

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Amend Requirements in Finder Agreements That Must be Submitted by Finder When Submitting a Claim on Behalf of Claimant

I.D. No. AAC-18-10-00002-P

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

Proposed Action: Amendment of section 129.1 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, sections 1401,1414 and 1416

Subject: To amend requirements in Finder Agreements that must be submitted by finder when submitting a claim on behalf of claimant.

Purpose: To provide a uniform method of determining the identity of a claimant who has signed a Finder Agreement.

Text of proposed rule: Section 129.1 of Part 129 of Title 2 NYCRR is amended as follows:

Section 129.1 General provisions

(a) The Comptroller shall not reveal any confidential information including the value of abandoned property to any claimant or their agent unless such person provides proof of an interest in the abandoned property and the following:

(i) a claim form, or other supplemental claim form deemed necessary by the Comptroller, signed by the person making claim and duly acknowledged by the person in the manner prescribed for the acknowledgement of a conveyance of real property in accordance with the Real Property Law;

(ii) in the case of a [claimant] *claim submitted by* [engaging the services of] a finder [for consideration], the finder must present to the Comptroller a finder agreement executed in accordance with section 1416 of the Abandoned Property Law which:

(1) *lists the claimant's current address;*

(2) *except where there is a separate power of attorney or other agency designation, authorizes the finder to claim the property on behalf of the claimant;*

(3) *is signed by the claimant and such signature [shall]has [be] been duly acknowledged by the claimant in the manner prescribed for the acknowledgement of a conveyance of real property in accordance with the Real Property Law; and*

(4) *in the case of a claim on behalf of an estate of a New York decedent subject to section 13-2.3 of the Estates Powers and Trusts Law, has been duly filed with the appropriate surrogate's court as required by that section.*

(b) Subdivision (a) of this section may be waived within the discretion of the Comptroller provided that the Comptroller determines that satisfactory proof has otherwise been submitted by the claimant establishing that the claimant is the owner of the abandoned property.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua - Legislative Counsel, Office of the State Comptroller, 110 State Street, Albany, NY 12244, (518) 473-4146, email: JElacqua@osc.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: This rule is authorized under sections 1401, 1414 and 1416 of the Abandoned Property Law. Section 1414 authorizes the Comptroller to make rules and regulations necessary to enforce the provisions of the Abandoned Property Law. Section 1401 provides that the Comptroller shall not reveal confidential information relating to funds reported to the Abandoned Property Fund except in the discretion of the Comptroller. Additionally, such section provides that the value of the property cannot be revealed to any person unless they have provided satisfactory proof of an interest or title to the property. Accordingly, it is proper for the Comptroller to promulgate rules that define uniform situations where it is proper to reveal any such confidential information. Further, section 1416 provides restrictions on agreements between Finders and claimants ("Finder Agreements.") In order to synthesize section 1416 with section 1401 there must be a uniform method to determine the identity of the claimant who has signed the Finder Agreement in order to release confidential information relating to the property to the Finder.

2. Legislative Objectives: The proposed rule enables the Comptroller to continue to operate within the statutory requirement that no confidential information may be revealed to a Finder without proof that such Finder has been authorized to act on behalf of the claimant and also serves to ensure compliance with the provisions of section 13-2.3 of the EPTL.

3. Needs and Benefits: Since statutorily, confidential information cannot be released to any person unless the Comptroller has determined they hold an interest in the abandoned property, it is necessary to provide a uniform method to determine the identity of a claimant and verify that the Finder is authorized to act on such claimant's behalf.

The Comptroller has previously promulgated regulations establishing what requirements the Comptroller may demand in the exercise his authority under the Abandoned Property Law. The requirements added by this rule were not included in the original regulation.

Additionally, the rule makes explicit that the where the Finder is submitting a claim, the agreement between the finder and the claimant must authorize the finder to do so, thereby enabling the Comptroller to process the claim and release information directly to the Finder.

Last, the rule recognizes that a Finder Agreement entered into in relation to the estate of a New York decedent is subject to the filing require-

ments of Section 13-2.3 of the EPTL, and requires that the finder provide proof that this has been done.

4. Costs: The only compliance cost directly imposed by the rule is the cost of obtaining court certified copies as set forth in the SCPA in order to comply with the EPTL (the requirement to file and the fee therefore are mandated by existing law). Such cost is generally less than twenty dollars. The statutory filing fee, which is already established by law is \$16.00 minimum or \$8.00 per page.

5. Local Government Mandates: Not applicable.

6. Paperwork: No new paperwork will be required.

7. Duplication: None.

8. Alternatives: No significant alternatives were considered.

9. Federal Standards: This rule does not exceed any Federal standard.

10. Compliance Schedule: It is estimated that regulated parties will be able to achieve compliance immediately. The Comptroller's Finder Brochure already advises finders to provide the current address of the claimant and authorizes the Finder to act on behalf of the claimant named in the Finder Agreement. Additionally, the Comptroller already requests that the Finder provide proof that a Finder Agreement between a Finder and a decedent's estate comply with Section 13-2.3 of the Estates, Power and Trusts Law and nearly all Finders are currently in compliance.

Regulatory Flexibility Analysis

1. Effect of Rule: This rule will amend the existing requirements with respect to the Finder Agreement that must be submitted by a Finder where the Finder is submitting a claim to the Comptroller on behalf of a claimant. The rule will require that such agreement contain the claimant's current address and explicit authorization for a Finder to process the claim on behalf of the claimant. Additionally, the rule requires that, where a Finder Agreement has been entered into with a decedent's estate that is subject to EPTL section 13-2.3, the Finder provide proof that the Finder Agreement has been filed with the appropriate Surrogate's court as required by section 13-2.3. It is expected that these changes will have little or no effect on local governments since most do not engage Finders or claim funds on behalf of an estate. There will be an impact on small businesses who are Finders; however, such impact will be minimal since the Comptroller has been administratively imposing these requirements (except for the requirement for an explicit authorization for the Finder to act on behalf of the claimant) and, as a result most Finders currently comply with these requirements and the cost of complying is generally less than twenty dollars. It is estimated that this rule will affect approximately 118 small businesses.

2. Compliance Requirements: If a local government or small business enters into a Finder Agreement, such agreement will need to list the current address of the claimant and explicitly authorize the Finder to act on its behalf. If a small business or local government enters into a Finder Agreement to collect funds relating to a decedent's estate, the Finder Agreement must comply with EPTL 13-2.3.

3. Professional Services: It is not expected that the relatively modest changes to Finders Agreements required by this rule will require the services of an attorney or other professional.

4. Compliance Costs: The only compliance cost directly imposed by the rule is the cost of obtaining court certified copies as set forth in the SCPA in order to comply with the EPTL (the requirement to file and the fee therefore are mandated by existing law). Such cost is generally less than twenty dollars. The statutory filing fee, which is already established by law, is \$16.00 minimum or \$8.00 per page.

5. Economic and Technological Feasibility: There are no issues regarding the economic and technological feasibility of this rule.

6. Minimizing Adverse Impact: No adverse impact is anticipated. The Comptroller's Office has previously required that abandoned property forms and Finder Agreements contain most of these elements. Therefore, small businesses and local governments affected have already been complying with this requirement.

7. Small Business and Local Government Participation: The proposed rule has been published on the Comptroller's website in order to obtain feedback from small businesses and local governments.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: This rule will affect all rural areas.

2. Reporting, Recordkeeping, and other Compliance Requirements; and Professional Services: This rule will amend the existing requirements with respect to the Finder Agreement that must be submitted by a Finder where the Finder is submitting a claim to the Comptroller on behalf of a claimant. The rule will require that such Finder Agreement contain the claimant's current address and explicitly authorize a Finder to process the claim on behalf of the claimant. Additionally, the rule requires that where a Finder Agreement is entered into with a decedent's estate that is subject to EPTL section 13-2.3, the Finder provide proof that the Finder Agreement has been filed with the appropriate Surrogate's Court as required by section 13-2.3. No professional services are necessary.

3. Costs: The only compliance cost directly imposed by the rule is the cost of obtaining court certified copies as set forth in the SCPA in order to comply with the EPTL (the requirement to file and the filing fee therefore are mandated by existing law). Such cost is generally less than twenty dollars. The statutory filing fee, which is already established by law is \$16.00 minimum or \$8.00 per page.

4. Minimizing Adverse Impact: This rule will have no adverse impact. Since the Comptroller's Office has previously required a Finder Agreement contain these elements and claimants in rural areas have already complied with this requirement.

5. Rural Area Participation: The proposed rule has been published on the Comptroller's website in order to obtain feedback from those in rural areas.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prohibiting Use of Tobacco by Staff and Residents in Residential Programs Caring for Foster Children

I.D. No. CFS-18-10-00004-P

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

Proposed Action: Addition of section 441.23 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(f) and 462(1)(a)

Subject: Prohibiting use of tobacco by staff and residents in residential programs caring for foster children.

Purpose: To prohibit the use of tobacco by staff and residents in residential programs caring for foster children.

Text of proposed rule: A new section 441.23 is added to read as follows:

Section 441.23 Tobacco product use prohibition

(a) *Use of tobacco products by staff or residents on the facility grounds of an institution, group residence, group home or agency boarding home, as defined in section 441.2 of this Part, is prohibited.*

(b) *Tobacco products in the possession of a resident of such a facility are contraband and must be confiscated by agency staff.*

(c) *For the purposes of this section:*

(1) *Use of tobacco products means the lighting, chewing, ingestion or smoking of any tobacco product.*

(2) *Tobacco products include but are not limited to cigarettes, cigars, pipe tobacco, chewing or dipping tobacco.*

(3) *Facility grounds means any building, structure, and surrounding grounds contained within a facility's legally defined property boundaries as registered in a county clerk's office and any vehicle used to transport residents.*

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(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 462(1)(a) of the SSL authorizes OCFS to promulgate regulations concerning standards of care, treatment and safety applicable to all facilities exercising care or custody of children.

2. **Legislative objectives:**

The proposed regulation supports the declaration of policy and state-

ment of purpose set forth in section 460 of the SSL that residential care programs for children of the highest quality is a matter of vital concern to the people of the State of New York. The proposed regulation that would prohibit the use of tobacco by staff and residents on the grounds of an institution, group residence, group home or agency boarding home certified by OCFS is consistent with the goal of the protection of the health and safety of children cared for in such residential programs.

The proposed regulation is also consistent with the provisions of section 1399-o of the Public Health Law (PHL) that provides that smoking is not permitted by any person in the indoor areas of group homes and public institutions, as defined in section 371 of the SSL.

3. Needs and benefits:

The proposed regulation would prohibit the use of any tobacco product by either staff or residents on the facility grounds of residential programs for foster children that are certified by OCFS. Facility grounds would extend to any building or structure and any outdoor area on the legally recognized property of the residential program. In addition, the ban on the use of tobacco would also apply to any vehicle used by the residential program to transport foster children. Finally, the proposed regulation would provide that tobacco in the possession of a foster child in a residential program is contraband that must be confiscated by agency staff.

The proposed regulation would assist in removing the harmful effects of tobacco use from foster children in residential programs. It is hoped that such a prohibition, in addition to the immediate health benefits, will also discourage use of tobacco after discharge from the residential program. Because of the concern over such factors as second hand smoke and the example of using potentially hazardous tobacco products, the ban on tobacco use also would apply to staff.

The prohibition on tobacco use in the proposed regulation is consistent with other statutory and regulatory bans on tobacco use. As previously noted, section 1399-o of the PHL prohibits any person to smoke in various indoor areas, including youth centers and facilities for detention, child day care centers, group homes, public institutions and residential treatment facilities for children and youth. Section 409 of the Education Law prohibits tobacco use on school grounds of all schools of common, union free, central high school and city school districts other than city school districts with over 125,000 inhabitants. The proposed regulations are similar to the standards promulgated by the New York State Office of Alcoholism and Substance Abuse Services (OASAS) that prohibit the use of all tobacco products in facilities, on grounds and in vehicles owned or operated by OASAS. Additional regulatory prohibitions on smoking include staff in day care centers (18 NYCRR 418-1.11 and 418-2.11) and school buses (8 NYCRR 156.3).

4. Costs:

The proposed regulatory amendment has no fiscal impact.

5. Local government mandates:

To the extent that a social services district operated a residential program for foster children certified by OCFS, the proposed regulation would apply.

6. Paperwork:

No additional paperwork requirements are mandated by the proposed regulation.

7. Duplication:

The proposed regulation does not duplicate other state requirements.

8. Alternatives:

One alternative considered was to limit the proposed regulation to only a ban on smoking. Given the potential health risks of smokeless tobacco, it was decided to expand the ban to all tobacco products.

9. Federal standards:

There are no comparable federal standards.

10. Compliance schedule:

Compliance with the proposed regulation will begin upon adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulation will affect social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies. There are 58 social services districts and approximately 125 voluntary authorized agencies in the State of New York.

2. Compliance Requirements:

Residential programs for foster children are subject to the inspection, supervision and regulation of the Office of Children and Family Services (OCFS) pursuant to Titles 1 and 3 of Article 7 of the Social Services Law (SSL). OCFS has promulgated regulations relating to the care, treatment, health and safety of children cared for in such residential programs for children (see 18 NYCRR Parts 441, 442, 447 and 448). Such regulations also address personnel practices and standards for residential programs for children.

The proposed regulation would prohibit the use of tobacco by either the staff or residents on the grounds of an institution, group residence, group home or agency boarding home, as defined in 18 NYCRR 441.2. The

prohibited use of tobacco would include the lighting, chewing, ingestion or smoking of any tobacco product on facility grounds. Facility grounds would include any building, structure and surrounding outdoor grounds within the facility's legally defined property boundaries as recorded in the county clerk's office. In addition, the proposed regulation would prohibit tobacco use by any staff or resident in a vehicle used to transport children.

Section 1399-o of the Public Health Law (PHL) prohibits smoking in any indoor areas of a group home or a public institution as defined in section 371 of the SSL.

3. Professional Requirements:

No need for additional staff is anticipated.

4. Compliance Costs:

The proposed regulatory amendment has no fiscal impact.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

The proposed regulation supports compliance with section 1399-o of the PHL in relation to prohibiting smoking in certain residential programs for children.

7. Small Business and Local Government Participation:

The vast majority of residential programs that would be impacted by the proposed regulation are operated by voluntary authorized agencies. OCFS contacted several voluntary authorized agencies that operate residential programs for foster children to inquire into their current policies regarding tobacco use. In addition, OCFS inquired into their position on a ban on tobacco use in such programs. OCFS contacted residential programs located in all parts of the State of New York. Feedback was generally positive towards a ban of tobacco product use.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The proposed regulations will affect social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies in rural areas. There are 44 social services districts and approximately 100 voluntary authorized agencies in rural areas of New York State.

2. Compliance Requirements:

Residential programs for foster children are subject to the inspection, supervision and regulation of the Office of Children and Family Services (OCFS) pursuant to Titles 1 and 3 of Article 7 of the Social Services Law (SSL). OCFS has promulgated regulations relating to the care, treatment, health and safety of children cared for in such residential programs for children (see 18 NYCRR 442, 442, 447 and 448). Such regulations also address personnel practices and standards for residential programs for children.

The proposed regulation would prohibit the use of tobacco by either the staff or residents on the grounds of an institution, group residence, group home or agency boarding home, as defined in 18 NYCRR 441. The prohibited use of tobacco would include the lighting, chewing, ingestion or smoking of any tobacco product on facility grounds. Facility grounds would include any building, structure and surrounding outdoor grounds within the facility's legally defined property boundaries as recorded in the county clerk's office.

Section 1399-o of the Public Health Law (PHL) prohibits smoking in any indoor areas of a group home or a public institution as defined in section 371 of the SSL.

3. Professional Services:

No need for additional staff is anticipated.

4. Compliance Costs:

The proposed regulatory amendment has no fiscal impact.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

The proposed regulation supports compliance with section 1399-o of the PHL in relation to prohibiting smoking in certain residential programs for children.

7. Small Business Participation:

The vast majority of residential programs that would be impacted by the proposed regulation are operated by voluntary authorized agencies. OCFS contacted voluntary authorized agencies that operate residential programs for foster children in rural communities. OCFS inquired into the current policies of such agencies regarding tobacco use. In addition, OCFS inquired into the impact of a ban on tobacco use on such agencies. Generally, the response from such agencies on a ban on tobacco use was positive.

Job Impact Statement

A full job statement has not been prepared for the proposed regulation dealing with the prohibition against the use of tobacco by staff and

residents in residential programs for foster children. The proposed regulation would not result in the loss of any jobs.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Foster Family Boarding Homes

I.D. No. CFS-18-10-00005-P

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

Proposed Action: Amendment of section 443.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 378(5)

Subject: Foster Family Boarding Homes.

Purpose: Provide enhanced flexibility in regard to sleeping arrangements for sibling groups in foster homes.

Text of proposed rule: Paragraph (4) of subdivision (a) of section 443.3 is amended to read as follows:

(4) Separate bedrooms are required for children of the opposite sex over seven years of age, *unless the children are siblings or half siblings sharing the same bedroom and the alternative sleeping arrangement is consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.*

Paragraph (5) of subdivision (a) of section 443.3 is amended to read as follows:

(5) Not more than three persons may occupy any bedroom where children at board sleep, *unless the children are siblings or half siblings and the occupancy is consistent with the health, safety, and welfare of each of the siblings or half-siblings and is necessary to keep the siblings or half siblings placed together in the same foster home.*

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.

Section 378(5) of the SSL authorizes OCFS to establish and amend regulations governing the certifying of foster boarding homes.

2. Legislative objectives

The proposed regulations would carry out the intent of section 378(5) of SSL, which authorizes OCFS to amend the regulations governing the boarding of foster children in certified foster homes on an as needed basis.

3. Needs and benefits

The proposed regulations are in response to requests for flexibility by several social service districts when they have had circumstances of siblings that have not been able to be placed together due to the current foster care certification/approval requirements regarding bedroom capacity or sleeping arrangements.

The Office of Children and Family Services recognizes it is important for siblings to remain in placement together. In June of 2007, OCFS released an Informational Letter (07-OCFS-INF-04) titled Keeping Siblings Connected: A White Paper on Siblings in Foster Care and Adoptive Placements in New York State, which emphasized the importance of the sibling bond to children's development and emotional well-being. Many mental health and child care experts have stated that the sibling bond is extremely important for the mental health and well-being of all children, and maybe even more so for children in foster care who have usually suffered a significant amount of loss. Research has shown that siblings in foster care who are placed together tend to have fewer emotional and behavioral issues than those placed apart. They are also less likely to experience a disruption in placement.

Sections 358-a and 384-a of SSL both state that placement of siblings or half-siblings together must be sought unless it is deemed that such

placement would be contrary to the child's best interest. OCFS policy, as promulgated by 18 NYCRR 431.10 addresses the requirement to place siblings or half-sibling together unless placement together would be detrimental to the best interests of the siblings. This regulation also states that siblings or half-siblings may only be separated if the placement together is determined to be contrary to the health, safety or welfare of one or more of the children.

In 2005, the Office of the New York State Comptroller conducted audits both upstate and on the New York City Administration for Children's Services (ACS) on Sibling Placement in Foster Care (Report 2005-S-70 and Report 2005-S-10). The findings of these audits were that local social services districts needed to do more to either place siblings together or to document why such placements were not feasible.

Currently, under 18 NYCRR 443.3(a)(4), foster families are required to have separate bedrooms for children of the opposite sex over seven years of age. There is no differentiation between siblings or half-siblings and non-siblings with respect to this regulation. Therefore, if a foster family has only one bedroom available, they would not be able to accommodate two or more siblings or half-siblings if they are not of the same sex and are over the age of seven. The proposed regulations would provide that the general rule for separate bedrooms would not apply to children of the opposite sex over seven when the children are siblings or half-siblings, as long as the sleeping arrangement is consistent with the health, safety and welfare of each of the children and is necessary to keep the siblings or half-siblings placed together in the same foster home.

Also, under 18 NYCRR 443.3(a)(5), foster families are required to have not more than three persons occupying any bedroom where children at board sleep. The current regulation does not take into account if the children are siblings or half-siblings and that the room is sufficiently large enough to accommodate a larger number of children. Currently, if the foster family only has one bedroom available they could not be used as a resource for a sibling group of four or larger, even if the bedroom available is large enough to accommodate that number of children with bunk beds or other acceptable sleeping arrangements. The proposed regulation would provide that the general rule would not apply when the children are siblings or half-siblings, provided the occupancy is consistent with the health, safety and welfare of each of the children and is necessary to keep the siblings or half-siblings together in the same foster home.

The proposed regulations would allow social service districts and voluntary authorized agencies to consider foster homes that may have limited bedroom space as potential resources for children that are siblings or half-siblings. This change could result in more siblings and half-siblings being placed together in one foster home, rather than being separated due to the environmental limitations of a foster home that may be otherwise willing and able to accommodate them together.

4. Costs

The proposed regulations will have no fiscal impact on OCFS or local social services districts. The proposed regulations will result in more siblings and half siblings being placed together in the same foster home, rather than being separated due to the environmental limitations of a foster parent who is otherwise willing and able to care for a sibling group. The proposed regulations will also facilitate conformance with case plan requirements for sibling placements and will avoid the added costs and coordination of visits of siblings placed in multiple locations.

5. Local government mandates

There would be no additional mandates imposed on local governments as a result of the proposed regulations. Social service districts could choose to take advantage of the increased flexibility in certifying or approving their foster homes for placement of sibling groups based on the particular case circumstances.

6. Paperwork

No new paperwork is required by the proposed regulations.

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 the bedroom capacity/sleeping arrangement requirements of a certified or approved foster home when they are considering placement of a sibling group.

8. Alternatives

Retaining the current standards would result in the unnecessary separation of siblings when they may be placed in otherwise safe conditions.

9. Federal standards

Federal Title IV-E standards mandate that a foster home must be fully certified or approved before Title IV-E reimbursement is available. In addition, federal Title IV-E standards preclude a state to establish divergent sets of regulations for the certification of non-relative foster homes and the approval of relative foster homes.

10. Compliance schedule

Compliance with the proposed regulations would take effect upon adoption.

Regulatory Flexibility Analysis**1. Effect on Small Businesses and Local Governments**

Social service districts, the St. Regis Mohawk Tribe and voluntary authorized agencies contracted 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.

2. Compliance Requirements

There are no additional mandates imposed by the proposed regulations. These amendments allow for the expansion of the circumstances in which a foster home may be approved or certified for placement of a sibling group. The amendments do not require any social services district or voluntary authorized agency to take advantage of the added flexibility and use the changes to certification or approval of a foster home for the placement of siblings.

3. Professional Services

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

4. Compliance Costs

The proposed regulations will have no fiscal impact on OCFS or local social services districts. The proposed regulations will result in more siblings and half siblings being placed together in the same foster home, rather than being separated due to the environmental limitations of a foster parent who is otherwise willing and able to care for a sibling group. The proposed regulations will also facilitate conformance with case plan requirements for sibling placements and will avoid the added costs and coordination of visits for siblings placed in multiple locations.

5. Economic and Technological Feasibility

The proposed regulations will not impose any additional economic or technological burdens on social services districts, the St. Regis Mohawk Tribe, 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 have requested increased flexibility with foster care certification or approval with respect to making sibling placements. The local districts were concerned because they felt that there should be some flexibility in room capacity/sleeping arrangement requirements if it meant that siblings or half-siblings could be placed together safely in one foster home, as opposed to being placed separately.

Rural Area Flexibility Analysis**1. Types and estimated number of rural areas**

The proposed amendments to regulation will or may affect the 44 social services districts and the St. Regis Mohawk Tribe that are in rural areas. Currently, there are also approximately 100 voluntary authorized agencies in rural areas of New York State.

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 greater flexibility concerning the certification/approval requirements regarding bedroom capacity/sleeping arrangements with respect to sibling placements. They do not, however, require any social services district or voluntary authorized agency to take advantage of this added flexibility when considering sibling placements.

3. Costs

The proposed regulations will have no fiscal impact on OCFS or local social services districts. The proposed regulations will result in more siblings and half siblings being placed together in the same foster home, rather than being separated due to the environmental limitations of a foster parent who is otherwise willing and able to care for a sibling group. The proposed regulations will also facilitate conformance with case plan requirements for sibling placements and will avoid the added costs and coordination of visits for siblings placed in multiple locations.

4. Minimizing adverse impact

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

5. Rural area participation

Several social service districts made the request for added flexibility with bedroom capacity/sleeping arrangements for foster home certification or approval due to concerns regarding keeping siblings or half-siblings together.

Job Impact Statement

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

Education Department**EMERGENCY
RULE MAKING****Museum Collections Management Policies****I.D. No.** EDU-18-10-00001-E**Filing No.** 400**Filing Date:** 2010-04-14**Effective Date:** 2010-04-14

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

Action taken: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided), 217 (not subdivided), 233-aa(1), (2) and (5); and L. 2008, ch. 220

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April, June, July, October and December 2009 and the February 2010 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009. Notices of Revised Rule Making were published in the State Register on August 26, 2009 and January 20, 2010.

The proposed amendment is consistent with generally accepted professional and ethical standards within the museum and historical society

communities. State Education Department staff continue to work with the Legislature and with museum constituents to develop revised standards for museum deaccessioning. The Department participated in a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly. However, a consensus has not been reached with respect to the revised standards, and the Department believes it is necessary to continue the emergency rule that has remained in effect since December 19, 2008.

The emergency rule adopted at the February Regents meeting is only effective for 60 days and will expire on April 13, 2010. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the February Regents meeting to readopt the rule, effective April 14, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above. Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

The Notice of Proposed Rule Making published in the January 7, 2009 State Register will expire on April 7, 2010. It is anticipated that the emergency rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a new Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of emergency rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective April 14, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed June 12, 2010:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the institution by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective April 14, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed June 12, 2010:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, *including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision*, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, *for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section*, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) *the item or material is not relevant to the mission of the institution;*

(ii) *the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;*

(iii) *the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or*

(iv) *the institution is unable to conserve the item or material in a responsible manner.*

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

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 June 12, 2010.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Education Law section 215 authorizes the Regents, the Commissioner, or their representatives, to visit, examine and inspect education corporations and other institutions admitted to the University of the State of New York, as defined in Education Law section 214, and to require, as often as desired, duly verified reports giving such information and in such form as they shall prescribe.

Education Law section 216 authorizes the Board of Regents to incorporate educational institutions, including museums and other institutions for the promotion of science, literature, art, history or other department of knowledge, with such powers, privileges and duties, and subject to such limitations and restrictions, as they Regents may prescribe.

Education Law section 217 empowers the Board of Regents to grant a provisional charter to an institution, which shall be replaced by an absolute charter when the conditions for such absolute charter have been fully met.

Education Law section 233-aa, as added by Chapter 220 of the Laws of 2008, enacts provisions governing the ownership and management of properties owned by or lent to museums, requires that the acquisition of property by a museum pursuant to section 233-aa must be consistent with the mission of the museum, and specifies that proceeds derived from the sale of any property title to which was acquired by a museum pursuant to section 233-aa shall be used only for the acquisition of property for the museum's collection or for the preservation, protection, and care of the collection and shall not be used to defray ongoing operating expenses of the museum.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the statutes by clarify-

ing criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

4. COSTS:

- (a) Costs to the State: None.
- (b) Costs to local governments: None.
- (c) Costs to private, regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to museums and historical societies with collections chartered by the Board of Regents, and does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any additional paperwork requirements on such institutions.

7. DUPLICATION:

The proposed amendment duplicates no existing state or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards regarding the chartering and registration of museums and historical societies by the Board of Regents.

10. COMPLIANCE SCHEDULE:

The proposed amendment clarifies criteria regarding the deaccessioning of items and materials in the collections of chartered museums or historical societies, consistent with generally accepted professional and ethical standards within the museum and historical society communities. It is anticipated that regulated parties can achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules

that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to all of the 644 museums and 884 historical societies in New York State (source: New York State Museum chartering database as of November 2008), including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 persons per square mile or less.

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, and does not impose any costs on such institutions, the State, local governments or the State Education Department.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. The proposed amendment clarifies restrictions on when a chartered museum or historical society may deaccession an item or material in its collection and clarifies restrictions on the use of deaccession proceeds, consistent with generally accepted professional and ethical standards within the museum and historical society communities, and does not impose any additional compliance requirements or costs on such institutions. Since these requirements must have State-wide application in order to ensure uniform, consistent practices relating to museum and historical society collections management, it is not feasible to impose a lesser standard on, or otherwise exempt, institutions located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department consulted with the Museum Association of New York in the development of the proposed amendment.

In addition, the Department asked its museum and historical society constituents to comment on the proposed amendment through announcements on web sites, and copies sent to listservs and electronic mailing lists. All areas of the state, including rural areas, received the announcements.

Job Impact Statement

The proposed amendment applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

Teacher Certification Flexibility to Avoid or Mitigate Reductions in Force

I.D. No. EDU-18-10-00014-P

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

Proposed Action: Amendment of section 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 3001 and 3004(1)

Subject: Teacher certification flexibility to avoid or mitigate reductions in force.

Purpose: To allow school districts and BOCES to reassign effective teachers to another grade level to avoid a reduction in force.

Text of proposed rule: New subdivisions (k), (l) and (m) are added to section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective April 27, 2010, to read as follows:

(k) Requirements for the issuance of a limited extension to teach a subject in grades 7-8 during a period of immediate fiscal crisis and a 7-8 grade level extension.

(1) Purpose. The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach that subject in grades 7-8 during a demonstrated fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 7-8 with that employing entity only. Thereafter, a 7-8 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 7 and 8 in any employing entity.

(4) Requirements for limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying that:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 7-8 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of an extension in grades 7-8 to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students;

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision; and

(f) the employing entity will not assign the employed teacher to teach courses for high school credit;

(5) Requirements for 7-8 grade level extension in a subject. Notwithstanding the provisions of this section, an extension to teach a subject in grades 7-8 shall be issued to a candidate in a specific subject area for grades 7 and 8 provided that the candidate successfully completes the

New York State Teacher Certification Examination content specialty test in the subject for which a certificate extension is being sought and six semester hours of coursework in middle childhood education.

(l) Requirements for a limited extension to teach kindergarten during a period of immediate fiscal crisis and a kindergarten extension.

(1) Purpose. The purpose of extensions issued in this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in childhood education (grades 1-6) to be reassigned by the employing entity to teach kindergarten during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity, provided that the requirements in paragraph (4) of this section are met. A limited extension shall authorize a candidate to teach kindergarten with that employing entity only. Thereafter, a kindergarten extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach kindergarten in any employing entity.

(4) Requirements for a limited extension. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate to teach kindergarten provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, permanent, initial or professional certificate in the classroom teaching service in childhood education (grades 1-6) or students with disabilities (grades 1-6) or an equivalent certificate title authorizing the teaching of all common branch subjects in grades 1 through 6; and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in kindergarten;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension in kindergarten to such candidate will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under an extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) Requirements for kindergarten extension. Notwithstanding the provisions of this section, a kindergarten extension may be issued to a candidate provided that the candidate satisfactorily completes six semester hours of pedagogical coursework in early childhood development.

(m) Requirements for the issuance of a limited extension to teach a subject in grades 5-6 during a period of immediate fiscal crisis and a 5-6 grade level extension in a subject.

(1) Purpose. The purpose of extensions issued under this subdivision, subject to their period of applicability as set forth in paragraph (2) of this subdivision, is to authorize a teacher who is currently employed and certified in the classroom teaching service in a certain subject in grades 7-12 and who has demonstrated an appropriate academic background to teach in the subject area of his/her grade 7-12 certificate, to be reassigned by the employing entity to teach that subject in grades 5-6 during a demonstrated immediate fiscal crisis to avoid or mitigate a reduction in force, consistent with the requirements of law.

(2) Applicability. The provisions of this subdivision shall apply commencing April 27, 2010 and end on June 30, 2013.

(3) Limitations. A limited extension issued under this subdivision shall be valid for two years from its effective date and shall not be renewable. A limited extension may be issued to a teacher currently employed by an employing entity that meets the requirements in paragraph (4) of this section. A limited extension shall authorize a candidate to teach a subject in grades 5-6 with that employing entity only. Thereafter, a 5-6 grade level extension may be issued to such teacher upon completion of the requirements in paragraph (5) of this subdivision and shall authorize the teacher to teach a subject in grades 5-6 in any employing entity.

(4) Requirements for a limited extension to teach a subject in grades 5-6. Notwithstanding the provisions of this section, a limited extension may be issued to a candidate in a subject for grades 5-6 provided that the candidate meets the requirements in each of the following subparagraphs:

(i) The candidate shall hold a valid provisional, initial, permanent, or professional certificate in English language arts (7-12), language other than English (7-12), mathematics (7-12), biology (7-12), chemistry (7-12), earth science (7-12), physics (7-12), or social studies (7-12); and

(ii) The candidate shall submit a statement by the Chancellor, in the case of employment with the City School District of the City of New York; or by the superintendent, in the case of other employing boards; or by the chief school officer, in the case of employment with another entity required by law to employ certified teachers certifying:

(a) the employing entity seeks to reassign a currently employed teacher to a new teaching position in grades 5-6 in a subject area in the classroom teaching service;

(b) the candidate meets the qualification requirements of section 120.6 of this Title, relating to the No Child Left Behind Act of 2001;

(c) the employing entity is in an immediate fiscal crisis and the issuance of a limited extension to such candidate to teach grades 5-6 will avoid or mitigate a reduction in force;

(d) the employing entity will provide appropriate support to the currently employed teacher undertaking a new teaching assignment under a limited extension to ensure the maintenance of quality instruction for students; and

(e) the employing entity will require, as a condition of employment under the extension, the candidate's enrollment in study at an institution of higher education to complete the requirements in paragraph (5) of this subdivision.

(5) Requirements for a 5-6 grade level extension in a subject area. A 5-6 grade level extension may be issued to a candidate in a specific subject area provided that the candidate meets the requirements of subdivision (b) of this section.

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 473-2986, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Joseph Frey, Deputy Commissioner of Higher Education, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 486-3633, email: jfrey@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 3001 of the Education Law provides that no teacher shall be authorized to teach in the public schools of the State if there are not in possession of a teacher's certificate issued by the Department.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by providing flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis to avoid or mitigate reductions in force.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis in order to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension

will be valid for two years and shall be valid with that employing entity only. A full extension will be issued to the candidate if the candidate completes six semester hours of coursework in Middle Childhood education.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the Department will issue the teacher a full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a teaching position in an academic subject in grades 7 and 8. The teacher would need to have appropriate educational and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to successfully complete the content specialty test in that subject area and complete six semester hours of coursework in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

4. COSTS:

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

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

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts and BOCES. However, to obtain a limited extension under the proposed amendment, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to both school districts and boards of cooperative educational services. Therefore, the mandates in Section 3 apply to school districts and BOCES.

6. PAPERWORK:

The proposed amendment requires the candidate to submit a written statement by the Chancellor, the superintendent or by the chief school officer containing certain information, when applying for a limited extension under the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish certification requirements for teachers, except the No Child Left Behind Act. Any candidate that applies for a limited extension under the proposed amendment will be required to qualify under the No Child Left Behind Act. Therefore, the proposed amendment is consistent with federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on April 27, 2010 in order to avoid or mitigate reduction in force decisions that must be made by school districts prior to school budget votes in May 2010.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to another grade level to avoid reductions in force. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed amendment relates to flexibility in teacher certification requirements for teachers across the State.

1. EFFECT OF RULE:

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to another grade level to avoid reductions in force.

2. COMPLIANCE REQUIREMENTS:

School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension will be issued to the candidate if the candidate completes six semester hours of coursework in Middle Childhood education.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the Department will issue the teacher a full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a teaching position in an academic subject in grades 7 and 8. The teacher would need to have appropriate educational and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to successfully complete the content specialty test in that subject area and complete six semester hours of coursework in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis.

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The purpose of the proposed amendment is to provide flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis in order to avoid or mitigate reductions in force. School districts and the New York State Council of School Superintendents requested that the Regents consider flexibility in the following three areas to help them retain effective teachers while meeting key staffing needs during the current fiscal crisis:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The proposed amendment provides a level of flexibility in certification similar to that of the Experiment in Organizational Change. During a period of fiscal crisis, a district could reassign a teacher who is employed by the district and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension will be issued to the candidate if the candidate completes six semester hours of coursework in Middle Childhood education.

Childhood Education Extended to Kindergarten

The proposed amendment authorizes a teacher who is currently certified in childhood education (grades 1-6) to be reassigned to teach kindergarten under a limited extension to their existing certificate for a two-year period while they complete six semester hours of pedagogical coursework in early childhood education. At that point, the Department will issue the teacher a full extension to teach kindergarten.

Childhood Education Extended to Grades 7 and 8

Similar to the regulation on the Experiment in Organizational Change, the proposed amendment authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a teaching position in an academic subject in grades 7 and 8. The teacher would need to have appropriate educational and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to successfully complete the content specialty test in that subject area and complete six semester hours of coursework in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

3. COSTS:

The proposed amendment is permissive in nature and any costs associated with the proposed amendment only apply to candidates that wish to be reassigned to a new grade level. However, to obtain a limited extension under the proposed amendment, the cost of the extension will be \$100 per candidate, which is the amount currently required for candidates seeking an extension.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment provides flexibility to school districts and BOCES located across the State. The proposed amendment provides flexibility from the current teacher certification requirements to allow school districts and BOCES to reassign effective classroom teachers to another grade level during this demonstrated immediate fiscal crisis.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The purpose of the proposed amendment is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to another grade level to avoid reductions in force. The proposed amendment will have no impact on the number of jobs or employment opportunities in New York State. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Professional Performance Reviews for Teachers in the Classroom Teaching Service

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

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

Proposed Action: Amendment of section 100.2(o) of Title 8 NYCRR.

Statutory authority: Education Law, section 207

Subject: Annual professional performance reviews for teachers in the classroom teaching service.

Purpose: To amend evaluation criteria of teachers to require uniform quality rating categories, incorporate student growth and feedback.

Substance of proposed rule (Full text is posted at the following State website: www.highered.nysed.gov): The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's regulations, relating to the Annual Professional Performance Review (APPR) for teachers in New York State. The following is a summary of the substance of the proposed amendment.

Annual Professional Performance Review for Teachers

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

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

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

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

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

Section 100.2(o)(2)(iii) creates four quality rating categories/criteria to be used in the annual professional performance review of teachers (Highly Effective, Effective, Developing and Ineffective) and defines each of these categories.

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

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

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

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

Professional Performance Review Plan

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

Content of the Plan

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

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

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

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

teacher improvement plan, which shall be developed by the district or BOCES in consultation with such teacher.

Variance

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

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

Data, views or arguments may be submitted to: Joseph Frey, Deputy Commissioner for Higher Education, NYS Education Department, 89 Washington Avenue, Room 977 EBA, Albany, NY 12234, (518) 486-3633, email: jfrey@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statute by requiring school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations; implementing uniform designated rating categories for the evaluation of teachers, and requiring that school districts and BOCES include a ninth evaluation criteria, i.e., student growth, in the evaluation of their teachers.

3. NEEDS AND BENEFITS:

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

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

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

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

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

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

4. COSTS:

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

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

(c) Costs to private regulated parties: In general, the proposed amendment does not impose any additional compliance costs on school districts

and BOCES. The Annual Performance Review already requires teachers to measure student's progress in learning based on the analysis of available student performance data. Secondly, the proposed amendment requires districts and BOCES to utilize four designated quality rating categories/criteria. The addition of such rating categories should not impose any additional costs.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

(a) Small businesses:

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

(b) Local governments:

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

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

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

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

unique abilities or disabilities of each student, including English language learners.

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

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

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

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

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

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

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

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement. Lastly, the proposed amendment eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Establishment of Clinically Rich Graduate Level Teacher Preparation Program

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

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

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

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

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

Purpose: Establish program registration standards for program and authorize certain non-collegiate institutions to offer program.

Substance of proposed rule (Full text is posted at the following State website: www.highered.nysed.gov): To maximize student growth and achievement in high need schools, the Board of Regents propose an amendment to the regulations to establish a clinically rich teacher preparation pilot program. Presented below is a summary of the proposed amendment.

Registration Requirement for the Pilot Program

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

Definition of Transitional B Certificate

Subparagraph (xvi) of paragraph (1) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended to revise the definition of Transitional B certificate to include a teaching certificate obtained by a candidate enrolled in the Model-B track of a clinically rich graduate level teacher preparation pilot program.

Program Registration Standards for Clinically Rich Pilot Program

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

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

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

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

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

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

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

Clause (b) of this subparagraph requires programs to meet certain admission requirements, including a requirement that candidates hold a baccalaureate or graduate degree with a 3.0 cumulative grade point average; an undergraduate or graduate major in the subject of the certificate sought; that candidates provide a written commitment to teach for at least four years in a high need school upon graduation and that candidates seeking certification in early childhood education, childhood education, middle childhood education-generalist, or a candidate seeking to teach students with disabilities at those developmental levels complete an undergraduate or graduate major in a liberal arts and sciences subject or interdisciplinary field.

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

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

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

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

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

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

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

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

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

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

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

Requirements for a Transitional B Certificate

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

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, 9th Floor, Education Building Annex, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Joseph Frey, Deputy Commissioner of Higher Education, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 486-3633, email: jfrey@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

Any institution that participates in this pilot program shall execute a

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

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

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

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

6. PAPERWORK:

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

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There were no significant alternative proposals considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

If adopted as an emergency measure at the April Regents meeting, the proposed amendment will become effective on May 1, 2010. A second emergency adoption will be necessary at the July Regents meeting to ensure that the regulations remain continuously in effect until the regulation becomes effective on August 11, 2010. It is unnecessary to delay implementation of the proposed amendment because of its permissive nature.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to establish program

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

2. Compliance requirements:

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

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

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business participation:

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

b) Local Governments:

1. Effect of rule:

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

2. Compliance requirements:

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

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

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

The proposed amendment is expected to have a positive impact on high need schools and school districts by increasing the supply of highly effective teachers in high need subjects in high need schools. As stated above, the proposed amendment is permissive in nature. It only applies to high need schools and school districts that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on school districts.

7. Local government participation:

The conceptual framework of the graduate level clinically rich pilot

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

Implementation of the proposed rule will not have a negative impact on entities or individuals located in rural communities. The proposed amendment is permissive in nature. Only program providers that wish to offer graduate level clinically rich pilot programs are required to meet the new

requirements for such programs. High need schools and school districts that elect to participate in the pilot program will benefit by having access to a larger pool of teacher candidates, although they will have the expense of providing mentoring support.

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

5. Rural area participation:

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

Job Impact Statement

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

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

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Aid for Public Health Services: Counties and Cities

I.D. No. HLT-18-10-00017-P

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

Proposed Action: Amendment of Parts 40 and 42 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 602(3)(a)

Subject: State Aid for Public Health Services: Counties and Cities.

Purpose: To achieve cost savings and to clarify eligible services for reimbursement of Article 6 of the Public Health Law (State Aid).

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by section 602(3)(a) of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon publication of the Notice of Adoption in the *State Register*:

Subsection (a) of Section 40-1.20 is repealed and subdivisions b and c are renumbered to be subdivisions a and b, respectively.

Subdivision (b) of Section 40-1.20 as renumbered is amended to read as follows:

[(c)](b)The commissioner shall issue an annual *fiscal* report not later than September 15th, on the extent to which *general public health work funding* [services] *was utilized* [provided] by municipalities pursuant to this Part. [maintained and improved the health status of residents, maintained and improved the accessibility and quality of health care and helped to control the costs of the health care system.] Such report shall be based upon findings derived from the reporting [systems] *system* authorized pursuant to [subdivisions] *subdivision* (a) [and (b)] of this *section*. [and shall include recommendations for improvements in the State Aid Program.]

Section 40-1.53 is amended to add new subdivisions (s), (t), and (u), to read as follows:

(s) *Abatement of public health nuisances. Abatement, remediation, management in place or any action that removes the public health*

nuisance from a property or relocating persons exposed to public health nuisances.

(t) *Optional Laboratory services. The cost of laboratory services for entities other than the municipal health department or the cost of those laboratory services that are unrelated to eligible services described in this Part.*

(u) *Optional, other services. Any services performed by the municipality that are unrelated to the eligible services described in this Part, including but not limited to hospice program and transition from the Early Intervention Program to the 3-5 (Pre-school/special education) program.*

Section 40-3.1 is repealed.

Subdivision (a) of Section 42.1 is amended to read as follows:

(a) All counties and cities *performing or contracting for laboratory tests related to the municipal health department's performance of eligible services described in this Part*, must submit to the New York State Department of Health an application for State aid for laboratory services, on an annual basis, no later than on the date specified by the State Commissioner of Health.

Section 42.10 is amended in part to read as follows:

Laboratory services eligible for reimbursement. *State aid will be granted to a municipality performing or contracting for laboratory tests related to the municipal health department's performance of eligible services described in this Part for, [on] the cost of laboratory services required for:*

* * *

Subdivision (a) of Section 42.11 is amended as follows:

(a) laboratory services eligible for reimbursement by Medicaid, Medicare and other third party payors; *and laboratory services unrelated to the eligible services described in this Part; or those provided to private practitioners or others where the municipal laboratory is providing services available from a private, commercial laboratory.*

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

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

Statutory Authority:

Article 6 of the Public Health Law (PHL) provides statutory authority for state aid for general public health work (GPHW) delivered by municipalities and describes basic and optional services that are eligible for reimbursement. PHL § 614(3) defines municipality to be a county or city. PHL § 602(3)(b) authorizes the commissioner to adopt rules and regulations after consulting with the public health council and county commissioners, boards, and the public health directors, to establish standards of performance delivered under the GPHW program.

Legislative Objectives:

This regulation meets the original legislative objective of PHL Article 6 of protecting the public health by redefining the set of services eligible for reimbursement under the GPHW Program to include only those that are related to the public health mission of municipalities. The changes are part of the overall effort to preserve core public health services. Public health funds will permit municipalities to focus on essential public health services needed to protect and improve the health of New York residents.

Needs and Benefits:

These revisions to the regulations are proposed to assure the continuation of adequate funding for public health services that are related to the public health mission municipalities of (i.e., local health departments (LHDs)).

The proposed rule clarifies that the abatement of public health nuisances is not eligible for reimbursement under the PHL Article 6 program. In making this change, the regulation re-emphasizes that the role of the municipalities is to assure the abatement of public health nuisances (e.g. through inspection, citation, monitoring, prevention activities, etc., which are reimbursable under Article 6), while the performance or funding of the actual abatement activity itself is not reimbursable.

The proposed rule seeks to eliminate reimbursement for the following set of services: laboratory services that do not support the public health programs delivered by the municipality, including but not limited to: hospice services; transition services from the Early Intervention Program to the Pre-school/Special Education Program (also referred to as the 3-5 Program); other optional services that are delivered by municipalities that are unrelated to the services described by Article 6 of the PHL.

The proposed changes are necessary to assure that reimbursement from

the GPHW Program is used to support essential public health services needed to protect and improve the health of New York State residents. To determine which services should no longer be eligible for reimbursement, staff evaluated the relationship of the service and its related costs to the intent of Article 6 to support public health services. None of the aforementioned programs, services, or activities relate to the five basic service areas defined in PHL § 602(3)(b): community health assessment, health education, family health, disease control and environmental health. To preserve funding for essential public health services provided by municipalities, this select group of optional services will no longer be eligible for reimbursement.

The proposed revision to 10 NYCRR § 40-1.2 will minimize the administrative burden on municipalities by removing the requirement to report performance data on an annual basis to the GPHW Program of the New York State Department of Health (Department) to assess performance. The GPHW Program will access data already collected by Department programs. Since performance data specific to Article 6 reimbursement will no longer be collected by the GPHW Program, the content of the annual report required by the regulation will no longer contain aggregate performance data and the report will only contain fiscal data.

Costs:

Costs to Regulated Parties for the Implementation of, and Continuing Compliance with, the Rule:

Final GPHW state aid payments for calendar year 2008 totaled approximately, \$289.5 million. Adoption of the proposed regulations will save New York State approximately \$5 million in State Fiscal Year (SFY) 2010-11. If the regulated parties, i.e., the LHDs, choose to continue providing services at the 2008 levels, which will be ineligible for state reimbursement, they will incur \$5 million in SFY 2010-11 and \$9.5 million in SFY 2011-12 when fully annualized.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

There are no costs to the agency or the state for the elimination of reimbursement for programs. As described above, if municipalities choose to continue the provision of services ineligible for state aid reimbursement they will incur \$5 million in SFY 2010-11 and \$9.5 million in SFY 2011-12 when fully annualized, if spending remains at 2008 levels.

The Information, Including the Source(s) of Such Information and the Methodology upon Which the Cost Analysis is Based:

The cost analysis is based on 2008 Calendar Year State Aid Application information, provided by municipalities, as currently required by PHL § 618 and 10 NYCRR § 40-1.20(b). An annual summary of state aid paid is routinely prepared by the program. This data was used to estimate the cost savings of the proposed rule.

Local Government Mandates:

This proposed rule does not impose any program, service, duty or responsibility upon the municipalities.

Paperwork:

The requirements for reporting will be reduced by the proposed amendment to 10 NYCRR § 40-1.2. All other reporting requirements will remain unchanged.

Duplication:

There are no relevant rules and other legal requirements of the state and federal governments, that duplicate, overlap or conflict with the proposed rule.

Alternatives:

An alternative was to reduce the state aid formula for reimbursement across the board which would achieve the same savings, but would adversely impact the municipality's ability to provide the basic public health services required by PHL § 602(3)(b). This alternative was rejected, in favor of emphasizing the importance of the core services and supporting the provision of those services by the municipalities.

Federal Standards:

There is no federal minimum standard.

Compliance Schedule:

The regulations will take effect upon publication of the Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect of Rule:

These proposed regulations will apply to municipalities that perform the impacted services:

- optional laboratory services - 14 counties;
- hospice - five counties;
- transition from the Early Intervention Program to the Preschool/Special Education Program (also known as the 3-5 Program) - 44 counties; and
- other optional services - in the future all municipalities would be affected due to the inability to request reimbursement for services that have been determined to be unrelated to eligible basic and

optional programs as described by regulation. It is not possible to predict what these services may be, their cost or the impact of this rule change.

All 58 municipalities will benefit by the proposed regulation that reduces the annual performance reporting requirement.

Compliance Requirements:

The proposed regulations will not change the PHL Article 6 mandate for a municipality to submit a Community Health Assessment, Municipal Public Health Services Plan, and State Aid Application.

Professional Services:

Municipalities will not require additional professional services to comply with the proposed rule. Existing staff will be sufficient to comply.

Compliance Costs:

If municipalities continue to provide services, at the 2008 level, that are no longer reimbursable by the state aid as GPHW, the costs will vary by size of program, receipt of revenue, and clients served. Estimated impacts on the municipalities, using 2008 calendar year reimbursement data are as follows: optional laboratory services - \$233,000; and other optional services, including but not limited to hospice and transition from the Early Intervention Program to the Preschool/Special Education Program - \$9.3 million.

Economic and Technological Feasibility:

There are no technological requirements for compliance with the proposed rule. Municipal government will need to determine the economic feasibility to continue supporting the municipality's performance of the services that will no longer be eligible for reimbursement. Each municipality will need to examine its own decision to provide these services, the municipality's need for such services, and the fiscal support required to continue provision of services. Municipalities may need to examine the revenue billing and collection policies which would off-set the local cost of service provision.

Minimizing Adverse Impact:

The proposed regulatory changes are the best option for ensuring adequate resources are available for delivery of essential local public health services. The alternatives of reducing the reimbursement rate across the board for all services would adversely impact all 58 LHDs and the provision of public health services necessary to protect the health of each county resident.

This proposed rule represents a minimal impact on the municipality, resulting in a savings of approximately \$5 million in SFY 2010-11 and approximately \$9.5 million in SFY 2011-12. The overall impact on public health programs and funding is minimal, amounting to a reduction of three percent (3%) of the overall annual GPHW reimbursement amount.

Small Business and Local Government Participation:

Compliance with PHL § 602(3)(a) and with State Administrative Procedure Act (SAPA) § 202-b(6), to ensure that local governments have an opportunity to participate in the rule making process was achieved by:

- convening a budget briefing conference call on January 27, 2010 for all LHDs, their trade association, the New York State Association of County Health Officials (NYSACHO), and other interested parties;
- presenting the initiative to the Public Health Council on March 12, 2010;
- presenting the initiative to NYSACHO on April 1, 2010;
- publishing the proposed rule in the *State Register* accompanied by a notice to NYSACHO and the New York State Association of Counties (NYSAC); and
- individually addressing questions from concerned LHDs and NYSACHO to ensure understanding of the intention of the proposed changes, in preparation for review of the proposed regulations.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

There are 43 rural municipalities in New York State, with populations of less than 200,000. Each of these rural municipalities has an LHD. Each element of the proposed rule affects a different set and number of rural municipalities affected:

- eight municipalities obtain reimbursement for optional laboratory service costs;
- five municipalities provide hospice services; and
- 33 municipalities provide transition from the Early Intervention Program to the Preschool/Special Education Program.

All of the rural municipalities will be affected by the change to the annual performance report requirement.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The proposed regulations will not change the PHL Article 6 mandated requirement for rural municipalities to submit Community Health Assessments, Municipal Public Health Services Plans and State Aid Applications. Municipalities will not require additional professional services to comply with the proposed rule. Existing staff will be sufficient to comply.

Costs:

If rural municipalities continue to provide the services that are no longer reimbursable by state aid for GPHW at the levels these services were provided in 2008, the costs will vary depending on the size of program, the receipt of revenue, and the clients served. Estimated impacts, using 2008 calendar year reimbursement data are as follows:

- optional laboratory services - \$101,000;
- other optional services, including but not limited to hospice and transition from the Early Intervention Program to the Preschool/Special Education Program - \$1,974,000.

Minimizing Adverse Impact:

The proposed rule was designed to minimize adverse impact on rural areas since municipalities can choose to continue the provision of services without reimbursement from the state.

Rural Area Participation:

Compliance with SAPA § 202-bb(7), to ensure that rural local governments have an opportunity to participate in the rule making process was achieved by: convening a budget briefing conference call on January 27, 2010 for all LHDs, their trade association, the New York State Association of County Health Officials (NYSACHO), and other interested parties; an April, 2010 meeting with NYSACHO to department staff; a Public Health Council briefing in early 2010; publishing the proposed rule in the State Register accompanied by a notice to NYSACHO and the New York State Association of Counties (NYSAC); and Department staff responding to individual questions from concerned LHDs and NYSACHO to ensure understanding of the intention of the proposed changes, in preparation for review of the proposed regulations.

Job Impact Statement**Nature of Impact:**

The proposed regulation does not mandate a reduction or increase in employment opportunities. It does allow municipalities a choice in selecting the programs (optional laboratory services, Early Intervention transition to the Preschool/Special Education Program, hospice and other optional programs) they will continue to provide without the fiscal support provided by state aid for GPHW.

Categories and Numbers Affected:

Eliminating reimbursement for optional laboratory services provided or contracted for by a municipality that are not related to the eligible services outlined in Part 40 or providing services available from private laboratories will affect fourteen municipalities. The number of personnel working on optional laboratory services for the municipality receiving the largest amount of reimbursement is three full time laboratory staff at a cost of approximately \$176,000.

Eliminating the category of expenses known as "other optional" services consists of services or programs performed by municipalities that are unrelated to the eligible services described in Part 40, including but not limited to hospice and transition from the Early Intervention Program to the Pre-school/Special Education Program.

Eliminating state aid reimbursement for hospice services will affect five municipalities. A municipality receiving the largest amount of reimbursement employs about 5.7 full time employees at a cost of approximately \$235,000, while the municipality receiving the lowest amount of reimbursement employs 8 full time staff at a cost of approximately \$210,000. There is a high degree of variability across municipalities in the structuring of programs and in the reporting and categorization of staff as hospice staff. There may be other administrative staff that could be affected by a decision for a particular municipality to discontinue the provision of hospice services, but that data is not available for an analysis to be made.

Eliminating the other optional categories of service will affect transition services from Early Intervention Program to the Pre-school/Special Education Program, thereby impacting on 44 municipalities. The municipality receiving the largest amount of reimbursement employs about 25 full time employees at a cost of approximately \$1 million, while the LHD receiving the lowest amount of reimbursement employs 0.4 full time staff at a cost of approximately \$12,500. There is a high degree of variability across municipalities in the structuring of programs and in the reporting and categorization of staff. The municipalities have been found to report costs that are not eligible for GPHW reimbursement and which are also reimbursed by the State Education Department's state aid program and the Department's Early Intervention Program. When GPHW reimbursement is no longer available, these services may be reimbursed through those sources.

Regions of Adverse Impact:

The rural or small municipalities of the state will be affected more than other areas, since there are more rural municipalities than the medium and large counties. However, the affect is dependent upon each municipality's decision to continue or discontinue services that will no longer be eligible for GPHW reimbursement.

Minimizing Adverse Impact:

State support exists for the Transition from Early Intervention Program to the Pre-School/Special Education Program costs, in part, through state aid administered by the State Education Department and from the Early Intervention Program administered by the the Department. The decisions to eliminate optional services affected by the proposed rule that will affect existing jobs are decisions that will ultimately be made at the local level. Each affected municipality will need to evaluate the necessity and fiscal viability of the current programs and will need to decide if improvements must be made in efficiencies of organization, billing and operation to make the program more viable. The decision to eliminate programs, condense programs, or continue programs without the state aid for GPHW reimbursement that was previously available to them rests with the municipality.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Aid-Public Health Services: Counties and Cities-Reimbursement to Municipalities Per PHL Article 6 for Home Health Services

I.D. No. HLT-18-10-00018-P

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

Proposed Action: Amendment of Part 40 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 602(3)(a)

Subject: State Aid-Public Health Services: counties and cities-reimbursement to municipalities per PHL article 6 for home health services.

Purpose: To achieve cost savings and to clarify eligible services for reimbursement of article 6 of the Public Health Law (State Aid).

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by section 602(3)(a) of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon publication of the Notice of Adoption in the *State Register*, as follows:

Section 40-1.53 is amended to add new subdivision (s), to read as follows:

(s) Home Health Services provided by a municipality that is not the sole certified home health agency authorized to provide home health services to residents of that municipality as described in Section 40-3.22(a) shall not be reimbursed under this Part. Certified home health agencies whose services are limited to a special needs population pursuant to 10NYCRR 760.5(e)(1)(i) and (ii) shall not be considered providers of home health services in the municipality for the determination of a municipality's categorization as a sole provider under this Part.

Section 40-3.20 is amended to read as follows:

40-3.20 Home health services; performance standard. *Only a municipality that is a certified home health agency authorized to provide home health services to residents of that municipality and is the sole provider of such services as described in Section 40-3.22(a) will be reimbursed.* A municipality providing home health [care] services by nurses or other health professionals within its jurisdiction must be authorized to do so by the department under Article 36 of the Public Health Law.

Section 40-3.21 is amended to read as follows:

Municipal public health services plan; requirements. If a municipality is authorized to provide certified home health services to residents of that municipality and is the sole provider of such services as described in Section 40-3.22(a), its plan must include, at a minimum:

- (a) A description of the need for services provided based on its community health assessment;
- (b) A description of services to be provided; and
- (c) An estimate of services to be provided in relation to professional type and client group.

A new section 40-3.22 is added to read as follows:

40-3.22 *Providers of Home Health Services Reimbursable Under this Part*

- (a) *Home Health Services provided by a municipality that is a certi-*

ified home health agency and is the sole certified home health agency authorized to provide home health services to residents of that municipality shall be eligible for reimbursement under this Part. Certified home health agencies whose services are limited to a special needs population pursuant to 10NYCRR 760.5(e)(1)(i) and (ii) shall not be considered providers of home health services in the municipality for the determination of a municipality's categorization as a sole provider under this Part.

(b) On an annual basis, the department shall provide the municipality with a list of certified home health providers operating in the municipality and its determination as to whether or not the municipality is the sole provider as described in Section 40-3.22(a) for the purpose of identifying the eligibility of the municipality for reimbursement under this Part through the municipal public health services plan. If the municipality disagrees with the determination made by the department as to its eligibility, it shall submit to the department information to support its position. The department shall review the information and provide the municipality with a final determination.

(c)(1) If at any time a change occurs in the status of a municipality as a sole provider of home health services as described in subdivision (a) of this section, the municipality may submit to the department information to support its position. The department shall review such information and provide the municipality with a final determination.

(2) If at any time the department has confirmed information from any source regarding other certified home health agencies which would make the municipality eligible or ineligible for reimbursement under this Part, it will provide the municipality with a final determination.

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

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

Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) provides statutory authority for state aid for general public health work (GPHW) delivered by local health departments (LHDs) and describes basic and optional services that are eligible for reimbursement. PHL § 614(3) defines municipality to be a county or city. PHL § 602(3)(b) authorizes the commissioner to adopt rules and regulations after consulting with the public health council and county commissioners, boards, and the public health directors, to establish standards of performance delivered under the GPHW program.

Legislative Objectives:

This regulation meets the original legislative objective of PHL Article 6 by protecting the public health by redefining the set of services eligible for reimbursement under the GPHW Program to include only those that are related to the public health mission of local health departments. The changes are part of the overall effort to preserve core public health services. Public health funds will support LHDs to focus on essential public health services needed to protect and improve the health of New York residents.

Needs and Benefits:

These revisions to the regulations are proposed to assure the continuation of adequate funding for public health services that are related to the public health mission of municipalities (i.e., local health districts).

The proposed rule seeks to eliminate reimbursement for certified home health agency services delivered by municipalities who are not the only provider of such services to municipal residents.

The New York State Department of Health (Department) will implement these new rules by evaluating the status of the municipality as a sole certified home health agency (CHHA). This will be done by examining the Department's lists of CHHAs and any evidence regard-

ing a municipality's designation. If the municipality is the sole CHHA providing home health services to all the residents in the municipality (for example, when only CHHAs serving special needs populations also exist in the municipality), the municipality will continue to receive reimbursement.

The proposed changes are necessary to assure that reimbursement from the GPHW Program is used to support essential public health services needed to protect and improve the health of New York State residents. To determine which services should no longer be eligible for reimbursement, staff evaluated the relationship of the service and its related costs to the intent of PHL Article 6 to support public health services. Home health care services do not relate to the five basic service areas defined in PHL Section 602(3)(b): community health assessment, health education, family health, disease control and environmental health. To preserve funding for essential public health services provided by municipalities, home health care services delivered by municipalities that are not the sole providers as described in section 40-3.22(a) of the regulation they will no longer be eligible for reimbursement.

Costs:

Costs to Regulated Parties for the Implementation of, and Continuing Compliance with, the Rule:

Final GPHW state aid payments for calendar year 2008 totaled approximately \$289.5 million. Adoption of the proposed regulations will save New York State \$1.7 million in SFY 2010-11. If the regulated parties, i.e., the municipalities, choose to continue providing services at the 2008 levels, which will be ineligible for state reimbursement, they will incur an additional \$1.7 million in State Fiscal Year (SFY) 2010-11 and \$3.3 million in SFY 2011-12 when fully annualized.

Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule:

There are no costs to the agency or the state for the elimination of reimbursement for programs. As described above, if local governments choose to continue the provision of services ineligible for state aid reimbursement they will incur an additional \$1.7 million in SFY 2010-11 and \$3.3 million in SFY 2011-12 when fully annualized, if spending remains at 2008 levels.

The Information, Including the Source(s) of Such Information and the Methodology upon Which the Cost Analysis is Based:

The cost analysis is based on 2008 Calendar Year State Aid Application information, provided by municipalities, as currently required by PHL § 618 and 10 NYCRR § 40-1.20(b). An annual summary of state aid paid is routinely prepared by the program. This data was used to estimate the cost savings of the proposed rule.

Local Government Mandates:

This proposed rule does not impose any program, service, duty or responsibility upon the municipalities.

Paperwork:

All reporting requirements will remain unchanged.

Duplication:

There are no relevant rules and other legal requirements of the state and federal governments, that duplicate, overlap or conflict with the proposed rule.

Alternatives:

An alternative considered to achieve savings was to reduce across the board the State Aid formula for reimbursement for all public health services, which would achieve the same savings, but would adversely impact the municipality's ability to provide the basic public health services required by PHL § 602(3)(b). This alternative was rejected in favor of emphasizing the importance of the core services and supporting the provision of those services by the municipalities.

Federal Standards:

There is no federal minimum standard.

Compliance Schedule:

The regulations will take effect upon publication of the Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis**Effect of Rule:**

These proposed regulations will apply to 29 municipalities that are certified home health agencies (CHHAs) for county residents which are not the sole CHHA as described in Section 40-3.22(a). By eliminating reimbursement for this service to these municipalities, the revenues generated will no longer be reported on the municipal claims for reimbursement. Therefore, any municipality generating revenues in excess of expenses will not have its Article 6 reimbursement reduced. This may be beneficial to some municipalities.

Compliance Requirements:

The proposed regulations will not change the PHL Article 6 mandate for a municipality to submit a Community Health Assessment, Municipal Public Health Services Plan, and State Aid Application.

Professional Services:

Municipalities will not require additional professional services to comply with the proposed rule. Existing staff will be sufficient to comply.

Compliance Costs:

If municipalities continue to provide services, at the 2008 level, that are no longer reimbursable by state aid as GPHW, the costs will vary depending upon the size of program, the receipt of revenue, and the clients served. The estimated impact on the municipalities that are not sole providers of home health care services as described in Section 40-3.22(a) is \$3.3 million annually, using 2008 calendar year reimbursement data.

Economic and Technological Feasibility:

There are no technological requirements for compliance with the proposed rule. Municipal government will need to determine the economic feasibility to continue supporting the municipality's performance of the services that will no longer be eligible for reimbursement. Each municipality will need to examine its own decision to provide these services, the municipality's need for such services, and the fiscal support required to continue provision of services. Municipalities may need to examine the revenue billing and collection policies which would off-set the local cost of service provision.

Minimizing Adverse Impact:

The proposed regulatory change is the best option for ensuring adequate resources are available for delivery of core local public health services. The alternative of reducing the reimbursement rate for all services would adversely impact all municipalities and the provision of public health services necessary to protect the health of each municipal resident.

This proposed rule represents a minimal impact to municipalities, resulting in a savings of approximately \$1.7 million dollars in SFY 2010-11 and approximately \$3.3 million in SFY 2011-12. The overall impact on public health programs and funding will be minimal, amounting to a reduction of less than one percent (1%) of the overall annual GPHW reimbursement amount.

The proposed rule took into consideration the impact on small and rural municipalities in the crafting of the home health regulation. The Department will implement these new rules by evaluating the status of the municipality as described in Section 40-3.22(a). This will be done by examining the Department's lists of CHHAs and any evidence provided by a municipality or others in support of its designation. If the municipality is the sole CHHA as described in Section 40-3.22(a), the municipality will continue to receive reimbursement for home health care costs during the calendar year.

Small Business and Local Government Participation:

Compliance with PHL Section 602(3)(a) and with State Administrative Procedure Act (SAPA) Section 202-b(6), to ensure that local governments have an opportunity to participate in the rule making process was achieved by:

- convening a budget briefing conference call on January 27, 2010 for all LHDs, their trade association, the New York State Association of County Health Officials (NYSACHO), and other interested parties;
- presenting the initiative to the Public Health Council on March 12, 2010;

- presenting the initiative to NYSACHO by department staff on April 1, 2010;

- publishing the proposed rule in the State Register accompanied by a notice to NYSACHO and the New York State Association of Counties (NYSAC); and

- individually addressing questions from concerned LHDs and NYSACHO to ensure understanding of the intention of the proposed changes, in preparation for review of the proposed regulations.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

There are 43 rural municipalities in New York State, with populations of less than 200,000. Twenty-one rural municipalities are CHHAs, serving residents of the municipality who are also served by another CHHA(s).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The proposed regulation will not change the PHL Article 6 mandated requirement for rural municipality's to submit Community Health Assessments, Municipal Public Health Services Plans and State Aid Applications. Municipalities will not require additional professional services to comply with the proposed rule. Existing staff will be sufficient to comply.

Costs:

If rural municipalities continue to provide the home health care services that are no longer reimbursable by state aid for GPHW at the levels these services were provided in 2008, the costs will vary depending upon the size of program, the receipt of revenue, and the clients served. The estimated impact on an annual basis is \$2.8 million if spending continues at 2008 levels.

Minimizing Adverse Impact:

The proposed rule was designed to minimize adverse impact on rural areas, by allowing municipalities operating the sole CHHA providing care to municipal residents as described in Section 40-3.22(a) to be eligible for reimbursement.

Rural Area Participation:

Compliance with SAPA § 202-bb(7), to ensure that rural local governments have an opportunity to participate in the rule making process was achieved by: convening a budget briefing conference call on January 27, 2010 for all LHDs, their trade association, NYSACHO, and other interested parties; presenting the initiative at an April, 2010 meeting with NYSACHO to department staff; presenting at a Public Health Council briefing in early 2010; publishing the proposed rule in the State Register accompanied by a notice to NYSACHO and the New York State Association of Counties (NYSAC); and responding to individual questions from concerned LHDs and NYSACHO to ensure understanding of the intention of the proposed changes, in preparation for review of the proposed regulations.

Job Impact Statement**Nature of Impact:**

The proposed regulation does not mandate a reduction or increase in employment opportunities. It does allow municipalities a choice in whether the CHHA will continue to operate without the fiscal support provided by state aid for GPHW.

Categories and Numbers Affected:

Eliminating reimbursement for home health care services provided by a municipality's CHHA that is not the sole CHHA in that municipality as described in Section 40-3.22(a), will affect 29 municipalities. The number of personnel employed by the municipality receiving this GPHW reimbursement ranges from 2 full time nursing staff (\$1,200 annually) to 30 full time nursing staff (approximately \$4.4 million annually). There is a high degree of variability across municipalities in how programs are structured and in the reporting and categorization of staff as home health staff. There may be other related administrative staff that could be affected by a decision for a particular municipality to discontinue the provision of home health services, but those data are not available for an analysis to be made.

Regions of Adverse Impact:

The rural or small municipalities of the state will be affected more

than other areas, since there are more rural municipalities than suburban and urban municipalities. However, the effect is dependent upon each municipality's decision to continue or discontinue home health care services if those services will no longer be eligible for GPHW reimbursement.

Minimizing Adverse Impact:

The decision of whether or not to eliminate home health care services in municipalities not eligible for reimbursement will be made by the municipality. Each affected municipality will need to evaluate the necessity and fiscal viability of the current home health care programs and will need to decide if improvements can be made in efficiencies of organization, billing and operation to make the program more viable. The decision to eliminate programs, consolidate programs, or continue programs without state reimbursement rests with the municipality.

Insurance Department

NOTICE OF ADOPTION

Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance

I.D. No. INS-08-10-00002-A

Filing No. 447

Filing Date: 2010-04-20

Effective Date: 2010-05-05

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

Action taken: Amendment of Parts 52, 215, 360 and 361; and addition of Part 58 to Title 11 NYCRR.

Statutory authority: Federal Social Security Act (42 U.S.C. section 1395ss), Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235 and art. 43

Subject: Minimum standards for the form, content and sale of Medicare supplement insurance.

Purpose: To conform the regulations with the requirements of federal law.

Text or summary was published in the February 24, 2010 issue of the Register, I.D. No. INS-08-10-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, New York 10004, (212) 480-5257, email: amais@ins.state.ny.us

Assessment of Public Comment

This rulemaking adds new 11 NYCRR 58 (Regulation No. 193) and amends Part 52 of Title 11 NYCRR (Regulation No. 62), Part 215 of Title 11 (Regulation No. 34), Part 361 of Title 11 (Regulation No. 146), and Part 360 of Title 11 (Regulation No. 145) to establish a framework for the form, content and sale of Medicare supplement insurance. States must have a Medicare supplement insurance regulatory program that provides a minimum level of coverage as established by federal law, 42 U.S.C. § 1395ss.

Comments were received from one party, a national association representing health plans. Following a review of the comments, no revisions to the regulations were made. The comments were discussed by the Department with the federal Centers for Medicare and Medicaid Services (CMS), which confirmed that New York's language on the extended hospitalization benefit payable upon exhaustion of Medicare coverage is consistent with the federal standards and is acceptable as presently worded. CMS has the statutory responsibility for determining that a state's Medicare supplement insurance regulatory program meets the federal standards and requirements.

Comment: The one party that submitted comments stated that the language of the proposed regulation deviates from the federal standards that establish the payment rate and description for the extended hospitalization benefit under Medicare supplement insurance. The

party stated its belief that Regulation 193 omits a provision that prevents providers from balance billing the insured for an amount in excess of the insurer's payment and that without this protection, providers would then be free to charge and collect from insureds exorbitant amounts after having accepted the insurer's payment.

Response: The Department disagrees with the interested party's comments and suggested language change to the description of the extended hospitalization benefit. The party suggests that the Department insert wording that would require insurers to pay the benefit at the applicable prospective payment system (PPS) rate or other appropriate Medicare standard of payment and to specify that the provider hospital shall accept the insurer's payment as payment in full and may not balance bill the insured for any balance. However, there are no statutory provisions that dictate or control the amount a hospital must accept as payment for hospitalization after Medicare has been exhausted. As such, absent the enactment of a legislative requirement or the entering into a reimbursement contract with an insurer, there is no requirement that a hospital accept the PPS rate or other appropriate Medicare standard of payment as full payment and a hospital could potentially bill the patient for costs incurred in excess of such PPS or Medicare rates. Such balance billing is contrary to the intention of the federal standards for Medicare supplement insurance, which intend the extended hospitalization benefit to be a paid in full benefit. Therefore, the language of Regulation 193 clarifies that the Medicare supplement insurance policy's extended hospitalization benefit is a paid in full benefit and that the insured is not liable for any of the charges of a hospitalization after Medicare benefits have been exhausted. Regulation 193 also makes clear that an insurer may enter into a reimbursement contract with a provider hospital to stand in the place of Medicare and to make payment for the hospitalization expenses at the applicable PPS rate or other appropriate Medicare standard of payment, so long as there continues to be no cost to the insured person. The Insurance Department does not have any jurisdiction over hospitals and does not have the authority by regulation that is applicable only to insurers, to dictate that a hospital accept a certain level of payment and not balance bill the patient. However, the insurer and the hospital are free to negotiate and enter into an agreement for the amount of the reimbursement for the extended hospitalization benefit, which can be limited to the PPS rate or other appropriate Medicare standard of payment, as agreed upon.

Department of Labor

EMERGENCY RULE MAKING

Number of Crane Board Members Needed to Conduct Operators Examinations and Hold Administrative Hearings

I.D. No. LAB-18-10-00008-E

Filing No. 448

Filing Date: 2010-04-21

Effective Date: 2010-04-21

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

Action taken: Amendment of section 23-8.5 of Title 12 NYCRR.

Statutory authority: General Business Law, section 483

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

Specific reasons underlying the finding of necessity: This is a very busy season for practical examinations for crane operators. This amendment will allow for more testing days to be scheduled thereby eliminating delays in getting examinations.

Subject: The number of Crane Board Members needed to conduct operators examinations and hold administrative hearings.

Purpose: To modify the requirements regarding crane operator examinations and administrative hearings for crane operators.

Text of emergency rule: 12 NYCRR Section 23-8.5 is amended to read as follows:

§ 23-8.5 Special provisions for crane operators

(a) Finding of fact. The board finds that the trade or occupation of operating cranes of the type described in subdivision (b) of this section, in construction, demolition and excavation work involves such elements of danger to the lives, health and safety of persons employed in such trade or occupation as to require special regulations for their protection and for the protection of other employees and the public in that such cranes may fall over, collapse, contact electric power lines, dislodge material and cause such material to fall or fail to support intended loads and convey them safely, unless such cranes are operated by persons of proper ability, judgment and diligence.

(b) Limited application of this section. This section applies only to mobile cranes having a manufacturers' maximum rated capacity exceeding five tons or a boom exceeding forty feet in length and to all tower cranes operating in construction, demolition and excavation work. The word crane as used in this section refers to tower cranes and to such mobile cranes of the following type: a mobile, carrier-mounted, power-operated hoisting machine utilizing hoisting rope and a power-operated boom which moves laterally by rotation of the machine on the carrier.

(c) *Certificate of competence - Crane Classifications. The Commissioner has the authority to issue certificates of competence for the following classes of cranes:*

(1) *Class A - Unrestricted - Conventional, cable, lattice boom, and friction are names that have been used in reference to this class. This class includes all cranes having a fixed lattice boom, with or without free fall capability; conventional tower cranes, derricks and all cranes with free fall capability. A certificate of competence for Class A allows the holder to operate any crane.*

(2) *Class B - Hydraulic - This class includes all hydraulic cranes which have a telescopic boom and swinging cab; there is no restriction on maximum manufacturer's rating. This class also includes small trailer or truck mounted self-erecting tower cranes, as well as boom trucks having a manufacturer's rated capacity of over 28 tons. A certificate of competence for Class B allows the holder to operate Class B, C and D cranes.*

(3) *Class C - Boom Truck - This includes cranes having telescopic booms which are generally truck mounted and up to 28 ton maximum manufacturers' rated capacity. A certificate of competence for Class C allows the holder to operate Class C and D cranes.*

(4) *Class D - Restricted Boom Truck - These cranes are also referred to as sign hangers, but their use not restricted to that industry. This class includes cranes having telescopic booms which are generally truck mounted and up to 3 ton maximum manufacturer's rated capacity, and up to 125 feet of boom. A certificate of competence for Class D allows the holder to operate Class D cranes only.*

(5) *Class E - Reserved*

(6) *Class F - Line Truck - These cranes are also referred to as digger derricks. These cranes have up to 15 ton maximum manufacturers' rated capacity, 65 foot maximum boom length, utilize a non-conductive tip with nylon rope, for use in electrical applications only. A certificate of competence for Class F allows the holder to operate Class F cranes only.*

(d) Certificate of competence required. No person, whether the owner or otherwise, shall operate a crane in the State of New York unless such person is a certified crane operator by reason of the fact that:

(1) He holds a valid certificate of competence issued by the commissioner to operate [a] *that class of crane*; or

(2) He is at least 21 years of age and holds a valid license issued by the Federal government, a State government or by any political subdivision of this or any other State and such license has been accepted in writing by the commissioner as equivalent to a certificate of competence issued *pursuant to this Part* [by him]; or

(3) He is a person who:

(i) is at least 21 years of age and is employed by the Federal government, the State or a political subdivision, agency or authority of the State and is operating a crane owned or leased by the Federal government, the State or such political subdivision, agency or authority and his assigned duties include operation of a crane;

(ii) is at least 21 years of age and is employed only to test or repair a crane and is operating it for such purpose while under the direct supervision of a certified crane operator; or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and his assigned duties include the operation of a crane;

(iii) an apprentice or learner who is at least 18 years of age and who has the permission of the owner or lessee of a crane to take instruction in its operation and is operating such crane under the direct supervision of a certified crane operator or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and whose assigned duties include the operation of a crane.

(d) Application forms and photographs. An application for a certificate of competence or for a renewal thereof shall be made on forms provided by the commissioner. Upon notice from the commissioner to an applicant that a certificate of competence or a renewal thereof will be issued to him, the applicant must forward photographs of himself in such numbers and sizes as the commissioner shall prescribe, and such photographs must have been taken within 30 days of the request for such photographs.

(e) Physical condition. No person suffering from a physical handicap or illness, such as epilepsy, heart disease, or an uncorrected defect in vision or hearing, that might diminish his competence, shall be certified by the commissioner.

(f) Experience required. An applicant for a certificate of competence must be at least 21 years of age and must have had practical experience in the operation of cranes for at least three years and, in addition, have a practical knowledge of crane maintenance.

(g) Examining board. The commissioner may appoint an examining board which shall consist of at least three members, at least one of whom shall be a crane operator who holds a valid certificate of competence issued by the commissioner, and at least one of whom shall be a representative of crane owners. The members of the examining board shall serve at the pleasure of the commissioner and their duties will include:

(1) The examination of applicants and their qualifications, and the making of recommendations to the commissioner with respect to the experience and competence of the applicants;

(2) The holding of hearings regarding appeals following denials of certificates;

(3) The holding of hearings prior to determinations of the commissioner to suspend or revoke certificates, or to refuse to issue renewals of certificates;

(4) The reporting of findings and recommendations to the commissioner with respect to such hearings;

(5) The acts and proceedings of the examining board shall be in accordance with regulations issued by the commissioner.

(h) General examination. Each applicant for a certificate of competence will, and each applicant for a renewal thereof may, be required by the commissioner to take an appropriate general examination.

(i) Operating examination. An applicant who passes the general examination will also be required to take a practical examination in crane operation, except that the commissioner may waive this requirement with respect to an applicant for a renewal of a certificate of competence. *The commissioner shall designate one member of the examining board to conduct the practical examination for Class F line trucks. For all other practical examinations (for Classes A, B, C, D, and E), the commissioner shall designate a minimum of three members of the examining board to administer the practical examination, of which two members must be present at the practical examination and score the applicant and the other member(s) may review the video of the practical examination and score the applicant. When a practical examination is conducted by a single member of the examining board, the applicant must achieve a passing score from the member to receive a certificate of competence. When the practical examination is administered by three or more members of the examining board, the applicant must achieve a passing score, which shall be calculated as an average of all scores received from the three or more members that administered the practical examination. The procedures used regarding the conduct of the practical examination, the establishment of the passing score and the assignment of the board members to conduct individual examinations shall be set forth in a guidance document approved by the examining board.*

(j) Contents of certificate. Each certificate of competence issued shall include the name and address of the certified crane operator, a brief description of him for the purpose of identification and his photograph.

(k) Term of certificate. Each certificate of competence or renewal thereof shall be valid for three years from the date issued, unless its term is extended by the commissioner or unless it is sooner suspended or revoked. The commissioner may extend the term of any certificate of competence as he may find necessary to relieve a certified operator of unnecessary hardship.

(l) Carrying certificate. Each certified crane operator shall carry his certificate on his person when operating any crane and failure to produce the certificate upon request by the commissioner shall be presumptive evidence that the operator is not certified.

(m) Renewals. An application for renewal of a crane operator's certificate of competence shall be made within one year from the expiration date of the certificate sought to be renewed, except that the commissioner may extend the time to make such application to prevent any undue hardship to a certified crane operator.

(n) Suspension, revocation, refusal to renew, denials of certificates, hearings.

(1) The commissioner may, upon notice to the interested parties and after a hearing before the examining board, suspend or revoke a certificate

of competence upon finding that the certified operator has failed to comply with an order of the commissioner or that the certified operator is not a person of proper competence, judgment or ability in relation to the operation of cranes, or for other good cause shown.

(2) Prior to a determination by the commissioner not to renew a certificate of competence, the commissioner shall require a hearing before the examining board upon notice to the interested parties.

(3)[(i)] An applicant whose application for a certificate has been denied by the commissioner may[, upon his written] request [made to the commissioner within 30 days after the mailing or personal delivery to him of a notice of such denial, have a hearing before the examining board] *an administrative review of the reasons for the denial and a written response will be provided to such applicant but no hearing shall be required in connection with a denial of an application other than a renewal.*

[(ii) Such hearing shall be held by the examining board which] (4) *The commissioner shall designate a panel of two or more members of the examining board to conduct all hearings required pursuant to this section. The commissioner may also designate a hearing officer to assist the panel in conducting the hearings. The panel shall make its recommendations to the commissioner within three days after such hearing has been concluded. A written notice of the commissioner's decision, containing the reasons therefor, shall be promptly given to the certified operator or applicant, as the case may be, and to any interested parties who appeared at the hearing. Every such hearing shall be held in accordance with such regulations as the commissioner may establish.*

Statutory authority: General Business Law Section 483

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 19, 2010.

Text of rule and any required statements and analyses may be obtained from: Teresa Stoklosa, New York State Department of Labor, Counsel's Office, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcGovern@labor.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 483 of the General Business Law gives the Commissioner of Labor the authority to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of Article 28-D relating to Crane Operators. Such regulations may provide for examinations, categories of certificates, licenses or registrations (Section 483(2)).

2. Legislative Objectives:

The rulemaking accords with the public policy objectives the Legislature sought to advance when it adopted Section 483 of the General Business Law. These regulatory revisions clarify administrative procedures regarding the administration of the practical examinations for crane operator's certificates and the conduct of hearings by the examining board regarding the revocation, suspension, refusal to renew or denial of a crane operator's certificate. The Department is seeking to make it easier to schedule the practical examinations by authorizing the Commissioner to designate one member of the Examining Board to conduct examinations for Class F Line Trucks and to designate three or more members of the Examining Board to administer all other classes (Class A, B, C, D and E) of examination, with two of the members present at the physical examination and the other members to review a video of the examination and score the examination. Currently, at least a quorum of the entire Crane Examining Board must be present to conduct the exams. Crane Board members already dedicate more than forty (40) days annually to crane testing and hearings without compensation. This is a substantial commitment of time given that Board members are responsible for operating their own businesses or are employed full-time. Finding adequate number of Board members to participate in each testing series can be difficult given limitations on availability, particularly in the construction season when demand for testing can be at its highest. The regulation will facilitate the conduct of examinations by allowing the examinations to take place without a quorum of the board present at the exam. Additionally, the Department wants to make it easier to get administrative hearings scheduled regarding the revocation, suspension, and refusal to renew a crane operator's certificate. The Board is responsible for conducting these hearings and making a report and recommendation to the Commissioner. Individuals seeking review of adverse determinations regarding their operator's certificate expect timely access to the hearing process. It is important that crane operators not have any delays in getting their exams scheduled. It is even more important that administrative hearings not be delayed due to scheduling difficulties. The emergency regulation would also revise the procedures to be followed where an applicant fails the practical examination. Currently, the applicant is entitled to request a hearing regarding the failure of the practical examination. This is a rather unusual procedure to follow for failing a practical examination. Accordingly, the emergency

regulation provides that an applicant who failed the practical examination and is denied a certificate of competence may ask for a review of the reasons for the denial and will receive a written response to that request.

3. Needs and Benefits:

As previously mentioned, the members of the Board serve without salary or other compensation (General Business Law, Section 483(3)). The time estimated to conduct the exams and hearings is approximately 40 days per year. While Board members have been extremely generous in making themselves available for their duties, it is increasingly difficult to find testing and hearing dates when sufficient numbers of the board members are available for tests or hearings given other professional and personal demands on their time. This creates many scheduling difficulties and can create delays which affect crane operator applicants and individuals who are seeking hearings to review adverse determinations regarding their operator certificates. Moreover, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem. The amendments to 12 NYCRR Section 23-8.5 establishing a smaller number of Board members who need to be present at either examinations or hearings will make it easier to schedule the exams, thereby making certain that there will be no delays in the process. Additionally, the amendments will also make it easier to schedule administrative hearings. It is very important that there not be any delays in the hearing process.

4. Costs:

This amendment imposes no compliance costs upon state or local governments. There will be no additional costs to crane operators. There will also be no additional costs to the Labor Department.

5. Local Government Mandates:

The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork:

The proposed amendment imposes no new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other State or federal requirements.

8. Alternatives:

The primary alternative is to leave the regulation unchanged.

Another alternative would be to add new Board members, thereby increasing the pool of available members for testing and/or hearing panelists. The current regulations provide for the Commissioner of Labor to appoint the Board members and that the Board be comprised of at least three members. Accordingly, the Commissioner could increase the number of Board members to provide for a larger pool of members to conduct tests or hearings. However, as described above, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem.

9. Federal Standards:

There are no federal standards regulating the testing and licensing of crane operators, or administrative hearings relating thereto.

10. Compliance Schedule:

The provisions of this amendment will take effect immediately.

Regulatory Flexibility Analysis

These emergency regulations relate to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings need not be conducted by the entire examining board, but rather may be conducted by a panel of two or more members of the board. The regulations also have been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is rather an unusual process for someone failing a practical examination.

The emergency regulations do not impose any additional obligations on any local government or business entity. Nor do they impose any adverse economic impact, reporting or recordkeeping, or other compliance requirements on small businesses and/or local governments. Rather, they are intended to facilitate the testing of individuals seeking crane operator certificates, some of whom are employees of local governments or businesses. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. On the contrary, the rule is intended to facilitate the timely conduct of crane operator examinations and hearings. Therefore, the regulations will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The regulation relates to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings may be conducted by a panel of two or more members of the Board. The regulation has been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is a rather unusual process for someone failing a practical exam. Accordingly, the regulation will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rule will encourage and support employment opportunities for qualified crane operators because it will facilitate the testing of individuals seeking crane operator licenses. Because it is evident from the nature of the regulation that it will have a beneficial impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Therefore, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Ski Tows and Other Passenger Tramways

I.D. No. LAB-46-09-00003-A

Filing No. 422

Filing Date: 2010-04-14

Effective Date: 2010-05-05

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

Action taken: Repeal of Part 32 and addition of new Part 32 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 27 and 202-c; and General Obligations Law, art. 18

Subject: Ski Tows and Other Passenger Tramways.

Purpose: The new Part 32 makes New York State regulations consistent with nationally accepted standards.

Substance of final rule: These regulations are being revised at this time at the request of the ski industry in New York. The proposed amendments repeal Part 32 in its entirety. This was done to facilitate the change in format that will take place with this newest edition of the regulations. The new Part 32 makes New York State regulations once again consistent with nationally accepted standards for design and installation of ski tows and passenger tramways. The standard has been incorporated by reference into

the regulation and issued by the national standard organization, American National Standard for Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors-Safety Requirements (hereinafter Standards). The proposed amendments repeal Sections 32-1 (General Provisions) 32-2 (Aerial Tramways) 32-3 (Detachable Grip Aerial Lifts) 32-4 (Fixed Grip Aerial Lifts) 32-5 (Surface Lifts) 32-6 (Tows) 32-7 (Reserved) 32-8 (Conveyers) in their entirety and replace them with a shorter set of rules.

The proposed new sections of ICR 32 are summarized as follows:

Section 32.1 Title and citation. Administrative information about ICR 32.

Section 32.2 Application. Defines the scope of regulations and what they apply to as well as the statutory authority.

Section 32.3 Purpose and intent of Part. Defines the intent of the regulation and when this edition becomes effective. Also explains when regulations apply to existing equipment installed prior to the effective date of this edition.

Section 32.4 Definitions. This section provides a list of definitions used in the revised Code Rule. It incorporates definitions from the current ICR 32 and the ANSI B77 standard.

Section 32.5 Quality program. Lists quality program requirements for the design and construction of tramways.

Section 32.6 General requirement of safety. Requires that tramways not be operated with known defects and that all operations be conducted in a manner that will provide reasonable protection against personal injuries to employees and the public.

Section 32.7 Approval of materials and devices. That unless otherwise stated in the rule no special approvals by the Commissioner are required for use of devices and materials associated with tramways.

Section 32.8 Plans and specifications. Explains the requirements for plan submissions to the Commissioner and requires approval of the same by the Commissioner for new installations as well as major modifications of existing installations. Also defines what changes would be considered major modifications.

Section 32.9 Registration. Requires that all devices be registered with the Commissioner prior to operation. Explains the Commissioner's authority to suspend or cancel a registration.

Section 32.10 Personal injury report. Requires an operator to notify the Commissioner by the close of the next business day on any accident with a lift that resulted in a serious personal injury.

Section 32.11 Severability clause.

Section 32.12 Adoption of standards. Lists the nationally recognized standards that are applicable to the design, operation and maintenance of ski lifts.

Section 32.13 Adoption of ANSI B77 Standard. In the process of reviewing the ANSI B-77 Standard several exceptions to the requirements of the Standard were identified. The exceptions are provided in the context of the text of the B-77 Standard. These exceptions are requirements that were carried over from previous versions of Code Rule 32.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 32.13.

Text of rule and any required statements and analyses may be obtained from: Nancy Pepe, New York State Department of Labor, Building 12, State Office Campus, Room 509, Albany, New York 12240, (518) 457-0288

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

There have been no substantial revisions or changes in the text of the Proposed Rule necessitating a modification in the Regulatory Impact Statement (RIS), Regulatory Flexibility Analysis (RFA), Rural Area Flexibility Analysis (RAFA) and Job Impact Statement (JIS) as published in the State Register on November 18, 2009.

Assessment of Public Comment

The Department of Labor conducted a public hearing on January 19, 2010. The purpose of the hearing was to receive comments on proposed changes to 12 NYCRR Part 32 Ski Tows and Other Passenger Tramways. The Department received comments from two (2) separate groups: Ski Areas of New York (SANY) and the Tramway Advisory Council. SANY is the trade association that represents the

New York Ski Industry. They have over thirty-five (35) ski resort members and seventy-five (75) associated/affiliated members.

All of the comments supported the adoption by reference of the ANSI B-77 code with amendments. Additionally, several commentators expressed strong approval that it is important for New York to be in line with the National Standard. Every comment that was received was reviewed and assessed in accordance with the provisions of the State Administrative Procedure Act.

Section 32.13, ANSI B77, Section 4.1.1.5.1 Vertical clearances

This regulation adopts the ANSI Standards and also provides for several exceptions to the requirements of the Standards. The exceptions are provided in the context of the text of the ANSI B-77 Standard. These exceptions are requirements that were carried over from previous versions of Code Rule 32. One of the exceptions was the section on vertical clearances. This provision provides for a 15 foot vertical clearance. The current ANSI B-77 Standard only requires a 10 foot clearance. The 15 foot clearance was left in to address one existing installation. The installation that required this exception has since been dismantled. The Tramway Advisory Council requested that this provision be removed.

Response

The Department agreed that since the installation being addressed by this exception no longer exists, the section in the proposed regulation on Vertical Clearances 4.1.1.5.1. was not needed and was removed. All new installations will be designed to meet the requirements of ANSI B-77.

Long Island Power Authority

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Long Island Power Authority publishes a new notice of proposed rule making in the *NYS Register*.

Public Access to Records

I.D. No.	Proposed	Expiration Date
LPA-15-09-00018-P	April 15, 2009	April 15, 2010

Division of the Lottery

EMERGENCY RULE MAKING

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

I.D. No. LTR-18-10-00003-E

Filing No. 423

Filing Date: 2010-04-15

Effective Date: 2010-04-15

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

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

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

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

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

New York faces an historic economic challenge, the gravest in nearly a century. For several months, events have shaken us to the core. Bank

closures, job losses and stock market meltdowns have destabilized the foundations of our economy. Since January 2008, two million Americans have lost their jobs. During this recession, an estimated 225,000 New Yorkers will be laid off. Many others have lost their homes. The pillars of Wall Street have crumbled. The global economy is reeling. Trillions of dollars of wealth have vanished.

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

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

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

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

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

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

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

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

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

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

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

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

Definitions are revised to accommodate the new design while also providing that certain specific game rules shall be publicly announced by

the Lottery. The definition of the LOTTO game was revised to permit the Lottery to change the name of the game or to offer two or more versions of the LOTTO game with different fields of numbers and prize structures.

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

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

Technical amendments are also made throughout the proposed regulations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 13, 2010.

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

Regulatory Impact Statement

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

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

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

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

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

Marketing research and consumer surveys indicate that interest in the new variation of the LOTTO game is high. Players are motivated by "better odds," and many think the new game is a great value. Research reveals

that players find the improved odds of winning when compared to the current LOTTO game to be the single most exciting aspect of the new game. Survey participants also responded favorably to first prize being paid as a lump sum. Of those surveyed, 86% prefer jackpot winnings to be paid all at once in cash as opposed to installments. This evidence suggests that New Yorkers are intrigued by the new game, and the State is likely to realize a tangible benefit in the form of increased earnings for education.

4. Costs:

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

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

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

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

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

7. Duplication: None.

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

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

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

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

The proposed amendments to the LOTTO game and subscription regulations will not impose any adverse economic or reporting, record-keeping or other compliance requirements on small businesses or local governments. Small businesses will not have any additional recordkeeping requirements as a result of the amendments. Additionally, the proposed amendments are anticipated to have a positive effect on the revenue of small businesses that sell lottery tickets as more players will be interested in the game, which will increase sales commissions paid to retailers. Local governments are not regulated by the New York Lottery or its subscription

regulations, nor are any economic or recordkeeping requirements imposed on local governments as a result of the amendments.

Job Impact Statement

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

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

Department of Motor Vehicles

NOTICE OF ADOPTION

Warren County Motor Vehicle Use Tax

I.D. No. MTV-09-10-00001-A

Filing No. 449

Filing Date: 2010-04-20

Effective Date: 2010-05-05

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

Action taken: Amendment of section 29.12 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Warren County motor vehicle use tax.

Purpose: To impose a Warren County motor vehicle use tax.

Text or summary was published in the March 3, 2010 issue of the Register, I.D. No. MTV-09-10-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Commission on Public Integrity

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procedure for Requesting an Exemption from Filing an Annual Statement of Financial Disclosure

I.D. No. CPI-18-10-00006-P

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

Proposed Action: Amendment of Part 935 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (k)

Subject: Procedure for requesting an exemption from filing an annual statement of financial disclosure.

Purpose: To provide applicable State officers and employees with a procedure for requesting an exemption.

Text of proposed rule: Title 19 NYCRR Part 935 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 19. DEPARTMENT OF STATE
CHAPTER XX. [STATE ETHICS COMMISSION] COMMISSION ON PUBLIC INTEGRITY
PART 935

PROCEDURE FOR REQUESTING AN EXEMPTION FROM FILING A FINANCIAL DISCLOSURE STATEMENT

935.1 Definitions.

(a) Annual C[c]ompensation shall mean that basic annual salary [which] that an individual receives to perform the duties of the position in which he or she serves. Payment of overtime, a one-time bonus, a performance award [which] that does not become part of the basic annual salary, a lump sum payment for whatever purpose including retroactive payment for a salary increase, uniform or clothing allowance, tuition reimbursement or payment or similar one-time payment [which] that does not become part of the individual's basic annual salary shall not be included in determining A[a]nnual C[c]ompensation.

(b) Appointing A[a]uthority shall mean that individual or body [which] that has the authority by law, rule or regulation to appoint a person to a position, or that individual or body to whom such authority may be properly delegated by law, rule or regulation.

(c) Commission shall mean the [State Ethics Commission] *New York State Commission on Public Integrity*.

(d) Employee shall mean a State officer or employee of a State A[a]gency, as defined in subdivision (h) of this [section] *Section*, who serves in a position [which] that has not been designated policymaking pursuant to section 73-a of the Public Officers Law and who earns A[a]nnual C[c]ompensation in excess of the F[f]iling R[r]ate.

(e) Exemption shall mean a waiver from filing a F[f]inancial D[d]isclosure S[s]tatement pursuant to section 73-a of the Public Officers Law.

(f) Filing R[r]ate shall mean the job rate of SG-24 as set forth in [paragraph a of subdivision one of section one hundred thirty] *section 130(1)(a)* of the Civil Service Law as of April [first] 1 of the year in which an annual [statement of] F[f]inancial D[d]isclosure *Statement* shall be filed.

(g) Financial D[d]isclosure S[s]tatement shall mean [that] *the* annual statement [which] that must be filed pursuant to section 73-a of the Public Officers Law.

(h) State A[a]gency shall mean any State department, or division, board, commission, or bureau of any State department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, or *the* State University of New York or the City University of New York, including all their constituent units except community colleges of *the State University of New York* and the independent institutions operating statutory or contract colleges on behalf of the State.

(i) Filing shall mean personal delivery to the offices of the C[c]ommission for which the individual shall obtain a receipt, or service by certified mail, return receipt requested, postmarked by April 1st of the year for which the request for exemption is made. The date of postmark where service is by certified mail shall be determinative of the date of filing.]

(j) *i* Title shall mean the name of the position or job in which an E[e]mployee serves.

(k) *j* Job C[c]lassification shall mean a series of T[t]itles [which] that may be included under one classification standard or may be part of a promotional series [which] that may be considered for E[e]xemption.

(l) *k* Employee O[org]anization shall mean an employee organization [which] that is recognized or certified pursuant to section 204 of the Civil Service Law to represent public employees of a public employer.

935.2 Procedure.

(a) Each employee, individually, or employee organization or State agency, on behalf of persons who share the same job title or job classification, requesting an exemption from filing a financial disclosure statement, shall file such request with the commission by or before March 31st for statements due on or before May 15th. An employee who commences service or employment or whose job title changes on or after April 1st who wishes to seek an individual exemption may file such request with the commission within 30 days of commencing service or employment or changing job title. Such filing shall delay the employee's requirement to file a financial disclosure statement until the commission has acted on the request. In the event the commission denies the request, the employee shall have 15 days from receipt of the denial decision to file the financial disclosure statement.]

(a) *A person who is an Employee or becomes qualified as an Employee as defined in Section 935.1(d) prior to May 15 in any year shall file a Financial Disclosure Statement for the preceding year on or before May 15. Pursuant to Executive Law section 94(9)(k), the Commission permits such an Employee to request an Exemption from this filing requirement in accordance with this Section. If requesting an Exemption, such Employee shall file the Exemption request with the Commission on or before May 15.*

(b) *A person who qualifies as an Employee as defined in this Section 935.1(d) after May 15 of any year shall file the Financial Disclosure Statement for the preceding year within 30 days of commencing the qualifying employment. Pursuant to Executive Law section 94(9)(k), the Commission*

permits such an Employee to request an Exemption from this filing requirement in accordance with this Section. If requesting an Exemption, such Employee shall file the Exemption request with the Commission within 30 days of commencing the qualifying employment.

(c) The Exemption request shall be in writing and sent to the Commission via mail, email or facsimile.

(d) The Exemption request may be filed by the Employee individually, or by the Employee Organization or State Agency on behalf of persons who share the same Title or Job Classification.

(e) Pending the Commission's determination of an Exemption request, such Employee is not required to file the Financial Disclosure Statement. If the Commission denies the Exemption request, such Employee has 15 days from receipt of the denial to file the Financial Disclosure Statement with the Commission.

[(b)f] The request for E[e]xemption shall include the following information:

(1) name and address of the Employee, if the request is on an individual basis, or the name of the E[e]mployee O[o]rganization filing or the name of State A[a]gency filing and the address and name of the individual authorized to file on behalf of the E[e]mployee O[o]rganization or State A[a]gency;

(2) the T[t]itle(s) of the positions or the J[j]ob C[c]lassification(s) and a list of each State A[a]gency where such T[t]itle(s) or J[j]ob C[c]lassification(s) is located, if known;

(3) a copy of the duties and specifications of the T[t]itle(s) or J[j]ob C[c]lassification(s) for which an E[e]xemption is requested; and

(4) a statement to support the position of the filing individual or entity that the T[t]itle(s) or J[j]ob C[c]lassification(s) do not involve the duties [which] that would otherwise preclude an E[e]xemption from filing a F[f]inancial D[d]isclosure S[s]tatement.

[(c)g] The request for E[e]xemption must be signed by the individual requesting such E[e]xemption or by the authorized representative of the E[e]mployee O[o]rganization or State A[a]gency [which] that is requesting such an E[e]xemption on behalf of T[t]itle(s) or J[j]ob C[c]lassification(s).

[(d)h](1) An individual who files a request for E[e]xemption, must also file a copy of such request with his or her A[a]ppointing A[a]uthority and an E[e]mployee O[o]rganization [which] that files a request for E[e]xemption must also file a copy with all agencies where the T[t]itle(s) or J[j]ob C[c]lassification(s) are located.

(2) The A[a]ppointing A[a]uthority, or any State A[a]gency where the [job] T[t]itle or Job C[c]lassification exists, within seven working days, may file a written objection to such a request with the [c]Commission based solely on the grounds that the duties of the T[t]itle(s) or J[j]ob C[c]lassification(s) do not permit an E[e]xemption to be granted. The objection shall also be filed with the individual or E[e]mployee O[o]rganization, as appropriate.

(3) The individual or E[e]mployee O[o]rganization, as appropriate, may, within seven working days, file a written response to the objection of the A[a]ppointing A[a]uthority or State A[a]gency with the [c]Commission. The written response shall also be filed with the A[a]ppointing A[a]uthority.

(4) Should no filing under paragraph (2) or (3) of this [section] Subpart occur within the time limits provided, the [c]Commission may act upon the request for E[e]xemption based on the material available to it.

935.3 Commission action.

(a) Upon receipt of a request for an E[e]xemption from filing a F[f]inancial D[d]isclosure S[s]tatement, the [c]Commission shall review the material filed to determine whether the duties of the T[t]itle(s) or J[j]ob C[c]lassification(s) include any of the duties [which] that are set forth in section 94(k) of the Executive Law, without further inquiry. If no further information is required, the [c]Commission shall render its decision on the request before it.

[(b)] If the commission determines that additional information concerning the content of the duties of a title or job classification is necessary before a determination on an exemption can be made, it may forward the duties description and/or the job title(s) or job classification(s) for which a request for exemption has been filed to the Director of Classification and Compensation for positions in the service of the State of New York or to the authorized individual for other State agencies who is responsible to classify and allocate positions for those State agencies, for a determination of the content of such title(s) or job classification(s).]

[(c)] The Director of Classification and Compensation for the State of New York or the authorized individual for other State agencies shall review the duties of the title(s) or job classification(s) referred by the commission and shall provide information to the commission as to whether the duties of the title(s) or job classification(s) for which an exemption is requested include any of the duties which are set forth in § 94(9)(k) of the Executive Law.]

[(d)] (b)(1) Upon a determination that the T[t]itle(s) or J[j]ob C[c]las-

sification(s) do not include the duties [which] that would otherwise exclude such an E[e]xemption, the commission shall, if it determines it is in the public interest, grant such E[e]xemption on an individual, T[t]itle or J[j]ob C[c]lassification basis as requested, except as provided in paragraph (3) of this subdivision.

(2) Upon a determination that the T[t]itle(s) or J[j]ob C[c]lassification(s) do include such duties, the [c]Commission shall deny the request for an E[e]xemption [except as provided in paragraph (3) of this subdivision].

[(3)] Where the commission determines that it is in the public interest to require that an individual file a financial disclosure statement even though the duties may not exclude an exemption, or where the commission determines that the duties of a position require the filing of a disclosure statement and the requirement to file the disclosure statement as set forth in section 73-a of the Public Officers Law may not be in the public interest, the commission may require the individual(s) who serve in such title(s) or job classification(s) to file a short form financial disclosure statement, which shall contain only that information from the financial disclosure statement required by section 73-a which the commission determines is appropriate and necessary for that title or job classification.]

[(e)] (c) The [c]Commission shall notify the requesting individual or the E[e]mployee O[o]rganization or State A[a]gency, as appropriate, of its determination on a request for E[e]xemption.

[(f)] Pending a determination of a request for exemption, an individual serving in a title or job classification for which an exemption has been requested or an individual who has requested an exemption on his or her own behalf shall be required to submit a financial disclosure statement with the commission on or before May 15th of each year in which such a statement is required. The party requesting the exemption may, under compelling circumstances, apply to the commission for an extension to submit a financial disclosure statement until the exemption request is acted upon by the commission. Only in special circumstances as determined by the commission will an extension for submission of a disclosure statement because of a pending exemption request be granted.]

[(g)] (d) Once an E[e]xemption has been granted to an individual, or to a T[t]itle or T[t]itles, or to a J[j]ob C[c]lassification, an individual, as long as he or she serves in that T[t]itle or J[j]ob C[c]lassification, will not be required to submit a F[f]inancial D[d]isclosure S[s]tatement in any subsequent year for which one would otherwise be required unless:

(1) the individual is appointed or promoted to a new T[t]itle or J[j]ob C[c]lassification in which such a filing is required; or

(2) the duties of the T[t]itle or J[j]ob C[c]lassification change to include duties [which] that would preclude an E[e]xemption from filing a F[f]inancial D[d]isclosure S[s]tatement; or

(3) the individual serves in a position [which] that is designated as policymaking by his or her A[a]ppointing A[a]uthority; or

(4) the [c]Commission, upon review of its determination to grant such exception, determines the E[e]xemption is no longer appropriate under the law or this rule and regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law § 94(9)(c) generally directs the Commission on Public Integrity ("Commission") to adopt, amend, and rescind rules and regulations to govern the procedures of the Commission. In addition, Executive Law § 94(9)(k) directs the Commission to promulgate rules concerning requests for exemptions from filing an annual statement of financial disclosure ("FDS") as required by Public Officers Law § 73-a. Specifically, Executive Law § 94(9)(k) provides that the Commission shall:

Permit any person who has not been determined by his or her appointing authority to hold a policy-making position but who is otherwise required to file a financial disclosure statement [pursuant to Public Officers Law § 73-a(1)] to request an exemption from such requirement in accordance with rules and regulations governing such exemptions. Such rules and regulations shall provide for exemptions to be granted either on the application of an individual or on behalf of persons who share the same job title or employment classification which the commission deems to be comparable for purposes of this section. Such rules and regulations may permit the granting of an exemption where, in the discretion of the commission, the public interest does not require disclosure and the applicant's duties do not involve the negotiation, authorization or approval of:

(i) contracts, leases, franchises, revocable consents, concessions, vari-

ances, special permits, or licenses as defined in section seventy-three of the public officers law;

(ii) the purchase, sale, rental or lease of real property, goods or services, or a contract therefor;

(iii) the obtaining of grants of money or loans; or

(iv) the adoption or repeal of any rule or regulation having the force and effect of law;

The Commission is, therefore, authorized to promulgate rules governing the process by which a State officer or employee, who is not a policymaker but is required to file an FDS because he or she earns more than the filing rate set forth in Public Officers Law § 73-a (l) (referred to herein as a "Potential Applicant"), may apply for an exemption from the FDS filing requirement.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 ("PEERA") established the Commission as the successor agency to the State Ethics Commission. The Commission, therefore, assumed the authority to promulgate rules governing the procedure for requesting an FDS exemption pursuant to Executive Law § 94(9)(k). The existing rule, which has been effective since 1989, sets forth conditions under which State officers and employees may request such an exemption.

The fundamental legislative objective of the FDS filing requirement is to ensure that policymaking State officers and employees publicly disclose their financial interests in order to avoid conflicts of interest with their official position. The Legislature, in enacting Executive Law § 94(9)(k), also created an opportunity for non-policymaking State officers and employees to apply for an exemption. In authorizing the Commission to promulgate rules governing the FDS exemption request procedure, the Commission implements the legislative objectives of providing Potential Applicants with sufficient time to file an FDS exemption request and, if the request is denied, to file their FDS as soon as practicable.

In accordance with its grant of regulatory authority, the Commission, therefore, proposes these amendments to offer Potential Applicants a uniform and simplified procedure for filing an FDS exemption request, and in certain cases, additional time in which to do so, in order that Potential Applicants may substantially comply with the FDS filing requirement and their respective deadlines set forth in Public Officers Law § 73-a.

3. Needs and benefits: The proposed rulemaking is necessary in order to make certain technical changes to conform the rules to PEERA, such as updating the name of the agency. In addition, the amendments delete obsolete provisions in the existing rule, such as the provision describing the role played by the Department of Civil Service's Director of Classification and Compensation, which provision was never adopted as a practice.

The most substantial revisions to this rule, however, provide additional time and a simplified procedure for seeking FDS exemptions that will ultimately promote timely FDS filing compliance, and, thus, prevent violations that could result in civil penalty assessments.

The existing rule provides that the first class of Potential Applicants, who are those with a May 15 FDS filing deadline, must file their exemption request with the Commission by March 31. Under the existing rules, however, if such Potential Applicant is denied, he or she is still required to file the FDS by May 15, regardless of when the Commission's denial is received. The existing rules, therefore, give this first class of Potential Applicants a more onerous requirement by mandating them to file the FDS by May 15 regardless if and when they receive the Commission's denial. This requirement makes it difficult for the first class of Potential Applicants to comply with their applicable FDS deadline.

Alternatively, the proposed amendment provides that this first class of Potential Applicants is required to file either their exemption request, or their actual FDS, on or before May 15. Pending the Commission's determination, such a Potential Applicant, who has been denied an exemption request, is no longer required to file the FDS by May 15 as in the existing rules; rather, if denied, the Potential Applicant has 15 days from receipt of the Commission's denial in which to file the FDS. Under this amended scenario, this first class of Potential Applicants is now treated in the same manner as the second class of Potential Applicants, who are those State officers and employees who qualify as a required FDS filer on a date after May 15 of any year (see, Public Officers Law § 73-a(2)(e) below). Under the proposed rules, therefore, if a Potential Applicant in the first class files the request on or before May 15, and is thereafter denied, by filing the FDS within 15 days of receiving the denial, rather than having to file the FDS by May 15 regardless of the Commission's determination, he or she will be in substantial compliance with the governing statute.

The governing statute also sets forth an FDS filing deadline for a second class of Potential Applicants. Section 73-a(2)(e) of the Public Officers Law provides that any person who becomes qualified to file an FDS after May 15 of any year shall file their FDS within thirty days after commencing such qualifying employment. In regard to this second class of Potential Applicants, the proposed amendment does not substantially change the existing rule. This class of Potential Applicants is still required to file an

exemption, or an FDS, within 30 days after commencing qualifying employment. The proposed rule, however, revises the qualifying employment date to mirror the governing statute exactly. The existing rule in Part 935.2(a) erroneously utilizes April 1, rather than May 15, as Public Officers Law § 73-a(2)(e) so authorizes, as the date which commences the thirty-day filing deadline. The existing rule was drafted in 1989 and it is not apparent what the rationale was for drafting a regulation that provides a date that is inconsistent with the governing statute.

To summarize: the proposed amendment changes the qualifying date for the second class of Potential Applicants to May 15, which matches the date in the governing statute; and, it also treats both classes of Potential Applicants in the same manner by requiring them to file their FDS within 15 days of receiving the Commission's denial.

The proposed rules for exemption request procedures, therefore, achieve the overarching legislative objective, which is that, all Potential Applicants are required to substantially comply with their respective FDS filing deadlines contained in the governing statute.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.

b. Costs to the agency, State and local government: None.

c. Cost information is based on the fact that the proposed rulemaking involves simplification of the exemption request procedure and the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: One alternative that was considered was making the technical amendments without changing the existing exemption request deadline. The Commission considered not changing the regulation because it is already the Commission's practice to accept exemption requests past the existing March 31 deadline. The Commission, however, deemed that a formal rulemaking would afford affected parties with sufficient notice and due process in the rulemaking process regarding the requirements for FDS filing and exemption requests.

Another alternative that the Commission considered relates to the first class of Potential Applicants, or those who have an FDS filing deadline of May 15. The Commission considered extending their exemption request deadline from March 31 to May 1, while still requiring those who receive an exemption denial to file their FDS by May 15 as is set forth in the existing rule. This scenario, however, created a compressed time frame that would not allow sufficient time both for the Commission to timely process exemption requests and also to enable those who are denied an exemption to comply with the May 15 statutory deadline. As a solution, the Commission deemed that extending the exemption request deadline to May 15 for these filers was the better alternative.

The Commission determined that the proposed amendments were the best alternative for the following reasons. By extending the deadline to May 15 for the first class of Potential applicants, it provides sufficient time for them to file, and for the Commission to process, these exemption requests. Also, both classes of Potential Applicants are now treated uniformly, in that, pending the Commission's determination, they are not required to file an FDS, but, if denied, are required to file their FDS within 15 days. This amendment enables all Potential Applicants to substantially comply with the respective FDS deadlines set forth in the governing statute in order that they may avoid a civil penalty assessment for late filing.

9. Federal standards: The proposed rulemaking pertains to the procedure for requesting an exemption from filing a financial disclosure statement by certain State officers and employees pursuant to PEERA and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: The rule will become effective upon adoption in the *State Register*.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping or other affirmative acts on the part of these entities for compliance purposes. CPI makes these findings based on the fact that the procedure for requesting an exemption from filing a financial disclosure statement affects only certain State officers and employees.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. CPI makes these findings based on the fact that the procedure for requesting an

exemption from filing a financial disclosure statement affects only certain State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies narrowly to the procedure for filing an exemption from filing a financial disclosure statement. In addition, the regulation only affects certain State officers and employees and does not apply, nor relate to small businesses, economic development or employment opportunities.

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

Procedure for Seeking Extension for Filing an Annual Statement of Financial Disclosure

I.D. No. CPI-18-10-00007-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 936 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c)

Subject: Procedure for seeking extension for filing an annual statement of financial disclosure.

Purpose: To provide a procedure for seeking an extension due to justifiable cause or undue hardship.

Text of proposed rule: Title 19 NYCRR Part 936 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 19. DEPARTMENT OF STATE
CHAPTER XX. [STATE ETHICS COMMISSION] COMMISSION ON PUBLIC INTEGRITY
PART 936

[EXTENSION OF] TIME EXTENSION FOR FILING A FINANCIAL DISCLOSURE STATEMENT DUE TO JUSTIFIABLE CAUSE OR UNDUHARDSHIP OR AUTOMATIC EXTENSION OF TIME TO FILE

936.1 Applicability.

This part shall apply to the following individuals:

- (a) T[t]he four statewide elected officials;
- (b) State officers or employees; and
- (c) P[p]olitical party chairmen;

who are required to file an annual statement of financial disclosure pursuant to section 73-a of the Public Officers Law.

936.2 Definitions.

(a) Commission shall mean the New York State [Ethics] Commission on Public Integrity [created by section 94 of the Executive Law, which may delegate the authority to act described by these rules and regulations to its executive director].

(b) Covered I[i]ndividual shall mean an individual who is required to file an annual statement of financial disclosure with the [c]Commission pursuant to section 73-a of the Public Officers Law.

(c) Filing R[r]ate shall mean the job rate of SG-24 as set forth in [paragraph a of subdivision one of] section 130(1)(a) of the Civil Service Law as of April first of the year in which a F[f]inancial D[d]isclosure S[s]tatement shall be filed.

(d) Financial D[d]isclosure S[s]tatement shall mean the annual statement of financial disclosure required to be filed pursuant to section 73-a of the Public Officers Law.

(e) Political P[p]arty C[c]hairman shall have the same meaning ascribed to such term by [paragraph (k) of subdivision one of] section 73 (1)(k) of the Public Officers Law.

(f) State O[o]fficer or E[e]mployee shall mean:

- (1) H[h]eads of State departments and their deputies and assistants;

(2) O[o]fficers and employees of statewide elected officials, of officers and employees of State departments, boards, bureaus, divisions, commissions, councils or other State agencies, who:

(i) receive annual compensation in excess of the F[f]iling R[r]ate; and

(ii) have not been exempted from filing a F[f]inancial D[d]isclosure S[s]tatement; or

(iii) hold policymaking positions as determined by the appropriate appointing authority; and

(3) M[m]embers or directors of public authorities, other than multistate authorities, public benefit corporations and commissions at least one of whose members is appointed by the Governor, and those employees of such authorities, corporations and commissions, who:

(i) receive annual compensation in excess of the F[f]iling R[r]ate; and

(ii) have not been exempted from filing a F[f]inancial D[d]isclosure S[s]tatement; or

(iii) who hold policy[-]making positions as determined by the appropriate appointing authority.

(g) Statewide E[e]lected O[o]fficial shall mean the Governor, Lieutenant Governor, Comptroller and Attorney General.

936.3 Basis for extension.

A C[c]overed I[i]ndividual may be granted an extension of time within which to file a F[f]inancial D[d]isclosure S[s]tatement with the [State Ethics] Commission only upon a showing of:

(a) J[j]ustifiable cause; or

(b) U[u]ndue hardship.

936.4 Procedure.

(a) A covered individual may request an extension of time within which to file the F[f]inancial D[d]isclosure S[s]tatement [, due by May 15, with the commission. Such request for extension must be postmarked, or the delivery to the commission must be made, no later than May 5 th of the year in which the financial disclosure statement is to be filed.] by sending a written request to the Commission via mail, email or facsimile in accordance with this Section.

(b) A person who is or becomes a Covered Individual on or before May 15 of any year shall file the extension request with the Commission on or before May 15 of the same year. If the Commission grants the extension, such Covered Individual shall file the Financial Disclosure Statement no later than June 30 of the same year.

[(b) In the event an individual, through hiring, appointment, promotion, election or other designation, becomes a covered individual on or after April 15 th of the year in which such statement is required, that individual shall file such statement with the commission within thirty days after such event. Such covered individual may request an extension of time for filing a financial disclosure statement, and such request must be postmarked or delivery to the commission must be made, at any time within the thirty-day filing period.]

(c) A person who becomes a Covered Individual after May 15 of any year shall file the extension request with the Commission within 30 days of becoming a Covered Individual. If the Commission grants the extension, such Covered Individual shall file the Financial Disclosure Statement within 45 days of the date that the statement is otherwise required.

[(c)d] The extension request [for an extension of time to file] must contain the following information:

(1) T[t]he name of the C[c]overed I[i]ndividual, home address and work address;

(2) T[t]he title(s) of the position or job classification(s) under which the individual is employed, and the appropriate title code; and

(3) D[d]ocumentation of justifiable cause or undue hardship in the form of a written statement with copies of any necessary supporting documents the C[c]overed I[i]ndividual wishes the [c]Commission to consider in granting or denying the request. [; and]

[(4) the specific period of time for which the covered individual wishes to be granted an extension, set forth with a date certain upon which the covered individual intends to comply with the filing require-

ment; provided, however, that no extension of time to file under these rules and regulations for statements due by May 15 th shall extend beyond June 30 th of the year in which the filing of such annual statement is required. No extension of time to file statements from individuals who are hired, appointed, elected or otherwise designated as a covered individual on or after April 15 th of the year in which the financial disclosure statement must be filed, shall extend beyond 45 days from the date on which the filing would otherwise be required.]

[(d) The request for extension shall be mailed to the commission by certified mail or shall be delivered by hand and, upon request, a receipt may be issued upon acceptance of such delivery.]

(e) Justifiable cause or undue hardship shall not include periods of vacation, attendance at conferences or meetings or other prescheduled or voluntary absences.

936.5 Commission action.

(a) Upon receipt of a timely request from a C[c]overed I[i]ndividual for an extension in which to file a F[f]inancial D[d]isclosure S[s]tatement, the [c]Commission shall review the material filed to determine whether there has been a showing of justifiable cause or undue hardship.

(b) The [c]Commission may request additional information from the C[c]overed I[i]ndividual who submitted the request. Such individual shall submit the additional information to the [c]Commission within seven business days [by certified mail or delivery by hand to the commission]. In the event the [c]Commission does not receive the additional information within 7 business days, the [c]Commission may make a determination on the basis of the information it has available.

(c) The [c]Commission shall notify the C[c]overed I[i]ndividual of its determination on the request for extension to file the F[f]inancial D[d]isclosure S[s]tatement.

(1) [In the event the request for an extension of time to file the financial disclosure statement is approved, such statement shall be filed on the date indicated by the commission in its determination of approval issued to the covered individual.]

If the Commission approves the extension request, the Covered Individual shall file the Financial Disclosure Statement within the applicable time period set forth in 936.4 (b) or (c) of this Section.

(2) [In the event the request for an extension of time to file the financial disclosure statement is denied for failure to show justifiable cause or undue hardship, the covered individual must file the financial disclosure statement by May 15 th or such date thereafter indicated by the commission in its determination of denial issued to the covered individual.]

If the Commission denies the extension request, such Financial Disclosure Statement shall be filed with the Commission within 15 days from receipt of such denial.

936.6 Automatic extension.

(a) In the event a C[c]overed I[i]ndividual timely filed with the Internal Revenue Service an application for automatic extension of time in which to file his or her individual income tax return for the immediately preceding calendar or fiscal year, such individual shall file with the [c]Commission, with respect to any item of the annual statement, a written statement that such information is lacking from such annual statement but will be supplied in a supplementary [statement of] F[f]inancial D[d]isclosure Statement on or before the seventh day after the expiration of the period of such automatic extension of time to file such income tax return.

(b) The written statement filed with the [c]Commission concerning an automatic extension of time to file must contain the following information:

(1) T[t]he name of the C[c]overed I[i]ndividual, home address and work address;

(2) T[t]he title(s) of the position or job classification(s) under which the individual is employed, and the appropriate title code;

(3) A[a] copy of the application for automatic extension to file an income tax return; and

(4) A[a] description of the information [which] *that* is lacking in

the filed annual statement due to the application of an automatic extension to file an income tax return with the Internal Revenue Service.

(c) An individual who is entitled to an automatic extension to file his or her income tax return with the Internal Revenue Service must file his or her annual [statement of] F[f]inancial D[d]isclosure Statement on or before [the] May 15 [th] containing all the information required by the annual statement except for [that] *the* information [only which] *that* is lacking due to such automatic extension to file the income tax return.

(d) Failure to file such supplementary statement or filing an incomplete or deficient supplementary filing shall be subject to the notice and penalty provisions of the Public Officers Law and the Executive Law as if such supplementary statement were an annual [statement of] F[f]inancial D[d]isclosure Statement.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law § 94(9)(c) directs the Commission on Public Integrity (“Commission”) to adopt, amend, and rescind rules and regulations to govern the procedures whereby a person who is required to file an annual financial disclosure statement (“FDS”) with the Commission may request an additional period of time within which to file such statement, due to justifiable cause or undue hardship, and such rules or regulations shall provide for a date beyond which no further extension of time will be granted.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 (“PEERA”) established the Commission as the successor agency to the State Ethics Commission. The Commission is charged with the authority to promulgate rules governing extension deadlines and procedures. The governing statute provides that an extension will only be granted to those State officers and employees who can demonstrate justifiable cause or undue hardship, including a limited extension when the Internal Revenue Service has granted an extension for an individual’s income tax return. These rules will assist such State officers and employees in complying with the FDS filing requirements set forth in the Public Officers Law.

3. Needs and benefits: The proposed rulemaking is necessary in order to make certain technical changes such as updating the name of the agency and replacing the grammatically incorrect word “which” with the grammatically correct word “that.” The most substantial revisions to this rule involve making the extension request procedure more uniform and predictable. The Public Officers Law creates two classes of State officers and employees who are required to file an FDS. The first class is comprised of those who become qualified to file an FDS on or before May 15 of any year. The second class is comprised of those who become qualified to file an FDS after May 15 of any year.

In regard to the extension procedure for both classes of filers, the proposed rule creates a more uniform procedure. For the first class, it changes the extension filing deadline from May 5 to May 15. This provides additional time that is helpful to filers. For the second class of filers, the amendment changes the trigger date for commencing qualifying employment from April 15 to May 15, but the corresponding extension request deadline remains the same as the existing rule, which is thirty-days from the date of qualifying employment. By changing the trigger date to after May 15 for the second class of filers, the proposed rule will become consistent with the corresponding date in the governing statute. That the proposed rule retains the thirty-day period in which second class filers are required to file the extension request also mirrors the existing rule and the governing statute.

Under the proposed rule, if denied, State officers and employees in both classes have 15 days in which to file their FDS. This eliminates the Commission’s ad hoc discretion, under the existing rules, to determine the FDS deadline for those who have been denied. If the Commission grants the extension request, under the proposed rule,

State officers and employees in both classes respectively have 45 days from the original FDS deadline in which to file the FDS. This procedure is the same as the existing regulation and is also consistent with the governing statute.

In addition, the existing rule provides the Commission with the authority to make ad hoc extension deadlines depending on the requestor. This practice may result in disparate treatment to filers. The proposed amendment, therefore, creates uniform deadlines, depending on the class of filer, that promote predictability for all applicants. A regulatory framework that provides a uniform extension deadline avoids disparate treatment by the Commission and eases the Commission's burden of tracking different extension deadlines. For second class filers, the proposed amendment revises the qualifying date to mirror the governing statute.

Significantly, these amendments make the extension filing dates for the corresponding class of filers the same as the exemption filing dates proposed in Part 935. Synchronizing these two different filing deadline dates will result in efficiencies for both the Commission and applicants alike.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.

b. Costs to the agency, the State and local government: None.

c. Cost information is based on the fact that the proposed rule-making involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: One alternative that was considered was only making the technical amendments. The Commission, however, deemed that a formal rulemaking would afford affected parties with sufficient notice and due process in the rulemaking process regarding the requirements for FDS filing and exemption requests.

No other alternatives, other than not amending the rule, were seriously considered. The Commission determined, however, that the proposed amendments were the best alternative because they are consistent with the governing statute and provide a uniform procedure for all State officers and employees to request FDS extensions, regardless of the date they became qualified to file an FDS.

Significantly, under the proposed scenarios for Parts 935 and 936, the deadline for extensions and exemptions are the same for the corresponding class of filers. The Commission acknowledges that synchronizing these corresponding filing dates respective to the class of filer is the preferred alternative. In both proposed Parts 935 and 936, not only does the amendment correct operative dates that were inconsistent with the governing statute, but it also creates administrative efficiencies for the Commission by having uniform filing dates.

9. Federal standards: The proposed rulemaking pertains to the procedure for requesting an extension for filing an FDS in situations where there is demonstrated justifiable cause or undue hardship pursuant in accordance with PEERA and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: The rule will become effective upon adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. CPI makes these findings based on the fact that the procedure for requesting a time extension for filing a financial disclosure statement affects only certain State officers and employees.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact

on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. CPI makes these findings based on the fact that the procedure for requesting an extension of time for filing a financial disclosure statement affects only certain State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies narrowly to the procedure for requesting and extension of time for filing a financial disclosure statement. In addition, the regulation only affects certain State officers and employees and does not apply, nor relate to small businesses, economic development or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Franchise Renewal

I.D. No. PSC-09-08-00007-A

Filing Date: 2010-04-20

Effective Date: 2010-04-20

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

Action taken: On 4/15/10, the PSC adopted an order denying Time Warner Entertainment-Advanced/Newhouse Partnership's petition for reconsideration of the May 1, 2007 Order Approving Renewal issued May 1, 2007 and granting the request for clarification.

Statutory authority: Public Service Law, sections 219(1) and 222(4)

Subject: Franchise renewal.

Purpose: To deny the petition for reconsideration and grant the request for clarification.

Substance of final rule: The Commission, on April 15, 2010, adopted an order denying Time Warner Entertainment-Advanced/Newhouse Partnership's petition for reconsideration of the May 1, 2007 Order Approving Renewal issued May 1, 2007 and granting the request for clarification, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(00-V-2091SA1)

NOTICE OF ADOPTION

Costs of Interconnecting a Net Metered Farm Waste Generator

I.D. No. PSC-36-09-00007-A

Filing Date: 2010-04-16

Effective Date: 2010-04-16

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

Action taken: On 4/15/10, the PSC adopted an order denying Boxler Dairy Farm's complaint regarding the cost to interconnect a net metered farm waste generator.

Statutory authority: Public Service Law, section 66-j

Subject: Costs of interconnecting a net metered farm waste generator.

Purpose: To deny Boxler Dairy Farm's complaint regarding the cost to interconnect a net metered farm waste generator.

Substance of final rule: The Commission, on April 15, 2010, adopted an order denying Boxler Dairy Farm's complaint regarding the cost to interconnect a net metered farm waste generator, subject to the terms and condition set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0608SA1)

NOTICE OF ADOPTION

Disposition of a Federal Income Tax Refund

I.D. No. PSC-36-09-00010-A

Filing Date: 2010-04-16

Effective Date: 2010-04-16

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

Action taken: On 4/15/10, the PSC adopted an order approving a Joint Proposal by Niagara Mohawk Power Corporation d/b/a National Grid, Commission Staff and Multiple Intervenors, for the disposition of a federal income tax refund.

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

Subject: Disposition of a federal income tax refund.

Purpose: To approve the disposition of a federal income tax refund.

Substance of final rule: The Commission, on April 15, 2010, adopted an order approving a Joint Proposal by Niagara Mohawk Power Corporation d/b/a National Grid, Commission Staff and Multiple Intervenors, for the disposition of a federal income tax refund of \$25.6 million, inclusive of interest in the amount of \$13.3 million received in 2003 and 2004, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-M-0554SA1)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-46-09-00008-A

Filing Date: 2010-04-19

Effective Date: 2010-04-19

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

Action taken: On 4/15/10, the PSC adopted an order approving, with modifications, the Village of Churchville's amendments to P.S.C. No. 1—Electricity, effective April 1, 2010 and postponed to May 1, 2010.

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

Subject: Minor Rate Filing.

Purpose: To approve the Village of Churchville's amendments to P.S.C. No. 1—Electricity.

Substance of final rule: The Commission, on April 15, 2010, adopted an order approving, with modifications, the Village of Churchville's amendments to P.S.C. No. 1—Electricity, effective April 1, 2010 and postponed to May 1, 2010, for a total revenue increase of \$280,988, or 20.6%, with

\$140,494 or 10.3% effective May 1, 2010, and the remaining \$140,494, or 10.3% effective May 1, 2011, subject to the terms and condition set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0782SA1)

NOTICE OF ADOPTION

Transfer of Stock

I.D. No. PSC-48-09-00012-A

Filing Date: 2010-04-16

Effective Date: 2010-04-16

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

Action taken: On 4/15/10, the PSC adopted an order approving the petition of United Water Owego-Nichols Inc. (UWON) for a change in ownership from United Water Toms River Inc. to United Waterworks Inc.

Statutory authority: Public Service Law, section 89-h

Subject: Transfer of stock.

Purpose: To approve the transfer of stock from United Water Toms River Inc. to United Waterworks Inc.

Substance of final rule: The Commission, on April 15, 2010, adopted an order approving the petition of United Water Owego-Nichols Inc. (UWON) for the transfer of stock from United Water Toms River Inc. to United Waterworks Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-W-0797SA1)

NOTICE OF ADOPTION

National Grid's Multifamily Electric Energy Efficiency Programs

I.D. No. PSC-50-09-00003-A

Filing Date: 2010-04-19

Effective Date: 2010-04-19

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

Action taken: On 4/15/10, the PSC adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's petition for rehearing to permit compact florescent light fixtures as an eligible measure in its multifamily energy efficiency program.

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

Subject: National Grid's multifamily electric energy efficiency programs.

Purpose: To approve the use of compact florescent light fixtures in National Grid's multifamily electric energy efficiency programs.

Substance of final rule: The Commission, on April 15, 2010, adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's petition for rehearing to permit compact florescent light (CFL) fixtures as an eligible measure in its multifamily energy efficiency programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(08-E-1133SA1)

NOTICE OF ADOPTION

Authorization to Terminate Natural Gas Transportation Service

I.D. No. PSC-05-10-00018-A

Filing Date: 2010-04-19

Effective Date: 2010-04-19

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

Action taken: On 4/15/10, the PSC adopted an order, authorizing St. Lawrence Gas, Inc. to terminate natural gas transportation service to AG-Energy, L.P.

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

Subject: Authorization to terminate natural gas transportation service.

Purpose: To authorize St. Lawrence Gas, Inc. to terminate natural gas transportation service to AG-Energy, L.P.

Substance of final rule: The Commission, on April 15, 2010, adopted an order, authorizing St. Lawrence Gas, Inc. to terminate natural gas transportation service to AG-Energy, L.P., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-G-0872SA1)

NOTICE OF ADOPTION

Petition for Rehearing of the Commission's December 22, 2009 Order Authorizing Bill Credits

I.D. No. PSC-07-10-00008-A

Filing Date: 2010-04-16

Effective Date: 2010-04-16

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

Action taken: On 4/15/10, the PSC adopted an order granting Multiple Intervenors' petition for rehearing to reapportion bill credits.

Statutory authority: Public Service Law, sections 5(2) and 65(1)

Subject: Petition for rehearing of the Commission's December 22, 2009 Order Authorizing Bill Credits.

Purpose: To grant Multiple Intervenors' petition for rehearing to reapportion bill credits.

Substance of final rule: The Commission, on April 15, 2010, adopted an order granting Multiple Intervenors' petition for rehearing of the Commission's December 22, 2009 order to change the distribution of bill credits based upon revenues generated by each customer, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-

2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-M-0435SA2)

NOTICE OF ADOPTION

Transfer of Real Property from National Grid to the Town of DeWitt

I.D. No. PSC-08-10-00006-A

Filing Date: 2010-04-15

Effective Date: 2010-04-15

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

Action taken: On 4/15/10, the PSC adopted an order approving the Joint Petition of Niagara Mohawk Power Corporation d/b/a National Grid to transfer certain real property interests to the Town of DeWitt.

Statutory authority: Public Service Law, section 70

Subject: Transfer of real property from National Grid to the Town of DeWitt.

Purpose: To approve the transfer of real property from National Grid to the Town of DeWitt, New York.

Substance of final rule: The Commission, on April 15, 2010, adopted an order approving the Joint Petition of Niagara Mohawk Power Corporation d/b/a National Grid and the Town of DeWitt to transfer certain real property interests to the Town of DeWitt in connection with the Butternut Creek Recreation and Nature Area Project, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-E-0052SA1)

NOTICE OF ADOPTION

Energy Cost Adjustment

I.D. No. PSC-08-10-00008-A

Filing Date: 2010-04-15

Effective Date: 2010-04-15

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

Action taken: On 4/15/10, the PSC allowed Orange and Rockland Utilities Inc.'s amendments to PSC 2—Electricity, to become effective May 1, 2010 to revise the provisions of the Energy Cost Adjustment.

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

Subject: Energy Cost Adjustment.

Purpose: To allowed the revisions of the Energy Cost Adjustment to go into effect on May 1, 2010.

Substance of final rule: The Commission, on April 15, 2010, allowed Orange and Rockland Utilities Inc.'s amendments to PSC 2—Electricity, to become effective May 1, 2010, to revise the provisions of the Energy Cost Adjustment.

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

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

per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-E-0054SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Availability of Telecommunications Services in New York at Just and Reasonable Rates

I.D. No. PSC-18-10-00013-P

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

Proposed Action: The Commission is considering a proposal for a temporary extension of the Transition Fund established to ease potential pressure on local telephone service rates of rural local exchange carriers affected by phase-out of intrastate access pooling.

Statutory authority: Public Service Law, sections 5, 91(1) and 94

Subject: Availability of telecommunications services in New York at just and reasonable rates.

Purpose: Providing funding support for availability of telecommunications services in New York.

Public hearing(s) will be held at: 10:30 a.m., May 26, 2010 and continuing from weekday to weekday until completed at Department of Public Service, Three Empire State Plaza, 19th Fl., Board Rm., Albany, NY.*

*On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.state.ny.us) under Case 09-M-0527.

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 notice dated August 3, 2009, the Commission established a proceeding to examine issues related to the advisability of modifications to the existing universal service funding regimes to support telecommunications services in New York in a rapidly changing industry. The existing regimes include a fund established to ease potential pressure on local telephone service rates of rural local exchange carriers affected by phase-out of intrastate access charge pooling. A number of parties to the proceeding have submitted a joint proposal to extend that fund (currently projected to be exhausted in May of 2011), pending completion of consideration of potential, more comprehensive modifications to the existing universal service funding mechanisms. The Commission may approve, reject, or modify the joint proposal, in whole or in part.

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

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

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

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

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

(09-M-0527SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Utility Transmission Right-of-Way Management Practices

I.D. No. PSC-18-10-00009-P

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

Proposed Action: The Public Service Commission is considering whether electric utility transmission right-of-way management practices properly balance the need for safety and reliability of the electric transmission system with other community values.

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

Subject: Electric utility transmission right-of-way management practices.

Purpose: To consider electric utility transmission right-of-way management practices.

Substance of proposed rule: The Public Service Commission is considering whether electric utility transmission right-of-way (ROW) management practices adequately balance the need for safety and reliability of the State's electric transmission system with the concerns raised by interested parties. In connection with its consideration of these issues, the Commission has instituted Case 10-E-0155 to receive and consider public comments regarding whether changes to utilities' implementation of transmission ROW management policies may be warranted to protect or enhance the continued provision of safe and reliable electric service and, at the same time, be cost-effective and sensitive to environmental and aesthetic values. The Commission will consider comments and recommendations and may accept, reject or adopt, in whole or in part, any or all such comments and recommendations.

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

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

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

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

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

(10-E-0155SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Street Lighting Facilities

I.D. No. PSC-18-10-00010-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part, a petition filed by Rochester Gas and Electric Corporation for approval of the sale of its street lighting facilities in the City of Rochester to the City of Rochester.

Statutory authority: Public Service Law, section 70

Subject: Sale of street lighting facilities.

Purpose: Approval for the sale of street lighting facilities to the City of Rochester.

Substance of proposed rule: The Commission is considering a petition filed by Rochester Gas and Electric Corporation (RG&E) for approval of the sale of street lighting facilities in the City of Rochester, Monroe County, to the City of Rochester for the sum of \$7,060,906.83 plus any accrued taxes and associated improvements and equipment. 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

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-0768SP1)

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

Indebtedness for a Term in Excess of 12 Months

I.D. No. PSC-18-10-00011-P

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

Proposed Action: The Commission is deciding whether to grant, modify or deny, in whole or in part, the New York Independent System Operator, Inc.'s (NYISO's) petition to incur indebtedness for a term in excess of 12 months.

Statutory authority: Public Service Law, section 69

Subject: Indebtedness for a term in excess of 12 months.

Purpose: To determine whether to grant, modify or deny, in whole or in part, the NYISO's petition to incur indebtedness.

Substance of proposed rule: The Public Service Commission is considering a petition from New York Independent System Operator, Inc. requesting authorization from the Commission to incur indebtedness for a period in excess of twelve months under the Public Service Law. The Commission may adopt, reject or modify, in whole or in part, the relief proposed, and may also consider related matters.

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

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

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

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

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

(10-E-0160SP1)

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

Water Rates and Charges

I.D. No. PSC-18-10-00012-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part or modify Emerald Green Lake Louise Marie Water Company, Inc.'s Rate Escalator Statement No. 1, which has been further suspended to July 28, 2010 by the Order dated 01/21/2010.

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

Subject: Water rates and charges.

Purpose: To approve or reject Emerald Green Lake Louise Marie Water Company, Inc.'s Rate Escalator Statement No.1.

Substance of proposed rule: On June 30, 2009, Emerald Green Lake

Louise Marie Water Company, Inc. (Emerald Green or the company) filed Leaf No. 12 Revision 4, Original Leaf No. 13, and Rate Escalator Statement No. 1, as amendments to its electronic tariff, P.S.C. No. 1 - Water to become effective on October 1, 2009. On January 21, 2010, the Commission adopted an order approving Emerald Green Lake Louise Marie Water Company to increase its annual revenues of \$106,418 or 27.7%, but directed that Rate Escalator Statement No. 1 be further suspended to July 28, 2010. The Commission may approve, reject or modify Emerald Green's request to implement an automatic annual rate increase, which is based on the U.S. Department of Labor's Consumer Price Index for Water and Sewer Management. The company currently provides water service to 845 residential customers in total, which includes 634 all-year-round customers and 211 seasonal customers, in real estate developments known as Lake Louise Marie and Emerald Green in Sullivan County.

Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Access to Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(09-W-0537SP2)

**Susquehanna River Basin
Commission**

INFORMATION NOTICE

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: January 1, 2010, through January 31, 2010.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. EXCO Resources (PA), Inc., Pad ID: Roba, ABR-20100101, Scott Township, Lackawanna County, Pa.; Consumptive Use of up to 2,000 mgd; Approval Date: January 8, 2010.

2. Ultra Resources, Inc., Pad ID: Ken-Ton 902, ABR-20100102, West Branch Township, Potter County, Pa.; Consumptive Use of up to 4,990 mgd; Approval Date: January 8, 2010.

3. Fortuna Energy, Inc., Pad ID: Vanblarcom R 004, ABR-20100103, Columbia Township, Bradford County, Pa.; Consumptive Use of up to 3,000 mgd; Approval Date: January 8, 2010.

4. Chief Oil & Gas, LLC, Pad ID: Lytle Unit Drilling Pad, ABR-20100104, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 5,000 mgd; Approval Date: January 8, 2010.

5. East Resources, Inc., Pad ID: Willard 419-1H, ABR-20100105,

Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

6. East Resources, Inc., Pad ID: York 480-5H, ABR-20100106, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

7. East Resources, Inc., Pad ID: Wood 513, ABR-20100107, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

8. Fortuna Energy, Inc., Pad ID: Hoover G 017, ABR-20100108, Canton Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

9. Fortuna Energy, Inc., Pad ID: Foust J 1H, ABR-20100109, Granville Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

10. Fortuna Energy, Inc., Pad ID: Lutz T1, ABR-20100110, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

11. Fortuna Energy, Inc., Pad ID: Lutz T2, ABR-20100111, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

12. Fortuna Energy, Inc., Pad ID: Thomas FT 1, ABR-20100112, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

13. Fortuna Energy, Inc., Pad ID: Thomas FT 2, ABR-20100113, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

14. East Resources, Inc., Pad ID: Butler 127, ABR-20100114, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

15. J-W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C-04 ABR-20100115, Lumber Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.

16. J-W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C-05 ABR-20100116, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.

17. J-W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C-07H, ABR-20100117, Lumber Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: January 8, 2010.

18. East Resources, Inc., Pad ID: Hackman 143, ABR-20100118, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

19. East Resources, Inc., Pad ID: Baker 128, ABR-20100119, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

20. East Resources, Inc., Pad ID: Charles Stock 144, ABR-20100120, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

21. East Resources, Inc., Pad ID: Kennedy 137, ABR-20100121, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

22. East Resources, Inc., Pad ID: Stevens 142, ABR-20100122, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

23. East Resources, Inc., Pad ID: Castle 113D, ABR-20100123, Canton Township, Bradford County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

24. East Resources, Inc., Pad ID: Miller 116D, ABR-20100124, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 8, 2010.

25. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 4V, ABR-20100125, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

26. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 3V, ABR-20100126, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

27. Citrus Energy Corporation, Pad ID: Procter & Gamble Mehoopany Plant 5V, ABR-20100127, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 8, 2010.

28. Fortuna Energy, Inc., Pad ID: Castle 01 047, ABR-20100128, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

29. Fortuna Energy, Inc., Pad ID: TWL Assoc 01 016, ABR-20100129, Armenia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: January 8, 2010.

30. Chesapeake Appalachia, LLC, Pad ID: Lionetti, ABR-20100130, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 8, 2010.

31. Chesapeake Appalachia, LLC, Pad ID: Storms, ABR-20100131, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

32. Chesapeake Appalachia, LLC, Pad ID: Welles 3, ABR-20100132, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

33. Chesapeake Appalachia, LLC, Pad ID: Shirley, ABR-20100133, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

34. Chesapeake Appalachia, LLC, Pad ID: Meas, ABR-20100134, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 9, 2010.

35. Chief Oil & Gas, LLC, Pad ID: Walters Unit #1H, ABR-20100135, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 9, 2010.

36. Chief Oil & Gas, LLC, Pad ID: Elliott Drilling Pad #1H, ABR-20100136, Monroe Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 9, 2010.

37. Cabot Oil & Gas Corporation, Pad ID: ChudleighW P2, ABR-20100137, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 9, 2010.

38. Cabot Oil & Gas Corporation, Pad ID: LaRueC P3, ABR-20100138, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 9, 2010.

39. East Resources, Inc., Pad ID: Coolidge 464, ABR-20100139, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 9, 2010.

40. East Resources, Inc., Pad ID: Sterling 525, ABR-20100140, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 9, 2010.

41. Chesapeake Appalachia, LLC, Pad ID: Mowry2, ABR-20100141, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

42. Chesapeake Appalachia, LLC, Pad ID: Harper, ABR-20100142, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

43. East Resources, Inc., Pad ID: McClure 527, ABR-20100143, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: January 10, 2010.

44. Chesapeake Appalachia, LLC, Pad ID: Welles 4, ABR-20100144, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 10, 2010.

45. Cabot Oil & Gas Corporation, Pad ID: CarlsonW P1, ABR-20100145, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 10, 2010.

46. Chief Oil & Gas, LLC, Pad ID: Patterson Drilling Pad #1, ABR-20100146, Penn Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 10, 2010.

47. Chesapeake Appalachia, LLC, Pad ID: Popivchak, ABR-20100147, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

48. Chesapeake Appalachia, LLC, Pad ID: Solowiej, ABR-20100148, Wyalusing Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

49. Cabot Oil & Gas Corporation, Pad ID: Baker P1, ABR-20100149, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: January 11, 2010.

50. Chesapeake Appalachia, LLC, Pad ID: Horst, ABR-20100150, Smithfield Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

51. Chesapeake Appalachia, LLC, Pad ID: Stevens, ABR-20100151, Standing Stone Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: January 11, 2010.

52. Ultra Resources, Inc., Pad ID: Mitchell A 903, ABR-20100152, West Branch Township, Potter County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: January 13, 2010.

53. XTO Energy Incorporated, Pad ID: Marquardt, ABR-20090712.1, Penn Township, Lycoming County, Pa.; Consumptive Use totaling up to 3.000 mgd; Approval Date: January 14, 2010.

54. Range Resources - Appalachia, LLC, Pad ID: Genter 3, ABR-20100153, Cummings Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 20, 2010.

55. Range Resources - Appalachia, LLC, Pad ID: Laurel Hill 1, ABR-20100154, Jackson Township, Lycoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: January 20, 2010.

56. Novus Operating, LLC, Pad ID: Sylvester 1H, ABR-20100155, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: January 21, 2010.

57. EOG Resources, Inc., Pad ID: PHC 20V, ABR-20100156, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: January 21, 2010.

58. EOG Resources, Inc., Pad ID: LIDDELL 1H, ABR-20100157, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: January 21, 2010.

59. Novus Operating, LLC, Pad ID: NorthFork 1H, ABR-20100158, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: January 28, 2010.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: April 16, 2010.

Stephanie L. Richardson

Secretary to the Commission.