an outside professional service for preparing the records. The exact amount of costs will vary with the number and nature of FOIL requests. There are no new costs for implementing the regulations.

5. Local Government Mandates:

This rule imposes no program, service, duty or responsibility on local governments.

6. Paperwork:

No need for reporting requirements.

7. Duplication:

The Freedom of Information Law statutes, found in Article 6 of Public Officers Law, may duplicate, overlap, or conflict with this rule. To ensure compliance with the FOIL statutes, the Canal Corporation will regularly check for updates to the FOIL statutes and update its FOIL regulations if there is a conflict or if an additional provision needs to be inserted.

- 8. Alternatives:  
None considered.
- 9. Federal Standards:  
None.
- 10. Compliance Schedule:  
No time is needed for regulated persons to comply with this rule.

**Regulatory Flexibility Analysis**

Based on the subject matter of this regulation, it will not impose any adverse economic impact on reporting, record keeping or other compliance requirements on small businesses or local governments. As such, a Regulatory Flexibility Analysis is not required.

**Rural Area Flexibility Analysis**

Based on its subject matter, this regulation does not impose any adverse impact on rural areas whether through reporting, record keeping or other compliance requirements on public or private entities in rural areas; as such, a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

Based on the nature and purpose of the proposed rule, it will not have a substantial adverse impact on jobs and employment opportunities. As such, a Job Impact Statement is not required.

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## Office of Children and Family Services

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

**Child Care Market Rate and Stimulus Regulations**

**I.D. No.** CFS-21-10-00006-P

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

**Proposed Action:** Amendment of sections 404.5, 415.2 and 415.9 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 410 and title 5-C

**Subject:** Child Care Market Rate and Stimulus Regulations.

**Purpose:** To revise the market rates and address the expanded need for child care services caused by the economic downturn.

**Text of proposed rule:** Subparagraphs (xviii) and (xix) of subparagraph (6) of paragraph (b) of section 404.5 of Title 18 are amended, and a new subparagraph (xx) is added to such paragraph, to read as follows:

(xviii) veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children; [and]

(xix) veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability[.]; and

(xx) one-time \$250 payments made under the American Recovery and Reinvestment Act of 2009 to Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits recipients for 10 months from the date the payment was received, including the month payment was received.

A new subparagraph (c) of subparagraph (vii) of subparagraph (3) of paragraph (a) of section 415.2 of Title 18 is added to read as follows:

(c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the portion of the day the caretaker is able to document is directly related to

the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

Subparagraph (1) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

(1) Effective [May 15, 2009] *October 1, 2009*, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Subparagraph (2) of paragraph (j) of section 415.9 of Title 18 is renumbered as subparagraph (3) and a new subparagraph (2) is added to read as follows:

(2) Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the social services law. A social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Re-numbered subparagraph (3) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

[(2)] (3) The market rates are established in five groupings of social services districts. [Except for districts noted as an exception in the market rate schedule,] [t]he rates established for a group apply to all districts in the designated group. The district groupings are as follows:

**CHILD CARE MARKET RATES**

Market rates are established in five groupings of social services districts as follows:

- Group 1: Nassau, Putnam, Rockland, Suffolk, Westchester
  - Group 2: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren
  - Group 3: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
  - Group 4: Albany, Dutchess, Orange, Ulster
  - Group 5: Bronx, Kings, New York, Queens, Richmond
- GROUP 1 COUNTIES:**  
Nassau, Putnam, Rockland, Suffolk, and Westchester  
**DAY CARE CENTER**

	AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$330	\$304	\$265	\$265
DAILY	\$59	\$52	\$42	\$40
PART-DAY	\$39	\$35	\$28	\$27
HOURLY	\$9.32	\$9.00	\$8.56	\$9.16

**REGISTERED FAMILY DAY CARE**  
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$270	\$263	\$250	\$250
DAILY	\$48	\$41	\$40	\$37
PART-DAY	\$32	\$27	\$27	\$25
HOURLY	\$10.00	\$10.00	\$9.00	\$9.00

GROUP FAMILY DAY CARE  
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$275	\$275	\$265	\$257
DAILY	\$50	\$50	\$50	\$50
PART-DAY	\$33	\$33	\$33	\$33
HOURLY	\$9.88	\$9.13	\$9.13	\$8.00

(Group 1 Counties)  
SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$265
DAILY	\$0	\$0	\$0	\$40
PART-DAY	\$0	\$0	\$0	\$27
HOURLY	\$0	\$0	\$0	\$9.16

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *STANDARD RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$176	\$171	\$163	\$163
DAILY	\$31	\$27	\$26	\$24
PART-DAY	\$21	\$18	\$17	\$16
HOURLY	\$6.50	\$6.50	\$5.85	\$5.85

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *ENHANCED RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$189	\$184	\$175	\$175
DAILY	\$34	\$29	\$28	\$26
PART-DAY	\$23	\$19	\$19	\$17
HOURLY	\$7.00	\$7.00	\$6.30	\$6.30

GROUP 2 COUNTIES:

Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$226	\$215	\$196	\$190
DAILY	\$48	\$45	\$40	\$35
PART-DAY	\$32	\$30	\$27	\$23
HOURLY	\$8.00	\$8.36	\$8.00	\$8.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$170	\$161	\$152	\$150
DAILY	\$35	\$32	\$30	\$30

PART-DAY	\$23	\$21	\$20	\$20
HOURLY	\$5.00	\$5.37	\$5.00	\$5.75

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$180	\$175	\$175	\$160
DAILY	\$36	\$35	\$35	\$34
PART-DAY	\$24	\$23	\$23	\$23
HOURLY	\$5.79	\$5.83	\$5.93	\$7.00

(Group 2 Counties)

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$190
DAILY	\$0	\$0	\$0	\$35
PART-DAY	\$0	\$0	\$0	\$23
HOURLY	\$0	\$0	\$0	\$8.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *STANDARD RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$111	\$105	\$99	\$98
DAILY	\$23	\$21	\$20	\$20
PART-DAY	\$15	\$14	\$13	\$13
HOURLY	\$3.25	\$3.49	\$3.25	\$3.74

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *ENHANCED RATE*

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$119	\$113	\$106	\$105
DAILY	\$25	\$22	\$21	\$21
PART-DAY	\$17	\$15	\$14	\$14
HOURLY	\$3.50	\$3.76	\$3.50	\$4.03

GROUP 3 COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$180	\$171	\$160	\$150
DAILY	\$40	\$37	\$34	\$31
PART-DAY	\$27	\$25	\$23	\$21
HOURLY	\$6.50	\$6.50	\$6.50	\$6.25

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$140	\$139	\$135	\$130
DAILY	\$30	\$30	\$30	\$30
PART-DAY	\$20	\$20	\$20	\$20

HOURLY \$4.00 \$3.88 \$3.50 \$4.00

GROUP FAMILY DAY CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$150	\$145	\$140	\$140
DAILY	\$33	\$31	\$30	\$30
PART-DAY	\$22	\$21	\$20	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$5.00

(Group 3 Counties)  
SCHOOL AGE CHILD CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$150
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$6.25

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *STANDARD RATE*  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$91	\$90	\$88	\$85
DAILY	\$20	\$20	\$20	\$20
PART-DAY	\$13	\$13	\$13	\$13
HOURLY	\$2.60	\$2.52	\$2.28	\$2.60

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *ENHANCED RATE*  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$98	\$97	\$95	\$91
DAILY	\$21	\$21	\$21	\$21
PART-DAY	\$14	\$14	\$14	\$14
HOURLY	\$2.80	\$2.72	\$2.45	\$2.80

GROUP 4 COUNTIES:  
Albany, Dutchess, Orange, and Ulster  
DAY CARE CENTER  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$241	\$223	\$205	\$200
DAILY	\$50	\$48	\$43	\$37
PART-DAY	\$33	\$32	\$29	\$25
HOURLY	\$8.24	\$7.90	\$7.62	\$7.00

REGISTERED FAMILY DAY CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$200	\$191	\$185	\$185
DAILY	\$44	\$40	\$38	\$38
PART-DAY	\$29	\$27	\$25	\$25
HOURLY	\$7.00	\$6.13	\$6.00	\$7.00

GROUP FAMILY DAY CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$200	\$191	\$185	\$185
DAILY	\$44	\$40	\$38	\$38
PART-DAY	\$29	\$27	\$25	\$25
HOURLY	\$7.00	\$6.13	\$6.00	\$7.00

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$220	\$200	\$195	\$195
DAILY	\$45	\$45	\$40	\$40
PART-DAY	\$30	\$30	\$27	\$27
HOURLY	\$8.00	\$7.22	\$8.00	\$7.25

(Group 4 Counties)  
SCHOOL AGE CHILD CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$200
DAILY	\$0	\$0	\$0	\$37
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *STANDARD RATE*  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$130	\$124	\$120	\$120
DAILY	\$29	\$26	\$25	\$25
PART-DAY	\$19	\$17	\$17	\$17
HOURLY	\$4.55	\$3.98	\$3.90	\$4.55

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME  
CHILD CARE *ENHANCED RATE*  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$140	\$134	\$130	\$130
DAILY	\$31	\$28	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.90	\$4.29	\$4.20	\$4.90

GROUP 5 COUNTIES:  
Bronx, Kings, New York, Queens, and Richmond  
DAY CARE CENTER  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$338	\$255	\$217	\$195
DAILY	\$53	\$47	\$40	\$35
PART-DAY	\$35	\$31	\$27	\$23
HOURLY	\$16.09	\$17.00	\$15.70	\$10.00

REGISTERED FAMILY DAY CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$150
DAILY	\$30	\$30	\$32	\$30
PART-DAY	\$20	\$20	\$21	\$20
HOURLY	\$16.00	\$11.11	\$13.20	\$13.06

GROUP FAMILY DAY CARE  
AGE OF CHILD

	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$194	\$181	\$175	\$160
DAILY	\$35	\$33	\$31	\$32
PART-DAY	\$23	\$22	\$21	\$21

HOURLY	\$18.14	\$15.65	\$12.83	\$18.00
(Group 5 Counties)				
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$195
DAILY	\$0	\$0	\$0	\$35
PART-DAY	\$0	\$0	\$0	\$23
HOURLY	\$0	\$0	\$0	\$10.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

AGE OF CHILD				
	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$104	\$98	\$98	\$98
DAILY	\$20	\$20	\$21	\$20
PART-DAY	\$13	\$13	\$14	\$13
HOURLY	\$10.40	\$7.22	\$8.58	\$8.49

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

AGE OF CHILD				
	Under 1 <sup>1/2</sup>	1 <sup>1/2</sup> -2	3-5	6-12
WEEKLY	\$112	\$105	\$105	\$105
DAILY	\$21	\$21	\$22	\$21
PART-DAY	\$14	\$14	\$15	\$14
HOURLY	\$11.20	\$7.78	\$9.24	\$9.14

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$338
DAILY	\$59
PART-DAY	\$39
HOURLY	\$18.14

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, N.Y. 12144, (518) 473-7793

**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:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care ser-

vices, and reporting requirements. OCFS is required to specify certain NYSSCBG requirements in regulation.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant.

Federal statute, 42 USC 9858(c)(4)(A), and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The State is required under the Federal Child Care and Development Fund to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2007 through September 30, 2009 and the proposed State Plan for the period October 1, 2009 through September 30, 2011 has been submitted for approval by the federal government. A current survey of providers was conducted in April and May of 2009. These regulations are needed to adjust existing rates that were established based on a survey done in 2007. Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties.

Decreases in the child care market rates reflect the market place and provide comparable access to those families in receipt of a child care subsidy as compared with families that do not receive a child care subsidy, which is required by federal and State laws.

In addition, this regulatory package includes the three provisions from the previous market rate stimulus regulatory package that was filed previously on an emergency basis on May 15, 2009 and was re-filed on August 13, 2009. The revised market rates that were in effect since August 13, 2009 are superseded by this filing.

The first provision is the exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 when determining the eligibility for social services programs. These regulations address the federal requirement that one time payments disbursed under the American Recovery and Reinvestment Act of 2009 to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits be excluded as income for determining eligibility for any programs in receipt of federal funds.

Second, social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment.

Third, some districts have indicated that, in these difficult economic times, more families could be served without a negative impact on family access to child care if the enhanced child care market rate for legally-exempt family and in-home child care providers was lowered. Currently, there are two child care market rates established for legally-exempt family and in-home child care providers. One, the enhanced market rate, based on a 75 percent differential applied to the child care market rates established for registered family day care. The 75 percent reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Two, the standard market rate, based on a 65 percent differential applied to the child care market rates established for registered family day care. The 65 percent applies to legally-exempt family and in-home child care providers that have not obtained ten hours of training annually. These regulations propose to establish the enhanced market rate for legally-exempt family and in-home providers at a 70 percent dif-

ferential applied to the child care market rates established for registered family day care. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up to 75 percent of the applicable registered family day care market rate. Further, a social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement.

#### 4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2009-2010, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant. This funding represented an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the adjusted market rates. Further, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

#### 5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

Social services districts will also be required to amend their existing Child and Family Services Plan to select the expanded categories of eligible families to include the parent/caretaker that is a dislocated worker participating in a training program in an employment field that currently is or is likely to be in demand in the near future, if social services districts so desire. In addition, social services districts would also be required to amend their existing Child and Family Services Plans to increase the enhanced market rate for legally-exempt providers of family child care or in-home child care to 75 percent of the registered family child care rate, if social services districts so desire.

#### 6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

#### 7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

#### 8. Alternatives:

The adjustments in rates set forth in the regulations are required to implement the federal and State statutory and regulatory mandates; there are no other alternatives because every other alternative would violate federal and State statutory and regulatory mandates.

There are also no other viable alternatives to the child care stimulus provisions included in this regulatory filing. The only alternative to those provisions would be to not expand the delivery of child care services to needy families. This would adversely impact federal and State initiatives to support needy families affected by the recession and to stimulate the economy.

#### 9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

#### 10. Compliance schedule:

These provisions must be implemented effective on October 1, 2009.

### **Regulatory Flexibility Analysis**

#### 1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 56,000 informal providers that may provide child care services to families receiving a child care subsidy.

#### 2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

Social services districts will also be required to amend their existing Child and Family Services Plans to select the expanded categories of eligible families to include the parent/caretaker that is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. In addition, social services districts would also be required to amend their existing Child and Family Services Plan to increase the enhanced market rate for legally-exempt providers of family child care or in-home child care to 75 percent of the registered family child care rate, if social services districts so desire.

#### 3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

#### 4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2009-10, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant, an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Social services districts will be required to provide the subsidies on behalf of the parent for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency, at the enhanced rate of seventy percent (70%) of the family child care rate. Districts do have the option to pay seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by the legally-exempt caregiver enrollment agency, if the district selects this option in its Children and Family Services Plan. In addition, a social services district has the option, if it so chooses in the child care portion of its child and family services plan, to increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 related to the determination of eligibility for social services programs, which receive federal funds, will not require any additional compliance costs to implement.

Social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment. Social services districts may use the already allocated block grant funds to serve this optional category of families, if social services districts so desire.

#### 5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

#### 6. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,020 licensed and registered child care providers so that it was representative throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

The regulations recognize that there may be differences in the needs among districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

#### 7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 5,020 providers and that information formed the basis for the updated market rates.

The regulatory changes were discussed with a workgroup of local districts, including rural districts, for advice on potential impact.

#### **Rural Area Flexibility Analysis**

##### 1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the appropriate market rate. Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 to the determination of eligibility for social services programs, which receive federal funds, will not place any additional compliance requirements on social services districts.

Social services districts that choose to serve the optional eligibility categories of families to serve families where the parent/caretaker is a dislocated worker participating in a program to train workers in an employment field that is currently or is likely to be in demand in the near future will be required to amend the district's current Child and Family Services Plan.

A district will be required to provide subsidies on behalf of the parents for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as long as such providers are approved by the appropriate legally-exempt caregiver enrollment agencies, for the enhanced rate; or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, at the rate of seventy percent (70%) of the family child care rate. A district has the option to pay seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by an enrollment agency, if the district selects this option in its Child and Family Services Plan.

##### 3. Costs:

Under the State Budget for SFY 2009-2010, social services districts received their allocations of \$736,036,409 in federal and State funds under the New York State Child Care Block Grant, an increase of \$11.9 million from the base amount allocated to districts for SFY 2008-09. These increases in funding are available to cover any increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts have the option to transfer a portion of

their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

The exclusion of the one time payment of \$250 under the American Recovery and Reinvestment Act of 2009 to the determination of eligibility for social services programs, which receive federal funds, will not require add any additional compliance costs to implement. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent up to 75 percent, if social services districts select this option.

#### 4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,020 licensed and registered child care providers so that it was representative throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties. Decreases in the child care market rates reflect the market place and provides access comparable to those families not receiving a child care subsidy to that received by families that do not receive a child care subsidy as required by federal and State laws. The adjustments in the rates will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

The market rates for legally-exempt family child care and in-home child care were established based on a 65 percent differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family and in-home child care providers is based on a 70 percent differential applied to the child care market rates established for registered family day care. The 70 percent reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, which so choose in their Child and Family Services Plans, to increase the enhanced market rate to up to 75 percent of the applicable registered family day care market rate.

The regulations recognize that there may be differences in the needs among districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities. Social services districts have the option to serve families in which the parent/caretaker is a dislocated worker and is participating in a training program in an employment field that currently is or is likely to be in demand in the near future. Social services districts may choose to serve these families to provide safe, affordable child care to enable these parents/caretakers to be trained in various skills and rejoin the workforce in new employment.

#### 5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of

regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 5,020 providers and that information formed the basis for the updated market rates.

The regulatory changes were also discussed with a workgroup of local districts, including rural districts, for advice on potential impact.

#### Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

Adjustments to the child care market rates reflect both increases and decreases. Decreases in the child care market rates reflect the market place and OCFS believes that they are not substantial enough to cause the loss of jobs in child care programs.

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

#### Parent Advocate Regulations

I.D. No. CFS-21-10-00007-P

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

**Proposed Action:** Addition of section 441.2(o) and amendment of section 441.21(b) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 34(3)(f)

**Subject:** Parent Advocate Regulations.

**Purpose:** Expand the category of individuals who may be used to complete casework contact requirements.

**Text of proposed rule:** Subdivision (o) of section 441.2 is added to read as follows:

(o) *Parent advocate means a person who has previously been a recipient of child welfare services, has successfully addressed the issues which brought the family to the attention of child welfare, has been reunified with his or her children, if applicable, and has subsequently been trained as a parent advocate to work within the child welfare system. A parent advocate is employed by or under contract with an authorized agency, or is employed by an agency that is under contract with an authorized agency, for the purpose of providing support and advocacy to parent(s) or relative(s) through a variety of activities, including, but not limited to, engaging parent(s) or relatives(s) and assisting them to understand the child welfare and family court process; attending case conferences; coaching for productive visitation between parents and their children in foster care; accompanying parent(s) or relative(s) to court, school, public benefits offices, and health centers; assisting parent(s) in advocating for themselves; providing assistance in accessing community services; facilitating appointments; and working as a liaison between parent(s) or relative(s), caseworkers, foster parents, and other service providers.*

#### § 441.21 Casework Contacts

Paragraphs (1) and (2) of subdivision (b) of section 441.21 are amended to read as follows:

(b) Casework contact with parent or relatives. (1) Casework contacts with the child's parents or relatives is defined as individual or group face-to-face contacts between *one or more* of the [case planner, or assigned caseworker, as directed by the case planner, or the case manager] *persons listed in subparagraph (i) of this paragraph* and the child's parents or relatives. *Casework contacts are for the purpose of assessing whether the child would be safe if he or she was to return home, and the potential for future risk of abuse or maltreatment if he or she was to return home. Such contacts are also for the purpose of guiding the child's parents or relatives towards a course of action aimed at resolving problems or needs of a social, emotional, developmental or economic nature that are contributing to the reason(s) why such child is in foster care. In the case of children with the permanency planning goal of another planned living arrangement with a permanency resource or adult residential care, such contacts are for the purpose of mobilizing and encouraging family support of the youth's efforts to function independently, and to increase his/her capacity to be self-maintaining; evaluating the ability of the parents or relatives to establish or reestablish a connection with the youth and serve as a resource to the youth; and, where appropriate, encouraging an ongoing relationship*

between the parents or relatives and the youth. For purposes of this section, a case planner is defined as the person who is responsible for assessing the need for, providing or arranging for, coordinating and evaluating the provision of services to children in foster care and services to parents of children in foster care and such additional responsibilities as set forth in section 428.2(c) of this Title.

(i) *For the purposes of this section, casework contacts must be made by the following:*

(a) *the case manager;*

(b) *the case planner;*

(c) *a caseworker assigned to the case, as directed by the case planner; or*

(d) *a parent advocate as defined in section 441.2(o) of this Part.*

(ii) *A parent advocate may be considered for the purpose of making casework contacts with the child's parent or relatives, as defined in subdivision (b) of this section, when the contacts are directed, arranged, or otherwise coordinated by the case planner. A parent advocate providing casework contacts is permitted access to such child's foster care case file only if the parent advocate is employed by or under contract with an authorized agency, or employed by an agency under contract with an authorized agency, as defined in section 441.2(d) of the Part. Casework contacts between a parent advocate and the child's parent or relative can be made for the purposes set forth in section 441.21(b)(1), except that they can not be used for the purposes of assessing whether the child would be safe if he or she was to return home, or the potential for future risk of abuse or maltreatment if he or she was to return home. The case planner is responsible for all assessments and case planning decisions; however, the parent advocate may be asked to provide their input. Parent advocates will be trained in risk and safety assessment, and parent advocates need to be prepared to provide any feedback to the case planner regarding any safety and risk issues they discover during case work contacts. Casework contacts made by a parent advocate must be recorded in accordance with Parts 428 and 466 of this Title.*

(2) Frequency of casework contacts with parents or relatives.

(i) During the first 30 days of placement, casework contacts are to be held with the child's parents or relatives as often as is necessary but at a minimum, must occur at least twice unless compelling reasons are documented why such contacts are not possible. *Such initial casework contacts within 30 days of placement must be made by the case manager, the case planner or a caseworker assigned to the case, as directed by the case planner.*

(ii) After the first 30 days of placement, casework contacts are to be held with the child's parents or relatives at least once every month unless compelling reasons are documented why such contacts are not possible. *Such monthly casework contacts made after the first 30 days of placement must be made by one of the persons set forth in subparagraph (i) of paragraph (1) of this subdivision.*

(a) *No more than two of the monthly casework contacts in any six-month period may be made by a parent advocate.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory authority

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to promulgate regulations for the administration of public assistance and care within the state.

##### 2. Legislative objectives

Executive Order No. 17, which was signed in April 2009, establishes measures to evaluate costs of mandates on local governments. The proposed regulations are supported by the legislative objectives to offer mandate relief to local departments of social services by allowing flexibility in the casework contact requirements for parents and relatives of children in foster care.

##### 3. Needs and benefits

The proposed regulations would expand the category of individuals that a social service district or a voluntary authorized agency could utilize to complete the casework contact requirements with parents or relatives of children currently in foster care to include parent advocates under certain circumstances. Casework contact requirements are set forth under 18

NYCRR 442.21(b). The proposed regulations are in response to a request for flexibility in the casework contact requirements by a community agency and support for this request by some child welfare officials and local departments of social service.

The Office of Children and Family Services recognizes the importance of utilizing parent advocates in child welfare cases. In November of 2008, OCFS released an INF (08-OCFS-INF-14) titled Parent Advocate Programs, which provided information to local departments of social services and voluntary authorized agencies regarding the usage of parent advocates. Parent advocate programs employ parents who were previously recipients of child welfare services, and who have successfully addressed the issues which brought them to the attention of child welfare, as advocates to assist other families that are involved in the child welfare system. Several agencies within New York State currently have parent advocate programs and it appears these types of programs can be a valuable resource in the delivery of child welfare services.

Under the current 18 NYCRR 441.21, casework contacts with parents or relatives of children in foster care are limited to being with the case planner, caseworker or case manager. The primary purposes of these contacts are to assess whether the child would be safe if returned home and the potential future risk of abuse or maltreatment if the child returned home, to assist the parent or relative with resolving the issues that led to the child being placed, and to encourage positive supportive relationships between parents and relatives and children who have a goal of another planned living arrangement. The ability of a social services district or a voluntary authorized agency to employ the services of persons other than the case manager, case planner or case worker to make casework contacts in child welfare cases is currently available for preventive services under 18 NYCRR 423.4. That regulation allows the completion of casework contacts by other supportive service providers, including parent aide/training services, for two out of the contacts required in a six month period if arranged or coordinated by the case planner. The proposed regulations would add a definition of parent advocate to 18 NYCRR 441.2. A parent advocate would be defined as a person who had been a recipient of child welfare services, had successfully addressed issues that brought the parent advocate to the attention of child welfare and had been successfully trained as a parent advocate. Such person would be either an employee or under contract with a social services district or a voluntary authorized agency to provide support and advocacy to a parent or relative of a child in foster care.

Parents who have experienced child welfare intervention first-hand have a different perspective and can offer a unique type of support to other parents or relatives who are currently experiencing similar kinds of situations. Individuals who have had experience as clients of the child welfare system and have successfully addressed the issues which brought them into contact with the system possess a wealth of knowledge and understanding of how the child welfare system functions and can also serve as a positive role model for families trying to achieve reunification. These advocates are able to add credibility because they speak from their own real experiences rather than explaining how the system is "supposed to" work. For these reasons, parent advocates are often able to engage families in the provision of services and have successful interactions within the child welfare system.

The proposed regulations would amend 18 NYCRR 441.21 to allow those persons who meet the definition of parent advocate, as described earlier in this section, to complete a limited number of casework contacts with the parents or relatives of children placed in foster care, with the exception of the assessment of whether the child would be safe if returned home or the potential risk for future abuse or maltreatment if the child was returned home. Such safety and risk assessments must be made by the case planner. The initial casework contacts with the parent or relative would still have to be made either by the case manager, case planner or case worker. The proposed regulations would allow up to two monthly casework contacts by a parent advocate during a six month period to count towards the casework contact requirements set forth in 18 NYCRR 441.21, as noted above.

The proposed regulations would allow social service districts and voluntary authorized agencies to count contacts currently being made by parent advocates, or to start utilizing parent advocates to conduct casework contacts with parents or relatives, as a limited number of the required casework contacts. This change would further support the use of parent advocates by local districts and voluntary authorized agencies, and could reduce overall costs of providing casework contacts without reducing the quality of care provided.

#### 4. Costs

The proposed regulatory amendments have no fiscal impact on the Office of Children and Family Services. If local department of social services and voluntary authorized agencies chose to utilize parent advocates, it could offer a workload relief in regards to fulfilling the caseworker contact requirements.

#### 5. Local government mandates

There are no additional mandates imposed on local governments as a result of the proposed regulations. Social service districts could choose whether or not to take advantage of the increased flexibility to use parent advocates to conduct a limited number of casework contacts with parents or relatives of children in foster care based on the particular case circumstances.

#### 6. Paperwork

No new paperwork is required by the proposed regulations. The casework contacts made by parent advocates would be recorded in the New York's statewide automated child welfare information system, CONNECTIONS.

#### 7. Duplication

The proposed regulations do not duplicate other state or federal requirements. These amendments provide social service districts and voluntary authorized agencies with added flexibility regarding those individuals who are allowed to conduct casework contacts with parents or relatives of children in foster care.

#### 8. Alternative approaches

No alternative approaches were considered. In order to allow the flexibility that would be created by the proposed regulations, this regulatory amendment would be necessary.

#### 9. Federal standards

There are no federal standards dealing with casework contact with parents or relatives of children in foster care.

#### 10. Compliance schedule

The provisions contained in the proposed regulations could be utilized by a social service district or voluntary authorized agency immediately upon adoption.

### **Regulatory Flexibility Analysis**

#### 1. Effect on Small Businesses and Local Governments

Social service districts and voluntary authorized agencies contracted with by social service districts to provide foster care to children, will or may be affected by the proposed regulations. There are 58 social service districts and approximately 160 voluntary authorized agencies. However, the proposed regulations are permissive, and not mandatory; therefore would not affect those agencies that choose to not utilize the new provisions.

#### 2. Compliance Requirements

There are no additional mandates imposed by the proposed regulations. These amendments allow for the expansion of the individuals who can conduct casework contacts for parents or relatives of children in foster care to include parent advocates. The proposed regulations do not require any social services district or voluntary authorized agency to take advantage of the added flexibility and use these changes to the casework contact requirements for parents and relatives.

#### 3. Professional Services

The proposed regulations do not create the need for additional professional services.

#### 4. Compliance Costs

The proposed regulatory amendments have no fiscal impact on the Office of Children and Family Services. If local department of social services and voluntary authorized agencies chose to utilize parent advocates, it could offer a workload relief in regards to fulfilling the caseworker contact requirements.

#### 5. Economic and Technological Feasibility

The proposed regulations will not impose any additional economic or technological burdens on social services districts or voluntary authorized agencies.

#### 6. Minimizing Adverse Impact

It is not anticipated that the proposed regulations will result in any adverse impact on local government agencies or small businesses.

#### 7. Small Business and Local Government Participation

Several social services districts and voluntary authorized agencies, as well as other community organizations, have been involved in discussions regarding this proposed amendment. A draft of the proposed regulations was shared, and recommended changes were incorporated into this proposal.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated number of rural areas

The proposed regulations will or may affect the 44 social services districts that are in rural areas, along with approximately 100 voluntary authorized agencies that contract with districts to provide foster care.

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

The proposed regulations will not create any new reporting or other compliance requirements. The proposed changes will allow for an expansion of the individuals who are allowed to conduct a limited number of casework contacts with parents and relatives of children in foster care to

include parent advocates. The proposed regulations do not, however, require any social services district or voluntary authorized agency to take advantage of this added flexibility when conducting casework contacts.

### 3. Costs

The proposed regulatory amendments have no fiscal impact on the Office of Children and Family Services. If local department of social services and voluntary authorized agencies chose to utilize parent advocates, it could offer a workload relief in regards to fulfilling the caseworker contact requirements.

### 4. Minimizing adverse impact

The proposed regulations will not result in any adverse impact upon small businesses or social service districts in rural areas.

### 5. Rural area participation

Several local social services districts and voluntary authorized agencies, as well as other community organizations, have been involved in discussions regarding this proposed amendment. A draft of the proposed regulations was shared, and recommended changes were incorporated into this proposal.

### Job Impact Statement

A full job impact statement has not been prepared for the proposed amendments to regulation. The proposed amendments would not result in the loss or creation of any jobs.

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## Department of Civil Service

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

#### Jurisdictional Classification

**I.D. No.** CVS-21-10-00001-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "State Insurance Fund," by increasing the number of positions of Supervising Insurance Field Investigator from 3 to 4.

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

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

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

#### Regulatory Impact Statement

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

#### Regulatory Flexibility Analysis

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

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

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

#### Jurisdictional Classification

**I.D. No.** CVS-21-10-00002-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by increasing the number of positions of Deputy Director from 1 to 2.

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

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

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

#### Regulatory Impact Statement

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

#### Regulatory Flexibility Analysis

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

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

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

#### Jurisdictional Classification

**I.D. No.** CVS-21-10-00012-P

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

**Proposed Action:** Amendment of Appendix 3 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the labor class.

**Text of proposed rule:** Amend Appendix 3 of the Rules for the Classified Service, listing positions in the labor class, in the County Service of Westchester County, by adding thereto the following position:

Student Workers (in the Department of Health)

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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## Higher Education Services Corporation

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### NOTICE OF ADOPTION

**Administration of Student Financial Aid Application Processing**

**I.D. No.** ESC-12-10-00009-A

**Filing No.** 515

**Filing Date:** 2010-05-11

**Effective Date:** 2010-05-26

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

**Action taken:** Amendment of section 2201.1(a) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 652, 653, 655 and 661

**Subject:** Administration of student financial aid application processing.

**Purpose:** To adopt the federal financial aid deadline for submission of applications and delete outdated language.

**Text or summary was published** in the March 24, 2010 issue of the Register, I.D. No. ESC-12-10-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** George M. Kazanjian, Senior Attorney, New York State Higher Education Services Corporation, 99 Washington Avenue, Room #1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

**Assessment of Public Comment**

The agency received no public comment.

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## Insurance Department

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### EMERGENCY RULE MAKING

**Workers' Compensation Insurance Rates: Reserves for Special Disability Fund Claims**

**I.D. No.** INS-21-10-00008-E

**Filing No.** 507

**Filing Date:** 2010-05-10

**Effective Date:** 2010-05-10

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

**Action taken:** Amendment of Part 151 (Regulation 119) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1303 and 4117; Workers' Compensation Law, section 32

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

**Specific reasons underlying the finding of necessity:** Workers' Compensation Law ("WCL") Section 32 permits the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the Special Disability Fund ("SDF"). Furthermore, no insurer, self-insured employer, or the State Insurance Fund ("SIF") may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL Section 32. This regulation establishes the required reserve standards.

Presently, the SDF reimburses carriers for all payments properly paid in accordance with Workers' Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a "permanent physical impairment" incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee's death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on private insurance carriers, self-insured employers (including political sub-divisions), group self-insurers, and SIF. The combination of increasing requests for reimbursement from the SDF, as well as the SDF's assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

The Legislature enacted Chapter 6 of the Laws of 2007, which amended Section 15(8)(h) of the Workers' Compensation Law, in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amends Section 32(i) of the Workers' Compensation Law to permit the chair of the New York State Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the SDF. Furthermore, Section 32(i)(5) mandates that no carrier, self insured employer, or SIF may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent. This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of any claims.

The Waiver Agreement Management Office (WAMO), acting on behalf of the Workers' Compensation Board, will enter into waiver agreements with insurers, self-insured employers, and SIF whereby those parties agree to assume the liability for, management, administration or settlement of claims. In consideration of the assumption of those obligations, the insurer, self-insured employer, or SIF will receive a lump-sum payment from WAMO. WAMO will also negotiate and execute other waiver agreements (i.e., the retail/individual waiver agreements) contemplated by the regulation.

The New York State Dormitory Authority will be issuing tax exempt revenue bonds beginning in November, 2009, to fund the waiver agreements to be entered into by WAMO. This regulation must be in place before that time so that insurers (one of the parties to wholesale waiver agreements) will be able to enter into waiver agreements with WAMO. Nor will self-insured employers or the SIF be in a position to execute waiver agreements with WAMO until such time as this regulation is in place.

The rapid depopulation of the SDF through the waiver agreements will lead to a decrease the SDF assessments that New York State insurers and employers must pay. This regulation was previously promulgated on an emergency basis on November 18, 2009 and promulgated again on an emergency basis on February 10, 2010. For the reasons stated above, the

rule must be kept in effect on an emergency basis for the furtherance of the general welfare.

**Subject:** WORKERS' COMPENSATION INSURANCE RATES: Reserves for Special Disability Fund Claims.

**Purpose:** This regulation requires reserves to be established for those claims subject to reimbursement by the Special Disability Fund.

**Text of emergency rule:** A new subpart 151-4 is added to read as follows:  
Section 151-4.1 Preamble.

*The Special Disability Fund ("SDF") reimburses carriers and self-insured employers for all payments properly paid in accordance with Workers' Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a "permanent physical impairment" incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee's death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).*

*The SDF funds its operations and claims payments by making annual assessments on insurers writing workers compensation insurance in New York, self-insured employers (including political sub-divisions), group self-insurers, and the State Insurance Fund. The combination of increasing requests for reimbursement from SDF, as well as the SDF's assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.*

*The Legislature enacted Chapter 6 of the Laws of 2007, which amended Workers' Compensation Law Section 15(8)(h), in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amends Workers' Compensation Law section 32(i) to permit the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the special disability fund. Furthermore, Workers' Compensation Law section 32(i)(5) mandates that no carrier, self insured employer, or the State Insurance Fund may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. This purpose of this subpart is to ensure that an insurer, self-insured employer, or State Insurance Fund does not over-reserve for claims if it voluntarily assumes the liability for, or management, administration or settlement.*

*Section 151-4.2 Definitions.*

*Waiver agreement, in this subpart, means any agreement entered into between an insurer, self-insured employer, or the State Insurance Fund and the New York State Workers' Compensation Board pursuant to Workers' Compensation Law sections 32(i)(2) and (3).*

*Section 151-4.3 Reserve Amounts.*

*(a) An insurer other than the State Insurance Fund that enters into a waiver agreement shall establish reserves for those claims in accordance with Insurance Law sections 1303 and 4117(d).*

*(b) The State Insurance Fund or a self-insured employer holding reserves that enters into a waiver agreement shall establish reserves for those claims in accordance with the principles set forth in Insurance Law sections 1303 and 4117(d).*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 7, 2010.

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

#### **Regulatory Impact Statement**

1. Statutory authority: The Superintendent's authority for the promulgation of Part 151-4 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 119) derives from Sections 201, 301, 1303, and 4117 of the Insurance Law, and Section 32 of the Workers' Compensation Law ("WCL"). These provisions establish the Superintendent's authority to establish the amount of reserves

an insurer, self-insured employer, or the State Insurance Fund ("SIF") may hold for claims for which the entity has waived its right to reimbursement from the Special Disability Fund ("SDF"), and for which it has assumed the liability, management, administration, or settlement.

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

Section 1303 of the Insurance Law requires every insurer to maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims.

Section 4117(d) of the Insurance Law sets forth the minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance.

Section 32 of the Workers' Compensation Law permits the chair of the workers' compensation board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the SDF. Furthermore, no carrier, self insured employer, or the State Insurance Fund ("SIF") may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent.

2. Legislative objectives: The SDF reimburses carriers for all payments properly paid in accordance with Workers' Compensation Law Sections 15(8) and 14(6). Specifically, where an employee with a "permanent physical impairment" incurs a subsequent disability as a result of a work-related injury or occupational disease that results in a permanent disability caused by both conditions combined, to a degree greater than what would have resulted from the second injury or occupational disease alone, the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 260 weeks of disability. If the employee suffered the second injury before August 1, 1994, then the employer or carrier is reimbursed from the SDF for all benefits incurred after the first 104 weeks of the second injury. Further, if the second injury results in the employee's death, which would not have occurred except for the pre-existing permanent physical impairment, the employer or carrier is entitled to be reimbursed from the SDF for all benefits payable in excess of 260 weeks (or 104 weeks for accidents or disablements before August 1, 1994).

The SDF funds its operations and claims payments by making annual assessments on private insurance carriers, self-insured employers (including political sub-divisions), group self-insurers, and SIF. The combination of increasing requests for reimbursement from the SDF, as well as the SDF's assessment funding mechanism, has resulted in a burden on New York State insurers and employers. In fact, assessments on insurers have increased by nearly 160% from 1999 to 2008, resulting in increased premium charges to employers.

As a result, the Legislature enacted Chapter 6 of the Laws of 2007, which amended Section 15(8)(h) of the Workers' Compensation Law, in order to close the SDF to claims for reimbursement for injuries or illnesses occurring on or after July 1, 2007, and to mandate that all claims for reimbursement be filed with the SDF prior to July 10, 2010. The legislation also amended Section 32(i) of the Workers' Compensation Law to permit the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and management, administration or settlement of all or a portion of the claims in the special disability fund. Furthermore, Section 32(i)(5) mandates that no carrier, self insured employer, or SIF may assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent. This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of any claims.

3. Needs and benefits: This regulation requires an insurer, self-insured employer, or SIF to establish reserves for those claims subject to reimbursement by the SDF in accordance with Insurance Law Sections 1303 and 4117(d), thereby ensuring that insurers, self-insured employers, or SIF do not over-reserve for claims for which they have directly assumed the liability, management, administration, or settlement. Insurance Law Section 1303 states that all insurers must maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of the statement, whether reported or unreported, which are unpaid as of such date and for which such insurer may be liable, and also reserves in an amount estimated to provide for the expenses of adjustment or settlement of such losses or claims. In turn, Insurance Law Section 4117(d) sets forth the minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance.

4. Costs: Participation in the program is voluntary. If an insurer, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse cost impact on those entities that do choose to participate in the program.

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

6. Paperwork: This regulation requires no new paperwork. Insurers, self-insured employers and SIF already administer the claims for second injuries. However, by assuming the liability, management, administration, and settlement directly, these insurers, self-insured employers, or SIF would no longer be reimbursed by the SDF, and thereby reduce their paperwork.

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

8. Alternatives: The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL Section 32(i)(5). Reserving in accordance with Insurance Law Sections 1303 and 4117(d) will ensure that insurers that assume the liability, management, administration, and settlement of claims for which they were previously reimbursed by the SDF do not over-reserve for those claims. Nor would reserving in accordance with these sections result in inadequate reserves for those claims.

SIF and self-insured employers currently are not subject to the standards set forth in Insurance Law Sections 1303 and 4117(d). However, because the Workers' Compensation Law mandates the Superintendent to set reserve standards for those two types of entities, this regulation requires SIF and self-insured employers to hold reserves in accordance with the principles set forth in Insurance Law Sections 1303 and 4117(d).

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

10. Compliance schedule: Insurers, self-insured employers, or SIF, if they choose to assume the liability for, or management, administration or settlement of any claims, will be expected to demonstrate compliance with the reserve standards established by this regulation immediately upon entering into a waiver agreement.

#### **Regulatory Flexibility Analysis**

##### **1. Small businesses:**

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

This regulation applies to all workers' compensation insurers authorized to do business in New York State, self-insureds, and the State Insurance Fund ("SIF"). This regulation ensures that insurers, self-insured employers, and SIF do not over-reserve for claims if they voluntarily assume the liability for, or management, administration or settlement of those claims from the Workers' Compensation Special Disability Fund ("SDF") by requiring those entities to reserve in accordance with Insurance Law Sections 1303 and 4117(d).

The basis for this finding is that this rule is directed at workers' compensation insurers authorized to do business in New York State, none of which falls within the definition of "small business" as found in Section 102(8) of the State Administrative Procedure Act ("SAPA"). The Insurance Department has monitored Annual Statements and Reports on Examination of authorized workers' compensation insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees. Nor does SIF, which is also effected by the regulation, come within the definition of "small business" found in SAPA Section 102(8).

The prerequisites maintained by the Workers' Compensation Board for an employer to be self-insured make it highly unlikely that any small businesses, as defined by SAPA Section 102(8), are in fact self-insured. All of the currently self-insured employers have high credit scores and payrolls equal to or greater than \$732,000. Moreover, all self-insured employers must post a security deposit with the Workers' Compensation Board of at least \$935,000 or provide a letter of credit for the required amount of security. These qualifications, among others, preclude the overwhelming majority of small employers from becoming self-insured.

In any event, this rule is applicable only if a workers' compensation insurer, self-insured employer, or SIF voluntarily chooses to enter into waiver agreement. If an insurer, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration

of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse impact on those entities that do choose to participate in the program.

##### **2. Local governments:**

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

#### **Rural Area Flexibility Analysis**

##### **1. Types and estimated numbers of rural areas:**

This regulation applies to all workers' compensation insurers authorized to do business in New York State, self-insureds, and the State Insurance Fund ("SIF"). These entities do business throughout New York State, including rural areas as defined under State Administrative Procedure Act ("SAPA") Section 102(10).

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

This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers, self-insured employers, and SIF already administer the claims from a claims management perspective. If anything, they would have a reduction in paperwork because the reimbursement process would no longer be necessary.

##### **3. Costs:**

To insurers: Participation in the program is voluntary. If a carrier, self-insured employer or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse cost impact on those entities that do choose to participate in the program.

##### **4. Minimizing adverse impact:**

Participation in the program is voluntary. If a carrier, self-insured employer, or SIF chooses to assume the liability for, or management, administration or settlement of any claims for which they were previously reimbursed by the SDF, there will be costs associated with the undertaking. However, in consideration of the undertaking, the insurer, self-insured employers, or SIF will receive a lump-sum payment from the Waiver Agreement Management Office. Consequently, there will be no adverse impact on those entities that do choose to participate in the program.

##### **5. Rural area participation:**

The legislature in 2007 amended Workers' Compensation Law Section 32(i)(5) was amended to mandate that an insurer, self insured employer, or SIF may not assume the liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Insurance. In order for the mechanism contemplated by the statute to operate, the Superintendent must promulgate a regulation establishing reserve standards.

The entities covered by this regulation - workers' compensation insurers authorized to do business in New York State, self-insured employers, and SIF - do business in every county in this state, including rural areas as defined under SAPA Section 102(10). This regulation mandates that insurers should set reserves in accordance with Insurance Law Sections 1303 and 4117(d), and that self-insureds and SIF should set reserves in accordance with the principles set forth in Insurance Law Sections 1303 and 4117(d). The regulation contains no provisions that create impacts unique to rural areas of the state.

#### **Job Impact Statement**

This rule will not adversely impact job or employment opportunities in New York. The rule mandates that insurers must set reserves in accordance with Insurance Law Sections 1303 and 4117(d), and that self-insureds and the State Insurance Fund should set reserves in accordance with the principles set forth in Insurance Law Sections 1303 and 4117(d). The insurer's existing personnel should be able to perform this task. There should be no region in New York which would experience an adverse impact on jobs and employment opportunities. This regulation should not have a measurable impact on self-employment opportunities.

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## Office of Mental Health

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

#### Operation of Psychiatric Inpatient Units of General Hospitals and Operation of Hospitals for Persons with Mental Illness

I.D. No. OMH-21-10-00010-P

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

**Proposed Action:** Amendment of Parts 580 and 582 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, arts. 7 and 31

**Subject:** Operation of Psychiatric Inpatient Units of General Hospitals and Operation of Hospitals for Persons with Mental Illness.

**Purpose:** To update provisions that reflect outdated statutory references, nomenclature, practices or principles.

**Substance of proposed rule (Full text is posted at the following State website: [www.omh.state.ny.us](http://www.omh.state.ny.us)):** Summary

This rule will amend 14 NYCRR Part 580, Operation of Psychiatric Inpatient Units of General Hospitals, and 14 NYCRR Part 582, Operation of Hospitals for the Mentally Ill, by providing greater accuracy and clarity to providers of mental health services with respect to the standards under which they are expected to operate.

#### Overview

Currently, Part 580, which governs psychiatric inpatient units of general hospitals, and Part 582, which pertains to freestanding hospitals for persons with mental illness, are outdated. They do not reflect current statutory citations or amendments made over the past ten years, nor do they clearly convey the expectations of the Office of Mental Health with respect to current standards and operating practices.

#### Requirements

Provisions regarding the commingling of minors under the age of 18 and adults have been added, as have rules regarding implementing criminal history record checks in accordance with 14 NYCRR Part 550 (for Part 582 programs only, consistent with Mental Hygiene Law Section 31.35) and incident management procedures in accordance with 14 NYCRR Part 524. Appropriate references to program notification obligations under Mental Hygiene Law Section 33.23 ("Jonathan's Law") have been added. Consistent with Chapter 323 of the Laws of 2008, the definitions of "abused child in residential care" and "neglected child in residential care" have been amended. A new Section on "Premises" has been added to both Parts. This Section includes subdivisions relating to Safety, Code Compliance, Construction Standards, Provisions for Unplanned Events and Electroconvulsive Therapy. Changes have been included which reflect "person first" language. No longer is the terminology "mentally ill" used when referencing persons with mental illness. A person-first approach to language is much more respectful and courteous to others. In addition, other modifications have been made to reflect current nomenclature. Finally, references to sections of the Mental Hygiene Law or implementing regulations that have been repealed have been deleted and replaced.

**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: [cocbjdd@omh.state.ny.us](mailto:cocbjdd@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.

#### Regulatory Impact Statement

1. Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Chapter 323 of the Laws of 2008 created a new Section 412-a of the Social Services Law to amend the definitions of "abused child in residential care" and "neglected child in residential care."

3. Needs and Benefits: The regulations governing psychiatric inpatient units of general hospitals (14 NYCRR Part 580), and freestanding hospitals for persons with mental illness (14 NYCRR Part 582), are

significantly outdated. They do not reflect current statutory citations or amendments made over the past ten years with respect to criminal history background checks, child abuse and neglect definitions, incident notification, or other applicable statutes. Furthermore, these regulations use outdated lexicon, contain several procedural requirements that have not been applicable for a number of years, and do not accurately reflect expectations with regard to service provision in these facilities.

#### 4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: No increased paperwork is anticipated as a result of the amendments to Parts 580 and 582.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. Since inaction would perpetuate the regulations' outdated references, as well as other outdated rules or practices, that alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendments are effective immediately.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any new reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed amendments to 14 NYCRR Parts 580 and 582 merely update provisions that reflect outdated statutory references, nomenclature, practices or principles. There will be no adverse economic impact on small businesses or local governments.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules will not impose any adverse economic impact on rural areas, nor will they impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed amendments to 14 NYCRR Parts 580 and 582 merely update provisions that reflect outdated statutory references, nomenclature, practices or principles.

#### Job Impact Statement

A Job Impact statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have no impact on jobs and employment opportunities.

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## Office of Mental Retardation and Developmental Disabilities

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### NOTICE OF ADOPTION

#### Revision of the Reimbursement Methodology Related to Allowable Costs of Ownership of Real Property

I.D. No. MRD-10-10-00009-A

Filing No. 516

Filing Date: 2010-05-11

Effective Date: 2010-06-01

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

**Action taken:** Amendment of sections 635-6.4, 635-99.1, 680.12 and 686.13 of Title 14 NYCRR.

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

**Subject:** Revision of the reimbursement methodology related to allowable costs of ownership of real property.

**Purpose:** To simplify payment of property costs and synchronize reimbursement with providers' payment obligations based on debt service.

**Text of final rule:** Section 635-6.4 is amended as follows:

Section 635-6.4 - Costs of ownership of real property.

(a) Unless specifically otherwise provided for in this Title, costs of ownership of real property shall be allowable in the amount of depreciation, interest, *costs of alteration, construction, rehabilitation and/or renovation to real property*, and costs attributable to the negotiation or settlement of sale or purchase of real property[, or in the amount of] *in cases where:*

(1) OMRDD and the Division of the Budget first approved the property costs before June 1, 2010; or

(2) OMRDD and the Division of the Budget first approved the property costs on or after June 1, 2010, but the costs were previously funded, in whole or in part, by New York State, any other state or the federal government.

(b) Unless specifically otherwise provided for in this Title and except as provided in paragraph (2) of subdivision (a) of this section, costs of ownership of real property shall be allowable in the amount of interest and principal or provider equity (see Subpart 635-99 of this Part), in cases where OMRDD and the Division of the Budget first approved the property costs on or after June 1, 2010.

(c) Notwithstanding the provisions of subdivisions (a) or (b) of this section, costs of ownership of real property shall be allowable in the amount of costs related to loans from the Dormitory Authority of the State of New York (see [glossary.] Subpart 635-99 of this Part).

(d) Reimbursement for principal and interest or provider equity and interest is an allowance in lieu of reimbursement of interest and depreciation associated with the property, and in lieu of reimbursement of the underlying allowable costs, which may include allowable start-up costs, for which the mortgage, loan, or other financing is received.

[(b)] (e) Depreciation is based upon the historical cost and useful life of buildings, fixed equipment and/or capital improvements, alterations, rehabilitation and/or renovations.

(f) Principal shall be the amount which the provider borrows for the purchase, alteration, construction, rehabilitation and/or renovation of real property, for costs attributable to the negotiation or settlement of sale or purchase of the real property and for other reasonable and necessary costs related to such purchase, alteration, construction, rehabilitation and/or renovation, including, but not limited to, design fees and short term interest. Principal shall be allowable in the amount approved by OMRDD and the Division of the Budget, but shall not be greater than the lesser of:

(1) the historical cost; or

(2) the amount the provider actually borrowed.

(g) The commissioner may allow provider equity in an amount not to exceed fair market value if the provider demonstrates that allowing such provider equity:

(1) is necessary in order for the facility or program in question to continue to operate, or is necessary in order for the facility or program to open;

(2) would be an economic and efficient use of resources; and

(3) would be in the best interests of the persons who are receiving or will receive services at the facility or program in question.

Note: Current subdivisions 635-6.4(c)-(h) are renumbered as (h)-(m).

Note: Renumbered paragraphs 635-6.4(h)(1)-(8) are unchanged, except that subparagraph (8)(iii) is amended as follows:

(iii) The commissioner may allow an alternative historical cost only for transfers, purchases, alteration, construction, renovation or rehabilitation, the terms of which were agreed to after [the effective date of this regulation] July 12, 2000.

Note: Renumbered subdivision 635-6.4(i) is amended as follows:

(i) Useful life and amortization period.

(1) The useful life of depreciable assets shall be the higher of the

reported useful life or the useful life from the Estimated Useful Lives of Depreciable Hospital Assets (current edition), published by the American Hospital Association. This document is available from:

(i) the American Hospital Association, 840 Lake Shore Drive, Chicago, Illinois 60611;

(ii) it may also be reviewed in person during regular business hours at the:

(a) N.Y.S. Department of State, [41 State Street] 99 Washington Avenue, Albany, New York 12231; or

(b) by appointment at the N.Y.S. Office of Mental Retardation and Developmental Disabilities, 44 Holland Avenue, Albany, New York 12229.

(2) The amortization period for principal repayment and provider equity shall be the lesser of:

(i) the term of the indebtedness, as approved by OMRDD and Division of the Budget, related to the real property in question; or

(ii) the remaining useful life on the asset.

[(2)] (3) A provider or [consumer] an individual receiving services may use a different useful life or amortization period if such different useful life or amortization period is approved by OMRDD. OMRDD shall base such approval upon historical experience, documentary evidence, loan agreements (if any) and need for the services for which the depreciable or financed assets are used.

Note: Rest of section 635-6.4 remains unchanged except for renumbering.

Add new subdivision 635-99.1(ai) as follows and renumber rest of section 635.99.1 accordingly:

(ai) Equity, provider. The amount the provider paid, excluding the amount paid from borrowed funds, for the purchase, alteration, construction, rehabilitation and/or renovation of real property, for costs attributable to the negotiation or settlement of sale or purchase of such real property and for other reasonable and necessary costs related to such purchase, alteration, construction, rehabilitation and/or renovation, including, but not limited to, design fees and short term interest.

Paragraph 680.12(a)(9) is amended as follows:

(9) Capital costs shall mean property costs subject to the limitations contained in this section, Subpart 635-6 of this Title, and Medicare principles of reimbursement, except that costs of ownership of real property shall not include principal or provider equity.

Paragraph 680.12(d)(8) is amended by the addition of a new subparagraph (xiii) as follows:

(xiii) Costs of ownership of real property shall not include principal or provider equity.

Paragraph 686.13(b)(3) is amended by the addition of a new subparagraph (i) as follows:

(i) The provisions of this paragraph (3) shall only apply where costs of ownership of real property under Section 635-6.4 are limited to depreciation, interest, costs of alteration, construction, rehabilitation and/or renovation to real property, and costs attributable to the negotiation or settlement of sale or purchase of real property.

Note: Subparagraphs 686.13(b)(3)(i) and (ii) are renumbered as (ii) and (iii).

**Final rule as compared with last published rule:** Nonsubstantial changes were made in sections 635-6.4(i)(1) and 680.12(a)(9).

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

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

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

Minor nonsubstantive changes were made to the proposed amendments in clause 635-6.4(i)(1)(ii)(a) and in paragraph 680.12(a)(9).

The first change corrects the street address of the Department of State. The second change corrects a typographical error in underlining existing regulation text.

These minor technical corrections do not necessitate revision of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, or Job Impact Statement.

#### **Assessment of Public Comment**

The agency received no public comment.

### **NOTICE OF ADOPTION**

#### **Procedures for Control of Tuberculosis (TB)**

**I.D. No.** MRD-12-10-00010-A

**Filing No.** 517

**Filing Date:** 2010-05-11

**Effective Date:** 2010-06-01

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

**Action taken:** Repeal of Subpart 635-8 and addition of section 633.14 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

**Subject:** Procedures for control of tuberculosis (TB).

**Purpose:** To conform OMRDD requirements related to the control of TB to current national recommended practices.

**Substance of final rule:** • The regulation repeals existing out-of-date OMRDD requirements on the control of tuberculosis (TB) in 14 NYCRR Subpart 635-8 and adds a new Section 633.14 containing updated requirements.

- TB testing. The previous regulation required most service recipients, employees, volunteers and independent contractors to be tested for TB annually. The new regulation requires service recipients, employees, volunteers and independent contractors (excluding those who reside, work or volunteer in a developmental center) to have an initial TB test with a follow-up TB test only if the person is exposed to TB or the person exhibits TB symptoms. For those who live, work or volunteer in a development center, an annual TB test continues to be required.

- Testing technology. The previous regulation only allowed for testing with the purified protein derivative (PPD) Mantoux skin test. The new rule allows for new TB testing techniques.

- Treatment of TB. The previous regulation contained requirements, including isolation rooms at developmental centers, for the treatment of someone with active TB. The newly adopted regulations require people who have active TB be treated by their own healthcare provider in conjunction with the local health department.

- Applicability to non-certified services. The previous regulation applied to developmental centers, certified facilities and non-certified services. The new regulation only applies to developmental centers and certified facilities. Non-certified services are no longer required to comply.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 633.14(b), (c), (f), (g) and (i)(2).

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

**Additional matter required by statute:** Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

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

In subparagraph 633.14(c)(1)(i), the term “two-step TST” is changed to “two-step PPD,” to be consistent with the definition and usage in the regulation. Technical corrections were also made in the definitions of “contractor” and “service provider.” Other changes have been made to

correct punctuation and grammar. These minor changes do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

#### **Assessment of Public Comment**

OMRDD received one comment from the NYC Department of Health and Mental Hygiene, one comment from a provider association, and five comments from individuals employed by voluntary providers of services regarding the proposed regulations. The comments and OMRDD’s response to each is as follows:

**Comment:** The provider association strongly supports the new approach to disease control embodied in the proposed regulation. In particular, the association understands that these new measures will result in greater efficiency of provider financial resources. The CEO of a provider of services also commented that the provider fully supports the proposed regulations. The NYC Department of Health and Mental Hygiene also supports the proposal.

**Response:** OMRDD appreciates the support for these regulations.

**Comment:** The NYC Department of Health and Mental Hygiene (DOHMH) suggested modifying the definition of TB testing to read as follows: “Screening for tuberculosis infection with any approved test to detect M. tuberculosis infection, such as the tuberculin skin test (TST), or one of the whole blood interferon-gamma release assays (IGRAs) approved by the United States Food and Drug Administration (FDA).”

**Response:** The definition in the proposed regulation specified that tests must be “currently approved by the United States Food and Drug Administration (FDA) and/or recommended by the Centers for Disease Control (CDC) for that purpose.” OMRDD disagrees with identifying specific currently-approved tests as examples, since in the future approval for a particular test may be withdrawn by the FDA or the test may no longer be recommended by CDC. The definition is unchanged in the final regulation.

**Comment:** NYCDOHMH also suggested modifying the definition of “two-step PPD” to include the following: “If an IGRA test is used for screening, there is no need to perform a two-step baseline.”

**Response:** OMRDD does not disagree with the accuracy of the statement. However, OMRDD does not consider it necessary to add the statement to the cited definition, since an IGRA test is not a type of PPD and there is no two-step IGRA testing. The definition is unchanged in the final regulation.

**Comment:** A medical director of a voluntary provider asked whether 2-step PPD testing is required.

**Response:** The proposed regulations require TB testing but do not specify the type of testing that is required. Other TB tests may be utilized, such as a blood assay test (e.g. Quantiferon Gold). The regulations at 633.14(e)(2) do specify that if an initial TST is performed, it shall be conducted employing a two-step PPD unless the person has documented evidence of a TST within the last twelve months.

**Comment:** The medical director also suggested the inclusion of a provision for individuals for whom TB testing cannot be done secondary to behavior issues.

**Response:** OMRDD has not added the suggested provision. OMRDD agrees that in limited circumstances it may be undesirable to require a TB test for individuals with challenging behaviors. However, it has been OMRDD’s experience that many individuals who have challenging behaviors can successfully be screened with a PPD, especially when it is a one-time requirement. In addition, in some cases the physician can order a blood assay test for such individuals when other blood work is being done. OMRDD is concerned that the addition of a specific exemption for individuals on the basis of their challenging behaviors could be interpreted to exempt any person who has a behavior management plan, or who in any way acts like they may not “like” a TB test.

OMRDD considers that the proposed regulatory language already accommodates those limited circumstances when it is undesirable to require a TB test on the basis of challenging behaviors. Paragraph 633.14(d)(2) states:

“A statement by a physician, nurse practitioner or physician’s as-

sistant of contraindication shall be acceptable as long as the statement includes:

- (i) a recommendation as to when and if testing would be appropriate at a designated point in the future; and
- (ii) how the party will be evaluated for active pulmonary tuberculosis in the interim.”

OMRDD has not included a definition of the term “contraindication” to accommodate a diverse range of possible issues that would make doing a TB test contraindicated. Basically, if in the opinion of the practitioner, the risks of TB testing outweigh the benefits, the individual may be exempted so long as the practitioner statement includes the required elements.

Comment: The deputy executive director, on behalf of a provider agency, characterized the proposed regulation as a “good step forward.” The individual specifically stated that extending the use of other TB testing technologies was excellent as is the requirement limiting testing in many circumstances to the initial testing. The clinical and HR staff of the same provider were concerned with the total removal of ongoing testing except in the case of someone with symptoms or with an exposure occurrence. They were concerned that staff may not reliably report an exposure situation. In addition, they observed that TB symptoms may be mimicked by other respiratory infections or conditions such as bronchial disturbances and smokers’ cough, which might cloud the decision-making for the agency concerned with identifying a specific TB symptom. They are considering leaving in place 3 year or 5 year testing requirements.

Response: When OMRDD discussed the issue with the New York State Department of Health, it was the strong recommendation of NYSDOH that OMRDD drop routine screening for a much more “targeted” approach. Reviewing data from the last 10 years, OMRDD has been made aware of 4 cases of active pulmonary TB, only one of which was identified by routine screening. This was an individual who had recently migrated from a country where TB is endemic, and was discovered during pre-employment screening. In consultation with NYSDOH and guided by the newest guidelines of the CDC and its Advisory Council for the Elimination of Tuberculosis, OMRDD identified those populations at highest risk. This included persons who:

- have spent time with a person known or suspected to have active TB disease (a.k.a.: known exposure); or
- have symptoms of active TB disease; or
- are recent immigrants from a country where active TB disease is very common; or
- live somewhere in the United States where active TB disease is more common such as a homeless shelter, migrant farm camp, prison or jail; or
- inject illegal drugs; or
- have HIV infection or another condition that weakens the immune system and puts them at high risk for active TB disease.

According to the CDC, because of problems with continued cross-reactions with other mycobacteria, the specificity of the tuberculin test is less when serial skin testing is performed than when a single test is administered. Thus, serial skin-testing programs tend to overestimate the incidence of new TB infection in the tested population. Because of this potential for overestimation of incidence, the CDC recommends that serial skin-testing programs be targeted to populations at high risk for continued exposure to infectious TB.

To operationalize the recommendations, OMRDD and NYSDOH determined that persons who should continue to be routinely screened included:

- Pre-employment/pre-receipt of service for all new employees and individuals
- Developmental center populations as high risk as many of the individuals served in those settings have recently resided in state or county prisons or jails
- Persons with symptoms of active TB disease
- Persons with known exposures to active TB disease

The requirements of the regulation are the minimum standard with

which agencies must comply. If agencies wish, they are permitted to require testing of employees and/or individuals in excess of the minimum standard.

Comment: The same deputy executive director commented that on a routine basis they encountered staff and some service recipients and their families who travel abroad annually to visit families in their former homelands. Some of these countries have a different level of public health/medical oversight, and the person can remain there for up to 4 weeks. When they return back and receive services, the agency has become increasingly concerned that perhaps the best course would be to request medical clearance before they return. The agency has not mandated this process unless they are informed that the travelers contracted something when they were away or if symptoms are observed at work or in program.

Response: OMRDD carefully considered this issue during the development of the revised recommendations. However, after consultation with the NYSDOH and CDC, it was determined that this is not community standard of practice, and should not be a requirement of the regulation. Every day thousands of American citizens travel to countries where TB is endemic. Many are returning after many weeks or months of working in those countries, including US military personnel and State Department personnel. Neither CDC, NYSDOH, US Immigration, the US Department of State, the US Military nor any other authority of which OMRDD is aware require that these people be tested for any contagious disease upon their return (unless they have obvious symptoms). There is no epidemiological evidence that these people pose a significant risk, nor is there information that they disproportionately have a higher incidence of TB. Therefore, OMRDD decided against the inclusion of a regulatory requirement for medical clearance in these circumstances. However, if the agency chooses it can impose additional requirements in excess of the regulatory minimum standard.

Comment: A compliance officer of a provider agency commented that in his opinion the NYS Department of Health does not allow LPNs to read PPDs. He suggests deleting LPNs from the list of professionals who can read PPDs in the proposed regulation.

Response: Paragraph 633.14(e)(3) permits LPNs to read, but not interpret PPDs. This is consistent with an opinion of the State Board of Nursing. LPNs are allowed to collect objective data. Measuring the millimeters of induration from a Mantoux skin test is an objective measure. However, determining that the measurement constitutes a “positive” or “negative” is an interpretation of the objective data and can only be done by an RN, NP, PA or MD. Therefore OMRDD is retaining the provision to give providers flexibility in complying with this requirement.

Comment: An employee health nurse of a provider agency requested a clarification of the terms “registry” and “summary” used in the proposed regulations.

Response: OMRDD considers that the regulated parties are already familiar with these terms and the necessary compliance activities associated with these terms, and that further definition or specificity is not needed. OMRDD staff is available to assist regulated parties regarding requests for further clarification.

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## Niagara Frontier Transportation Authority

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

#### Smoking

**I.D. No.** NFT-21-10-00009-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 1151 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e(14), 1299-f(4) and (7)

**Subject:** Smoking.

**Purpose:** To clarify where smoking is prohibited at NFTA locations.

**Text of proposed rule:** Section 1151.9 is amended to read as follows:

1151.9 Smoking.

No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match or other lighted equipment capable of causing naked flame inside [or about] any transportation facility or transportation vehicle [in such areas where appropriate signs to that effect have been posted]. No person shall smoke, carry or possess a lighted cigarette, cigar, pipe, match or other lighted equipment capable of causing naked flame:

(a) within twenty feet of the main entrance to any transportation facility;

(b) inside any covered parking area that is physically part of or connected to a transportation facility;

(c) within twenty feet of building air intake ducts; and

(d) within twenty feet of the storage of flammable and combustible materials.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth\_Keating@nfta.com

**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

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. Most of the changes are explanatory and/or are technical in nature.
2. None of the changes are controversial.

#### Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is the regulation of the smoking at NFTA facilities. The rule does not impact hiring practices nor does it change the rules regarding smoking inside NFTA facilities.

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

#### NFTA's Procurement Guidelines

**I.D. No.** NFT-21-10-00013-P

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

**Proposed Action:** This is a consensus rule making to amend Part 1159 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e (5) and 1299-t

**Subject:** The NFTA's Procurement Guidelines.

**Purpose:** To amend the NFTA's Guidelines to make technical changes and conform to state law.

**Text of proposed rule:** Subdivision (v) of section 1159.3 is amended to read as follows:

(v) Public work. The construction, demolition, repair, rehabilitation, [removal, ] restoration or maintenance of any building, roadway, structure, fixture, facility[,] or improvement[, or property] owned by or leased to the authority.

Subdivision (j) of section 1159.4 is amended to add a new second paragraph as follows:

*At the time a determination of intent to award a procurement contract is made, the following information shall be submitted for publication in NYSCR:*

*For procurement contracts obtained through the Sealed Bidding process, the result of the bid opening including the names of bidding firms and the amounts bid by each;*

*For procurement contracts obtained through the Negotiation and/or Qualification-Based processes, the names of firms submitting proposals and the proposal selected as the best value offer; and*

*For all other procurement contracts, the name of the proposed awardee.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth\_Keating@nfta.com

**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

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being amended for the following reasons:

1. The major change is to conform to state law requirements.
2. The changes are not controversial.

#### Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is to conform to changes in state law. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

## Public Service Commission

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Consolidated Edison Company of New York, Inc. (ConEdison) Proposes to Retain a Portion of a Property Tax Refund**

**I.D. No.** PSC-21-10-00023-P

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

**Proposed Action:** The Commission is considering the petition of Consolidated Edison Company of New York, Inc. to retain 14% (\$200,000) of an approximately \$1.5 million property tax refund, for overpayment of taxes on certain properties located in East Fishkill, New York.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Consolidated Edison Company of New York, Inc. (ConEdison) proposes to retain a portion of a property tax refund.

**Purpose:** To allow ConEdison to retain a portion of a Town of East Fishkill property tax refund.

**Public hearing(s) will be held at:** 10:30 a.m., July 20, 2010 at Three Empire State Plaza, Albany, NY.

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

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

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. (Con Edison) successfully challenged property tax assessments on certain Con Edison property located in the Town of East Fishkill, New York, resulting in a total expected property tax refund of approximately \$1.5 million. When a public utility obtains a property tax refund, Public Service Law Section 113(2) provides that the Commission, after hearing, may determine the extent to which the refund will be passed on to the utility's customers. Con Edison proposes to recover its incremental expenses incurred in achieving this property tax refund, from the refund, and to retain 14% of the balance, or approximately \$200,000, for shareholders, and to defer 86% of the balance of the refund, or about \$1.2 million, for the benefit of its electric customers.

The Commission will consider the petition of Con Edison and may grant or modify the relief sought in the petition or take other measures authorized by law.

**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.

(09-M-0867SP1)

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

**Con Edison Proposes to Retain a Portion of a GRT Refund**

**I.D. No.** PSC-21-10-00024-P

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

**Proposed Action:** The Commission is considering the petition of Consolidated Edison Company of New York, Inc. (Con Edison) to retain 14% of an approximately \$5.6 million Gross Receipts Taxes (GRT) refund, the result of a challenge relating to the sale of certain properties.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** Con Edison proposes to retain a portion of a GRT refund.

**Purpose:** To allow Con Edison to retain a portion of a GRT refund.

**Public hearing(s) will be held at:** 10:30 a.m., July 21, 2010 at Three Empire State Plaza, Albany, NY.

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

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

**Substance of proposed rule:** By petition dated January 22, 2010, Consolidated Edison Company of New York, Inc. (Con Edison) sought approval to retain 14% of a \$5.6 million Gross Receipts Taxes (GRT) refund. Con Edison received a GRT refund as a result of challenging the GRT paid on profits resulting from the sale of certain properties. Con Edison proposes to defer 86% of the GRT refund for the benefit of its electric and steam customers, retaining the remaining 14%. The Commission is considering whether to grant or deny, in whole or in part, approval for the retention of a portion of the GRT refund.

**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-0039SP1)

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

**Gas Adjustment Tariff Provisions**

**I.D. No.** PSC-21-10-00014-P

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

**Proposed Action:** The Commission is considering a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid of NY (BUG) to revise its Gas Adjustment provisions so that BUG may file their monthly gas adjustment on less than three day's notice to the Commission.

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

**Subject:** Gas Adjustment tariff provisions.

**Purpose:** To revise tariff language to allow BUG to file its monthly gas adjustment on less than three day's notice to the Commission.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid of NY (BUG or the company) to revise its gas adjustment provisions to allow the company to file its monthly gas adjustment on less than three day's notice to the Commission. The Commission may adopt, reject, or modify, in whole or in part, BUG's proposal.

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

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

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

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

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

(10-G-0208SP1)

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

**Surcharge for Stimulus Projects**

**I.D. No.** PSC-21-10-00015-P

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

**Proposed Action:** The Commission is considering a proposed filing by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. Nos. 120 and 121.

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

**Subject:** Surcharge for Stimulus Projects.

**Purpose:** Establish a surcharge for the recovery of costs associated with New York Stimulus Projects.

**Substance of proposed rule:** The Commission is considering a proposal filed by New York State Electric & Gas Corporation (NYSEG) to establish a surcharge for the recovery of costs associated with New York Stimulus Projects in compliance with Commission Order issued July 27, 2009 in Case 09-E-0310. The proposed filing has an effective date of September 1, 2010. The Commission may adopt in whole or in part, modify or reject NYSEG's proposal.

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

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

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

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

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

(09-E-0310SP7)

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

**Surcharge for Stimulus Projects**

**I.D. No.** PSC-21-10-00016-P

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

**Proposed Action:** The Commission is considering a proposed filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. Nos. 18 and 19.

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

**Subject:** Surcharge for Stimulus Projects.

**Purpose:** Establish a surcharge for the recovery of costs associated with New York Stimulus Projects.

**Substance of proposed rule:** The Commission is considering a proposal filed by Rochester Gas and Electric Corporation (RG&E) to establish a surcharge for the recovery of costs associated with New York Stimulus Projects in compliance with Commission Order issued July 27, 2009 in Case 09-E-0310. The proposed filing has an effective date of September 1, 2010. The Commission may adopt in whole or in part, modify or reject RG&E's proposal.

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

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

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

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

(09-E-0310SP8)

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

**Gas Adjustment Tariff Provisions**

**I.D. No.** PSC-21-10-00017-P

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

**Proposed Action:** The Commission is considering a tariff filing by KeySpan Gas East Corporation d/b/a National Grid (KeySpan) to revise its Gas Adjustment provisions so that KeySpan may file their monthly gas adjustment on less than three day's notice.

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

**Subject:** Gas Adjustment tariff provisions.

**Purpose:** To revise tariff language to allow KeySpan to file its monthly gas adjustment on less than three day's notice to the Commission.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a National Grid (KeySpan or the company) to revise its gas adjustment provisions to allow the company to file its monthly gas adjustment on less than three day's notice to the Commission. The Commission may adopt, reject, or modify, in whole or in part, KeySpan's proposal.

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

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

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

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

(10-G-0209SP1)

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

**Interconnection of the Networks Between Verizon and Charter Fiberlink NY-CCO for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-21-10-00018-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with Charter Fiberlink NY-CCO, LLC executed on February 12, 2010.

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

**Subject:** Interconnection of the networks between Verizon and Charter Fiberlink NY-CCO for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Verizon and Charter Fiberlink NY-CCO.

**Substance of proposed rule:** Verizon New York Inc. and Charter Fiberlink NY-CCO, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Charter Fiberlink NY-CCO, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 5, 2011, or as extended.

**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](mailto: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](mailto: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.

(10-00914SP1)

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

**Specific Technical Specifications for Measuring Energy Savings in Electric and Gas Energy Efficiency Programs**

**I.D. No.** PSC-21-10-00019-P

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

**Proposed Action:** The Commission is considering modifications to the technical manuals associated with the Energy Efficiency Portfolio Standard (EEPS) program that are designed to provide a standardized approach for measuring energy savings.

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

**Subject:** Specific technical specifications for measuring energy savings in electric and gas energy efficiency programs.

**Purpose:** To encourage electric and gas energy conservation in the State.

**Substance of proposed rule:** The Commission is considering whether to

adopt, modify, or reject, in whole or in part, proposed modifications to the technical manuals associated with the Energy Efficiency Portfolio Standard (EEPS) program. The technical manuals are designed to provide a standardized approach for measuring energy savings in energy efficiency programs. They cover a variety of energy efficiency measures applicable to the single family, multifamily and commercial/industrial sectors. Between December 2008 and December 2009, the Commission approved five technical manuals, as follows:

1. New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs in Single Family Residential Measures - Approved December 16, 2009.

2. New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs in Commercial and Industrial Programs - September 1, 2009.

3. New York Standard Approach for Estimating Energy Savings from Energy Efficiency Measures in Multifamily Programs July 9, 2009.

4. New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs (Gas) March 25, 2009.

5. New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs (Electric) December 28, 2008.

It is now proposed that the current five manuals be consolidated and streamlined into one manual to eliminate redundant information and to make them easier to use. The new consolidated manual would be titled "New York Standard Approach for Estimating Energy Savings - Residential, Multi-Family and Commercial/Industrial Measures."

It is now also proposed that the substance of the manuals be refined regarding the following topics:

1. Lighting
2. HVAC
3. Building Types
4. Refrigeration
5. Water Heating
6. Shell and other miscellaneous
7. Custom Measures

The proposed refinements to the manuals include updated formulas, formulas for additional measures, new data tables to clarify specific calculations, the addition of more weather stations to facilitate more accurate and localized calculations, and refined protocols for reviewing custom measures. Moreover, efforts were made to improve the "evaluability" of the measures by lining up the parameters in the engineering equations to values that can be measured in the field through the evaluation process.

The proposed refinements were developed with the cooperation and assistance of the Evaluation Advisory Group (EAG) which conduct a detailed review of the manuals to ensure that they are up to date, accurate and complete, however, the sole responsibility for the content of the proposed refinements lies with the Director of the Office of Energy Efficiency & Environment.

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

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

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

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

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

(07-M-0548SP22)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection of the Networks Between Frontier and MetTel for Local Exchange Service and Exchange Access

I.D. No. PSC-21-10-00020-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Frontier Comm. of NY, et al. (together "Frontier") for approval of an Interconnection Agreement with Manhattan Tele. Corp. d/b/a MetTel executed on December 1, 2009.

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

**Subject:** Interconnection of the networks between Frontier and MetTel for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Frontier and MetTel.

**Substance of proposed rule:** Frontier Communications of New York, Inc., Frontier Communications of AuSable Valley, Inc., Frontier Communications of Seneca-Gorham, Inc., Frontier Communications of Sylvan Lake, Inc. and Ogden Telephone Company (together "Frontier") and Manhattan Telecommunications Corporation d/b/a MetTel have reached a negotiated agreement whereby Frontier and Manhattan Telecommunications Corporation d/b/a MetTel will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 1, 2010, or as extended.

**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.

(10-00951SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Interconnection of the Networks Between Citizens Telecom and MetTel for Local Exchange Service and Exchange Access

I.D. No. PSC-21-10-00021-P

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

**Proposed Action:** The PSC is considering whether to approve or reject a proposal filed by Citizens Telecommunications Company of New York, Inc. for approval of an Interconnection Agreement with Manhattan Tele. Corp. d/b/a MetTel executed on December 1, 2009.

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

**Subject:** Interconnection of the networks between Citizens Telecom and MetTel for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement between Citizens Telecom and MetTel.

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc and Manhattan Telecommunications Corporation d/b/a MetTel have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Manhattan Telecommunications Corporation d/b/a MetTel will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agree-

ment establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 1, 2010, or as extended.

*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.

(10-00952SP1)

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

**Interconnection of the Networks Between Frontier and MetTel for Local Exchange Service and Exchange Access**

**I.D. No.** PSC-21-10-00022-P

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

*Proposed Action:* The PSC is considering whether to approve or reject a proposal filed by Frontier Telecommunications of Rochester for approval of an Interconnection Agreement with Manhattan Tele. Corp. d/b/a Met-Tel executed on December 1, 2009.

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

*Subject:* Interconnection of the networks between Frontier and MetTel for local exchange service and exchange access.

*Purpose:* To review the terms and conditions of the negotiated agreement between Frontier and MetTel.

*Substance of proposed rule:* Frontier Telephone of Rochester, Inc. and Manhattan Telecommunications Corporation d/b/a MetTel have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Manhattan Telecommunications Corporation d/b/a MetTel will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 1, 2010, or as extended.

*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.

(10-00953SP1)

**New York State Thruway Authority**

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

**Public Access to Authority Records**

**I.D. No.** THR-21-10-00003-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 108 of Title 21 NYCRR.

*Statutory authority:* Public Authorities Law, sections 354(5) and 387; Public Officers Law, sections 87 and 89

*Subject:* Public Access to Authority Records.

*Purpose:* To bring the Thruway Authority's FOIL regulations into compliance with the updated FOIL statutes.

*Text of proposed rule:* Section 108.1 is amended as follows:

§ 108.1 [Current List.] *Records available for inspection and copying; fees*

*1. Subject Matter List*

[The current list is a reasonably detailed list by subject matter of any records produced, filed, or first kept or promulgated and maintained by the Thruway Authority after September 1, 1974 and available for public inspection and copying, as set forth in this Part.] *The Thruway Authority will keep a reasonably detailed current list, by subject matter, of all records in the possession of the Thruway Authority, whether or not available under the Freedom of Information Law.*

Subdivision (2) is added to read as follows:

*2. Availability of records.*

*The Thruway Authority shall produce its records for inspection by appointment during those days and hours that it is regularly open for business, as follows: Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. (excluding observed holidays). Written requests for copies of records should be directed to the Thruway Authority Records Access Officer at 200 Southern Boulevard, Albany, New York 12209.*

Subdivision (3) is added to read as follows:

*3. Fees*

*a. The fee for copies of records not exceeding 9 x 14 inches in size shall be 25 cents per page.*

*b. The fees for searching the records of the Thruway Authority for an accident report, for furnishing a copy of an accident report, and for furnishing a copy of an accident reconstruction report shall not exceed the fees charged by the division of state police pursuant to section sixty-six-a of the public officers law and/or by the department of motor vehicles pursuant to section two hundred two of the vehicle and traffic law; provided, however, that no fee shall be charged to any public officer, board or body, or volunteer fire company, for searches or copies of accident reports to be used for a public purpose.*

*c. Except when a different fee is otherwise prescribed by statute, the fee for a copy of any other record shall be the actual cost of reproducing such record, as determined by the Records Access Officer in accordance with Public Officers Law section 87.*

*d. The Thruway Authority Executive Director, or his or her designee may, at his or her discretion, waive all or any portion of the fees authorized by this subdivision.*

Section 108.2 is repealed and a new section 108.2 is adopted to read as follows:

*§ 108.2 Rights of party denied copying; access to records*

*If access to a record is denied, such denial may be appealed to the Thruway Authority Executive Director, or his or her designee.*

Section 108.3 is repealed.

Section 108.4 is repealed.

*Text of proposed rule and any required statements and analyses may be obtained from: Marcy Pavone, Thruway Authority, 200 Southern Boulevard, Albany, NY 12209, (518) 436-2860, email: marcy\_pavone@thruway.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:**

Subdivision 5 of Public Authorities Law (PAL) section 354 authorizes the Thruway Authority to make "rules and regulations governing the use

of the thruways and all other properties and facilities under its jurisdiction.” PAL section 387 provides that “the fees for searching the records of the authority for an accident report, for furnishing a copy of an accident report, and for furnishing a copy of an accident reconstruction report shall not exceed the fees charged by the division of state police pursuant to section sixty-six-a of the public officers law and/or by the department of motor vehicles pursuant to section two hundred two of the vehicle and traffic law, provided, however, that no fee shall be charged to any public officer, board or body, or volunteer fire company, for searches or copies of accident reports to be used for a public purpose.” Subdivision (1)(b) of Public Officers Law (POL) section 87 provides “each agency shall promulgate rules and regulations” in conformity with the Freedom of Information Law, including “i. the times and places such records are available; ii. the persons from whom such records may be obtained, and iii. the fees for copies of records which shall not exceed twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record in accordance with the provisions of paragraph (c) of this subdivision, except when a different fee is otherwise prescribed by statute.” Subdivision 2 of POL section 87 provides “each agency shall, in accordance with its published rules, make available for public inspection and copying all records...” Subdivision 3(c) of POL section 87 provides that an agency shall keep “a reasonably detailed current list by subject matter of all records in the possession of the agency, whether or not available” under the Freedom of Information Law. Subdivision 5(a) of POL section 87 provides “an agency shall provide records on the medium requested by a person, if the agency can reasonably make such copy or have such copy made by engaging an outside professional service.” Subdivision 4(a) of POL section 89 provides “any person denied access to a record may within thirty days appeal in writing such denial to the head, chief executive or governing body of the entity, or the person therefor designated by such head, chief executive, or governing body...”

2. Legislative Objectives:

The amendment of Part 108 of Title 21 of NYCRR will allow the Thruway Authority to update its Freedom of Information Law regulations, which were last updated in 1994, so as to comply with the most recent updates of Article 6 of the Public Officers Law, concerning Freedom of Information Law. Namely, it will remove the outdated subject matter list of records and replace it with the requirement that the Authority keep a detailed current list, by subject matter, of all records in its possession, clarify the times and places where Authority records are available, change the person to whom requests for records must be addressed, delete outdated provisions related to payroll records, update the provisions related to fees charged for copies of records so that it adequately reflects current law, and delete the list of exceptions to the FOIL disclosure requirement.

3. Needs and Benefits:

The Thruway Authority has not updated its regulations pertaining to the FOIL since 1994. Since that time, there have been numerous statutory changes in FOIL and the Authority’s organization structure has been modified. The changes to Part 108 of Title 21 of NYCRR would allow the Authority’s FOIL regulations to comply with Freedom of Information Law statutes effective as of the date of submission of this proposed rule.

As a result of these changes, the Authority will be able to easily adjust its subject matter list of records so that it more accurately reflects current records. Also, individuals or entities who seek Authority records will know the times and places where records are available and to whom a request for records shall be made. The omission of the list of exceptions to the FOIL disclosure requirement will mean that the Authority will not have to update its FOIL regulations every time the oft-changed FOIL statutes are updated.

4. Costs:

In accordance with Public Officers Law section 87(1)(b), those who seek copies of Thruway Authority records will be required to pay twenty-five cents per photocopy not in excess of nine inches by fourteen inches, or the actual cost of reproducing any other record, except when a different fee is otherwise prescribed by statute. Pursuant to Public Officers Law section 87(1)(c), the actual cost of reproducing a record includes an amount equal to the hourly salary attributed to the lowest paid agency employee who has the necessary skill required to prepare a copy of the requested record; the actual cost of the storage devices or media provided to the person making the request in complying with such request; and the actual cost to the agency of engaging an outside professional service to prepare a copy of a record, but only when an agency’s information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy. Preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of agency employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an agency employee’s time is needed, or if an outside professional service would be retained to prepare a copy of the record.

The fees for searching the records of the Thruway Authority for an accident report, for furnishing a copy of an accident report, and for furnishing a copy of an accident reconstruction report shall not exceed the fees charged by the division of state police pursuant to section sixty-six-a of the public officers law and/or by the department of motor vehicles pursuant to section two hundred two of the vehicle and traffic law. No fee shall be charged to any public officer, board or body, or volunteer fire company, for searches or copies of accident reports to be used for a public purpose.

The Authority will continue to have to pay the associated administrative fees, and employees or an outside professional service for preparing the records. The exact amount of costs will vary with the number and nature of FOIL requests. There are no new costs for implementing the changes.

5. Local Government Mandates:

This rule imposes no program, service, duty or responsibility on local governments.

6. Paperwork:

None.

7. Duplication:

The Freedom of Information Law statutes, found in Article 6 of Public Officers Law, may duplicate, overlap, or conflict with this rule. To ensure compliance with the FOIL statutes, the Thruway Authority will regularly check for updates to the FOIL statutes and update its FOIL regulations if there is a conflict or if an additional provision needs to be inserted.

8. Alternatives:

None considered.

9. Federal Standards:

None.

10. Compliance Schedule:

No time is needed for regulated persons to comply with this rule.

**Regulatory Flexibility Analysis**

Based on the subject matter of this regulation, it will not impose any adverse economic impact on reporting, record keeping or other compliance requirements on small businesses or local governments. As such, a Regulatory Flexibility Analysis is not required.

**Rural Area Flexibility Analysis**

Based on its subject matter, this regulation does not impose any adverse impact on rural areas whether through reporting, record keeping or other compliance requirements on public or private entities in rural areas; as such, a Rural Area Flexibility Analysis is not required.

**Job Impact Statement**

Based on the nature and purpose of the proposed rule, it will not have a substantial adverse impact on jobs and employment opportunities. As such, a Job Impact Statement is not required.

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## Urban Development Corporation

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### EMERGENCY RULE MAKING

**Downstate Revitalization Fund Program**

**I.D. No.** UDC-21-10-00011-E

**Filing No.** 512

**Filing Date:** 2010-05-07

**Effective Date:** 2010-05-07

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

**Action taken:** Addition of Part 4249 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); and L. 2008, ch. 57, Part QQ, section 16-r; and L. 1968, ch. 174

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

**Specific reasons underlying the finding of necessity:** Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and

in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

**Subject:** The Downstate Revitalization Fund Program.

**Purpose:** Provide the basis for administration of The Downstate Revitalization Fund including evaluation criteria and application process.

**Text of emergency rule:** DOWNSTATE REVITALIZATION FUND PROGRAM

#### Section 4249.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

#### Section 4249.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

(b) "Distressed communities" shall mean areas as determined by the Corporation meeting criteria indicative of economic distress, including land value, employment rate; rate of employment change; private investment; economic activity, percentages and numbers of low income persons; per capita income and per capita real property wealth; and such other indicators of distress as the Corporation shall determine.

(c) "Downstate" shall mean the geographical area defined by the Corporation. The defined geographical area will be disseminated to eligible parties by the Corporation.

#### Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited, to smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

#### 4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, and may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

(c) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

#### Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

(8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

#### Section 4249.6 Application and Approval Process

(a) The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.

(b) Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions of the Act's 16-r.

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

#### Section 4249.7 Confidentiality

(1) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.

#### Section 4249.8 Expenses

(a) An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the

Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

**Section 4249.9 Affirmative action and non-discrimination**

Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 4, 2010.

**Text of rule and any required statements and analyses may be obtained from:** Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

**Regulatory Impact Statement**

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 884, lines 5 thru 15 allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the

country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, Poverty in New York City, 2004: Recovery?, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

If it is assumed that at least half of the \$35 million allocation to the Fund is used for new capital investment, this would support approximately 160 construction-related jobs, generating an additional \$10 million in personal income in downstate distressed areas. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

4. Costs: The Fund as identified in Chapter 53 of the Laws of 2008, page 884, lines 17 thru 27 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. Local Government Mandates: The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses.

These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, Delivering on the Promise of New York State, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines “Distressed Communities”

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 “Application and approval process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

#### **Regulatory Flexibility Analysis**

1. Effects of Rule: “Small business” is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD’s models of the Downstate economy to determine how many small businesses could benefit from the Downstate Revitalization Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization Fund investments, there should be relatively little, if any additional administration costs.

5. Economic and Technological Feasibility: Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

7. Small Business and Local Government Participation: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for “support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives.”

2. Regulations should clearly define “distressed communities” using specific, objective criteria.

Section 4249.2, Part (a) defines “Distressed Communities”

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 “Application and approval process” from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the “existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties.”

#### **Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas: The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in the Downstate region Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. Minimizing Adverse Impact: The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program’s effectiveness and minimize any negative impacts.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

#### **Job Impact Statement**

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

There will be no adverse impact on job opportunities in the state.