

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Civil Service

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

#### Disqualification from Participation in the New York State Health Insurance Plan (“NYSHIP”) and Receiving Benefits Thereunder

I.D. No. CVS-47-10-00001-P

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

**Proposed Action:** This is a consensus rule making to amend section 73.2(e) of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, sections 160, 161(1), 163 and 164

**Subject:** Disqualification from participation in the New York State Health Insurance Plan (“NYSHIP”) and receiving benefits thereunder.

**Purpose:** To clarify that grounds for disqualification from NYSHIP participation apply to dependents.

**Text of proposed rule:** RESOLVED: That subdivision (e) of Section 73.2 of Part 73 of the Regulations of the Department of Civil Service (President’s Regulations) is amended to read as follows:

(e) Disqualification. The president may disqualify from participation in the health insurance plan and from receiving benefits thereunder any employee or retired employee or *dependent of an employee or retired employee* who has secured or attempted to secure participation in the health insurance plan or benefits under the plan for himself or another by fraud, deception or a false statement of a material fact, or who has accepted benefits for himself or another knowing he was not entitled thereto. No person shall be disqualified or denied benefits pursuant to this subdivision unless he is first given a written statement of the reasons therefor and afforded an opportunity to make an

explanation and submit facts in opposition to such action. Such employee, *retired employee or dependent of an employee or retired employee* may be restored to eligibility for coverage under the plan only on approval of the president and subject to such conditions as may be imposed by the president, including repayment of sums expended for benefits obtained by fraud, deception or false statement of a material fact, or accepted by the employee with knowledge that he was not entitled thereto.

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

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

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

#### Consensus Rule Making Determination

Pursuant to authority conferred by Article XI of the Civil Service Law, entitled Health Insurance for State and Retired State Employees, the New York State Department of Civil Service administers the New York State Health Insurance Program (NYSHIP) which provides health insurance coverage for eligible New York State employees and retirees, participating agencies and participating employers. (See Civil Service Law sections 160 et. seq.) Civil Service Law section 164 of Article XI further authorizes the President of the State Civil Service Commission, as head of the Department of Civil Service, to extend the availability of coverage to eligible spouses and dependents of covered employees and retirees upon payment of appropriate premiums therefor. The President of the Commission is required to adopt regulations governing the discontinuance and resumption by employees of coverage for such dependents.

Section 73.2(e) of the Regulations of the President of the Civil Service Commission (President’s Regulations; Title 4 of NYCRR) already permits the President to disqualify from participation in the health insurance plan and from receiving benefits thereunder any employee or retired employee who has secured or attempted to secure participation in the health insurance plan or benefits under the plan for himself or another by fraud, deception or a false statement of a material fact, or who has accepted benefits for himself or another knowing he was not entitled thereto. The proposed amendment makes clear that the President possesses similar authority to disqualify any dependent of a covered employee or retiree according to the terms and condition set forth in such section. This is consistent with the President’s duty to ensure the lawful, consistent and cost-effective administration of NYSHIP and to protect it against fraud.

No person or entity is likely to object to the rule as written. As such, the rule is proposed as a consensus rule.

#### Job Impact Statement

By amending subdivision (e) of section 73.2 of 4 NYCRR to expressly provide for the disqualification of dependents under NYSHIP, this rule will improve the administration of such program. Therefore, the rule will not negatively affect jobs of employment opportunities, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA) and a Job Impact Statement (JIS) is not required by section 201-a of such Act.

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

**Separate Units for Suspension, Demotion of Displacement (Layoff Units)**

**I.D. No.** CVS-47-10-00002-P

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

**Proposed Action:** This is a consensus rule making to amend section 72.1 of Title 4 NYCRR.

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

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

**Purpose:** To designate the Agency Law Enforcement Services negotiating unit as a separate layoff unit with Dept. of Environmental Conservation.

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

In the Department of Environmental Conservation  
Department-wide for [Security Services] *Agency Law Enforcement Services* Negotiating Unit

Remainder of department in each of the following groups:

- A. Albany County
- B. All other counties

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

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

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

**Consensus Rule Making Determination**

In 2003, the former Security Services Negotiating Unit (SSU) within the New York State Department of Environmental Conservation (NYSDEC) was redesignated as part of the Agency Law Enforcement Services Negotiating Unit (ALES). The SSU is already established as a separate, statewide unit for suspension, demotion or displacement (layoff unit) within NYSDEC in Part 72 of the Regulations of the Department of Civil Service (President's Regulations; Title 4 NYCRR). Following execution of a signed memorandum of understanding between NYSDEC and ALES representatives and at NYSDEC request, the definition of separate layoff units for NYSDEC in Part 72 is amended to replace the obsolete reference to SSU in NYSDEC with ALES. No employee rights are impacted by this ministerial amendment.

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

**Job Impact Statement**

By modifying Title 4 of the NYCRR to designate the Agency Law Enforcement Negotiating Unit (ALES) as a separate unit for suspension, demotion or displacement (layoff unit) within the New York State Department of Environmental Conservation (NYSDEC), this ministerial rule will have no impact on jobs or employment opportunities for subject employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-10-00003-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, under the subheading "Office of the Governor," by adding thereto the position of Chief Diversity Officer.

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-10-00004-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by adding thereto the subheading "Authorities Budget Office," and the position of Secretary.

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-10-00005-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of øDirector of Planning and Program Evaluation (1) and by adding thereto the position of øDirector Mental Health Field Office 2 (1).

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-10-00006-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the position of øDirector of Curriculum Services (1).

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

**I.D. No.** CVS-47-10-00007-P

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

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

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

**Subject:** Jurisdictional Classification.

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

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by adding thereto the position of øDirector, Charter Schools (1).

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

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

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

#### **Job Impact Statement**

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

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-47-10-00008-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** Substitute subheading in exempt and non-competitive classes; delete and classify positions in exempt and non-competitive classes.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by deleting therefrom the subheading "Crime Victims Board," and the positions of Counsel and Secretary and by adding thereto the subheading "Office of Victim Services," and the positions of Counsel, Deputy Director and Secretary; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Crime Victims Board," and the positions of Secretary 2 (4) and by adding thereto the subheading "Office of Victim Services," and the positions of Secretary 2 (4).

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

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

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

#### **Regulatory Impact Statement**

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

#### **Regulatory Flexibility Analysis**

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

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

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

#### **Job Impact Statement**

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

## **Education Department**

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

#### **Clinically Rich Graduate Level Teacher Preparation Program**

**I.D. No.** EDU-47-10-00011-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 52.21 of Title 8 NYCRR.

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

**Subject:** Clinically rich graduate level teacher preparation program.

**Purpose:** To amend the clinical experience requirement to provide program providers with the flexibility they need to be innovative.

**Text of proposed rule:** Subclause (3) of clause (c) of subparagraph; (iv) of paragraph (5) of section 52.21 of the Regulations of the Commissioner of Education shall be amended, effective November 19, 2010, to read as follows:

(3) Clinically rich experience component. The clinical experience component of the program shall meet the following requirements:

(i) . . . .  
(ii) Prior to assigning the candidate to a classroom, the institution shall enter into a written agreement with the high need school wherein the high need school shall agree to establish a plan for [at least] up to one continuous school year of mentored clinical experience by the assigned teacher-mentor for the candidate and 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.

(iii) The program shall ensure its candidates receive mentoring support by a teacher-mentor during the entire period they are assigned to the classroom and enrolled in the program, which shall [be at least] include up to one continuous school year of mentoring.

(iv) . . . .

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

**Data, views or arguments may be submitted to:** Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@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 Law authorizes the Regents to award and confer diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

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

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

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

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

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state

system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

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

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

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

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

## 2. LEGISLATIVE OBJECTIVES:

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

## 3. NEEDS AND BENEFITS:

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for graduate level clinically rich teacher preparation pilot programs. At its April 2010 meeting, the Board approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich teacher preparation pilot program, effective May 1, 2010.

The amendment established two tracks for the graduate level clinically rich program: 1) the Model A track is the residency program for candidates working with a teacher of record in a high need school; and 2) the Model B track is the residency program for candidates employed as teachers of record in a high need school who will be eligible to receive a Transitional B certificate upon completion of required introductory preparation, tests, and workshops. To ensure program quality, the regulatory amendment requires that the pilot program meet the general registration standards established by the Board of Regents for graduate curricula in terms of instructional time, faculty qualifications, and the rigor of curriculum.

The pilot program also includes components of effective residency programs supported by research findings and best practices, which include, among other requirements:

- Recruitment and selection for program candidates: the recruitment process will be highly selective to attract not only the highest caliber of candidates to the pilot program but also candidates with a strong commitment to high need schools.
- Collaboration between program providers and partnering high need schools or school districts: program providers shall execute a written agreement with partnering high need schools which specifies the roles of each partner in the design, implementation, and evaluation of the pilot programs.
- Recruitment, selection, training, and support for mentors: program providers shall collaborate with the high need schools to select mentors that are highly effective teachers and must provide mentors with continuous support and research-based training to support program candidates. Mentors will work collaboratively with faculty supervisors to evaluate candidates and provide feedback.
- Mentoring and support for candidates throughout the program and after program completion: Prior to assigning candidates to a classroom, program providers will enter into a written agreement with the high need schools specifying the mentoring plan. During the clinical experience, each candidate will be assigned a teacher-mentor and a support 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. In addition, program providers must have a formal written agreement with partnering schools or school districts to provide continued mentoring support for program graduates during their first year of teaching.

The regulatory amendments adopted in April 2010 also required that the pilot programs 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.

A competitive bidding process will be implemented to select program providers for the graduate level clinically rich teacher preparation pilot program. In order to provide program providers with the flexibility they need to be as innovative as possible, the Department believes that the one school year requirement for clinical experience is too restrictive. Therefore, the proposed amendment changes the required clinical experience component of the pilot program to require up to one continuous school year of mentored experience.

## 4. COSTS:

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

(b) Cost to local government: The proposed amendment will not impose any additional costs on local government.

(c) Cost to private regulated parties. The proposed amendment will not impose any additional costs on private regulated parties.

(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.

## 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides some flexibility to local governments by allowing local governments to provide less than one school year of mentored clinical experience to candidates enrolled in a graduate level clinically rich teacher preparation program, as opposed to the prior requirement, which required them to provide at least one continuous school year of clinical experience.

## 6. PAPERWORK:

The proposed amendment does not impose any paper requirements.

## 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 November Regents meeting, the proposed amendment will become effective on November 19, 2010. It is anticipated that the proposed amendment will become effective as a permanent rule on March 30, 2011.

## *Regulatory Flexibility Analysis*

### a) Small Businesses:

#### 1. Effect of rule:

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

#### 2. Compliance requirements:

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

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

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

Institutions that choose to offer Track B of the program (which leads to a Transitional B certificate) must also provide weekly program faculty

supervision and daily mentoring by an assigned teacher-mentor during the first eight weeks of teaching and continued mentoring by an assigned teacher mentor during the remainder of the time that the candidate is enrolled in the program and teaching.

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business participation:

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

b) Local Governments:

1. Effect of rule:

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

2. Compliance requirements:

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

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

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Local government participation:

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

**Rural Area Flexibility Analysis**

1. Types and estimate of number of rural areas:

The proposed amendment will impact institutions that elect to offer a clinically rich teacher preparation 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 will be required to provide up to one continuous school year of clinical experience to meet the eligibility requirements of this program.

3. Costs:

The proposed amendment does not impose any additional costs on regulated entities.

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 a clinically rich principal preparation pilot program 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.

Moreover, the proposed amendment provides flexibility to program providers located in all areas of the State, including rural areas. The proposed amendment changes the clinical experience component of the program to require program providers to provide up to one continuous school year of clinical experience.

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 amend the clinical experience component of the graduate level clinical rich pilot programs to allow program providers to offer less than a year of mentored clinical experience to provide program providers with the flexibility they need to be as innovative as possible.

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.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

**Proposed Amendments Will Amend Subparts 217-1 and 217-4, and Proposes a New Subpart 217-6**

**I.D. No.** ENV-31-10-00015-A

**Filing No.** 1140

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

**Effective Date:** 30 days after filing

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

**Action taken:** Amendment of Part 217 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** The proposed amendments will amend Subparts 217-1 and 217-4, and proposes a new Subpart 217-6.

**Purpose:** The revisions will end the NY Transient Emissions Short Test (NYTEST) program and update the NY Vehicle Inspection Program.

**Text or summary was published in** the August 4, 2010 issue of the Register, I.D. No. ENV-31-10-00015-P.

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

**Text of rule and any required statements and analyses may be obtained from:** James Clyne, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us)

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Low Emission Vehicle (LEV) Greenhouse Gas (GHG) Emission Standards**

**I.D. No.** ENV-31-10-00016-A

**Filing No.** 1139

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

**Effective Date:** 30 days after filing

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

**Action taken:** Amendment of Parts 218 and 200 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101,

1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105; and section 177 of the Federal Clean Air Act (42 USC 7507)

**Subject:** Low emission vehicle (LEV) greenhouse gas (GHG) emission standards.

**Purpose:** To incorporate revisions California has made to its LEV program to amend its GHG emission standards.

**Text or summary was published in** the August 4, 2010 issue of the Register, I.D. No. ENV-31-10-00016-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us)

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

**Assessment of Public Comment**

The agency received no public comment.

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**This Rule Amends the Environmental Assessment Forms in 6 NYCRR 617.20, Appendices A-C**

**I.D. No.** ENV-47-10-00015-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 617.20 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 8-0113

**Subject:** This rule amends the environmental assessment forms in 6 NYCRR 617.20, appendices A-C.

**Purpose:** The purpose of the rule is to update the environmental assessment forms.

**Public hearing(s) will be held at:** 1:00 p.m., January 25, 2011 at Department of Environmental Conservation, 625 Broadway, Rm. 129, Albany, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.ny.gov/permits/6061.html](http://www.dec.ny.gov/permits/6061.html)):** The environmental assessment forms (“EAF”) are model forms promulgated by the Department of Environmental Conservation (“DEC”) and appended to the State Environmental Quality Review Act (“SEQR”) regulations as required by the SEQR (see ECL § 8-0113). The EAFs are used by agencies and boards involved in the SEQR process to assess the environmental significance of actions they may be undertaking, funding or approving. The “full EAF” (or long form) has not been substantially revised since 1978 while its sister form, the “short EAF,” was last substantially revised in 1987. In the years since the EAFs were first created, DEC and other SEQR practitioners have gathered a great deal of experience with environmental analyses under SEQR. DEC has brought this experience to bear by preparing modern full and short EAFs. DEC has also proposed modifications to the forms to include consideration of emerging environmental issues such as climate change and energy conservation, environmental justice (“EJ”), smart growth, and pollution prevention. The revised EAFs have been changed to better address planning, policy and local legislative actions, which can have greater impacts on the environment than individual physical changes.

In addition to these substantive changes, the structure of the forms has been updated, to make them more straightforward for lead agencies and sponsors to use as well as readily compatible with electronic media. DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF and then eliminate the Visual EAF Addendum. This will help reduce the multiplicity of forms. In addition, DEC expects to support the revised forms with a workbook that will explain questions in the EAF and also direct users to sources for additional

information. The draft forms are published in full at the following web address: <http://www.dec.ny.gov/permits/6061.html>

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert Ewing or on the web: [www.dec.ny.gov/permits/6061.html](http://www.dec.ny.gov/permits/6061.html), New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, Comments may also be e-mailed to: [depprmt@gw.dec.state.ny.us](mailto:depprmt@gw.dec.state.ny.us), (518) 402-9482, email: [rlewing@gw.dec.state.ny.us](mailto:rlewing@gw.dec.state.ny.us)

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

**Public comment will be received until:** February 18, 2011.

**Additional matter required by statute:** The State Environmental Quality Review Act requires the agency to make a determination of environmental significance. A negative declaration has been prepared in accordance with 6 NYCRR Part 617 and Article 8 of the Environmental Conservation Law.

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY

Section 8-0113(2)(l) of the Environmental Conservation Law (“ECL”) is the statutory authority for this rulemaking, and provides that “[t]he rules and regulations adopted by the Commissioner specifically shall include: ... A model assessment form to be used during the initial review to assist an agency in its responsibilities under this article...” The model assessment forms are known as the full and short environmental assessment forms (“full EAF” and “short EAF”), respectively.

##### 2. LEGISLATIVE OBJECTIVES

The amendments to 6 NYCRR Part 617, appendices A-C, which implement the SEQR process, advance the legislative objectives of ECL Sections 8-0101 and 8-0103 to “promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources” while giving “appropriate weight to social and economic considerations in public policy” by modernizing the full and short EAFs. Specifically, as described above, ECL Article 8, or SEQR, requires DEC to produce model forms to be used for the conduct of an environmental assessment. The legislative purposes behind the requirement for DEC to produce model forms are to ensure that all agencies subject to SEQR have a means to assess environmental impacts and to save other agencies the job of having to produce their own forms.

The existing forms are out-of-date and no longer adequately serve the purposes for which they were created. The full EAF has been unchanged for approximately 30 years, and the short EAF has been unchanged for approximately 20 years. During the past 30 and 20 years, respectively, DEC and many other governmental agencies have asked for clarifications of existing questions, formulated new questions, and suggested changes to the format. The existing forms fail to address environmental issues that have emerged since the promulgation of the existing forms. Finally, the existing forms are not compatible with current or likely future electronic information technologies. Specific changes include the following:

a) The EAF has been changed to make it more effective in gathering information for the analysis of zoning and planning actions, which is a universally recognized shortcoming of the existing forms.

b) The forms have been modified to address critical environmental subjects that have come to public consciousness since the forms were first created, such as hazardous waste and brownfield redevelopment, energy efficiency, climate change, smart growth, pollution prevention, and environmental justice.

c) DEC expects to take advantage of electronic technologies to allow a user to gain immediate access to the data needed to answer a question by linking directly to relevant spatial data (e.g., maps that identify the locations of important resources).

d) Part II of the full EAF has been simplified to make it easier to complete by simplifying the responses to “yes” or no” answers.

e) The need for a separate document for the determination of significance has been eliminated.

f) The instructions and format have been improved to also allow users to navigate through the form more efficiently by blocking similar questions under broad “gateway” or threshold questions. If the answer to any of the “gateway” questions is “no”, then the remainder of the questions in the section will not require a response, and the user may skip to the next topic.

In addition to promulgation of new model forms, the DEC is preparing a workbook that will be hyperlinked to and accompany the new forms. DEC expects that the workbook will contain background information or illustrations for most of the questions, and links to resources to enable users to find answers for nearly all questions.

##### 3. NEEDS AND BENEFITS

The proposed changes to the forms will aid regulators and the regulated community in a number of ways:

- With regard items “a” and “b” above, such proposed changes will make the forms more relevant to environmental analysis. The current versions of the forms do not adequately serve their functions of

gathering and analyzing environmental information with respect to municipal planning and zoning actions or as to any of the environmental issues that have emerged since the forms were created.

- With respect to item “c”, connecting the form through the internet (“hyper-linking”) to spatial data will enable users to more thoroughly and inexpensively answer questions on the form that call for geographic information – which is much of Part I of the form. This change can be expected to improve accuracy and reduce time and expense in completing the forms.
- Items “d”, “e” and “f” are housekeeping measures to enable users to more easily complete the forms and eliminate the need for the preparation of a separate determination of significance.

##### 4. COSTS

###### (a) Costs to Private Regulated Parties

Because SEQR is a law that requires compliance by government agencies, any effect on the regulated public is indirect. With respect to the SEQR forms, costs are difficult at best to estimate since the new forms simply replace the existing ones, and the time to complete either version depends on the scale and complexity of the action. The changes that allow applicants to more easily navigate the forms along with linkages to spatial data may result in a net savings of time and expense in completing the forms. While additional questions have been added to the forms, they reflect information gathering that now takes place in an iterative manner, which has in turn helped to make the regulatory process less efficient. The new forms consolidate information gathering and, essentially, let the forms “catch up” to existing practice, which DEC expects may lead to greater efficiencies in the environmental review process. At worst, while there may be a small increase in time for project sponsors to complete the new EAF, the added time in completing the forms can be expected to be offset by the decrease in time that is now spent in back-and-forth discussions or correspondence between project sponsors and governmental agencies to answer additional questions and clarify points that a new, more comprehensive EAF would answer at an earlier stage in the process.

DEC also expects cost and time savings by having the EAFs linked to spatial data on the internet as well as from the housekeeping type refinements to the form. In linking the forms to the internet and making spatial data that exists on the internet more directly available to ordinary users of the forms, it may lessen business reliance on expensive consultants to perform environmental analyses. Finally, DEC expects that the new forms will be linked to an EAF workbook, which will provide a ready source of interpretation and thereby save applicants time and money in answering the questions on the forms.

###### (b) Costs to Local Governments

Local governments, undertaking, funding or approving actions subject to SEQR, use the SEQR model forms. The same cost and benefits analysis described above applies to local governments. Additionally, while the new model full and short forms are each slightly lengthier than their existing counterparts, DEC expects that, on balance, they can be expected to improve data gathering and project reviews. DEC also anticipates that many more reviews will be based on the revised short form, leading to substantial economies over time for local governments. Improvements in data gathering alone will increase the efficiency of the SEQR process for local governments by allowing such information to be compiled at an early stage in the project review. The workbook will also aid local governments in answering the EAF questions.

###### (c) Costs to State Government

Inasmuch as State government agencies are subject to SEQR, the same cost analysis applies with equal force to these agencies. Costs to DEC for revising the EAF have been and will be in staff time spent in developing the new forms and in the rulemaking process. The staff costs are not easy to evaluate because the form revisions and rulemaking process has not and will not be a full time effort for anyone in the agency. Rather, there will be portions of time spent by several staff of the SEQR section and several other DEC legal and program division staff who will be participating, at times, with this rulemaking effort. As with most regulatory amendments, there will be some cost in retraining people in the SEQR process as a result of this rulemaking. The cost here is short term and minimal. Due to the frequent turnover that exists in local government offices, DEC has maintained a training and assistance program for those interested in receiving training and those who have specific questions relating to implementation of the law. DEC also cooperates with statewide organizations in the conduct of training. This amendment would require that some small amount of additional staff time be devoted to learning the new forms.

##### 5. LOCAL GOVERNMENT MANDATES

The forms do not constitute a new mandate under Executive Order 17 as the forms are a replacement for existing forms and are model forms only. Section 617.20 states that Appendices A, B and C are model environmental assessment forms which may be used to satisfy this part or “... may be modified in accordance with sections 617.2 and 617.14 of this part.” While the new forms are lengthier than the existing forms, their real

effect is to consolidate early on in the process the data gathering that often takes place in an iterative fashion during the course of a project review. DEC is counterbalancing the additional upfront data gathering with a workbook that will make the forms easier for lay persons to complete.

Through stakeholder outreach, DEC has learned that local governments are presently using the long-form EAF in place of the short-form EAF for many Unlisted actions (where only the short-form is required). (Empirically, Unlisted actions comprise about seventy-five percent of the actions reviewed under SEQR by all agencies.) The reason for this is that a number of local governments view the existing short-form as too short or cursory to be useful, an opinion which DEC now shares. Improvements to the short-form will hopefully allow users of the EAF to make more use of the short-form for Unlisted actions, which can be expected to be a savings in paperwork and data gathering efforts.

As a result, this proposal will not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

#### 6. PAPERWORK

There will be not be any new reporting and monitoring requirements associated with this regulation. DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF and then eliminate the addendum. This will help reduce the multiplicity of forms.

#### 7. DUPLICATION

The only relevant state rule is 6 NYCRR Part 617, appendices A-C, which is proposed to be modified. There is no relevant federal rule that applies to SEQR or the EAF. Consequently, there is no duplication, overlap, or conflict with State or Federal rules.

#### 8. ALTERNATIVES

The other alternative considered was to take no action. DEC's past thirty years of experience with the full EAF and twenty years with the short EAF have shown that these amendments are warranted and that regulatory reform mandates would not be served by the "no action" alternative. The "no action" alternative would leave the DEC in a situation where it would be failing to acknowledge the numerous suggestions made to the DEC for changes to the EAF and the agency's own recognized, long-standing need for some of these changes.

#### 9. FEDERAL STANDARD

There is no relevant Federal standard governing SEQR or the EAF.

#### 10. COMPLIANCE SCHEDULE

The time necessary to comply with these regulatory amendments is limited to the time it would take to familiarize the public with the new forms. DEC will provide approximately six months or 180 days for the new forms to be completely substituted for the existing forms. For those individuals familiar with the current regulations and forms, training requirements will be minimal.

### **Regulatory Flexibility Analysis**

#### 1. EFFECT OF RULE:

This rulemaking consists of revised model forms to accompany the regulations promulgated pursuant to the State Environmental Quality Review Act ("SEQR"), which are used by most local governments in New York State to evaluate actions subject to SEQR<sup>1</sup>. Small businesses would only be impacted by the form revisions when they are applicants for projects that require some form of government approval that is subject to SEQR.

#### 2. COMPLIANCE REQUIREMENTS:

While SEQR has filing and publication requirements, it has no reporting requirements. The revised model forms do not change the filing and publication requirements. Additionally, DEC does not oversee local government compliance with SEQR.

#### 3. PROFESSIONAL SERVICES:

DEC does not expect there to be a change in the types of professional services that local governments and small businesses will use to complete the forms. Presently, depending on the action, users of the form frequently rely on planners and engineers. Historically, DEC has provided training and educational materials to help users of SEQR. DEC expects to take another step in its educational outreach assistance incidental to promulgation of the new forms by development of a workbook that will be made available on the internet and that will assist EAF users in answering questions. In some instances, users may become less reliant on professional services as the DEC expects that the workbook will greatly aid the ordinary user in navigating the forms. Links to spatial data will enable ordinary users to move efficiently and quickly gather geographic data.

#### 4. COMPLIANCE COSTS:

Because SEQR is a law that requires compliance by government agencies, any effect on small business is indirect. With respect to the SEQR forms, costs are difficult at best to estimate since the new forms simply replace existing ones, and the time to complete either version will depend on the scale and complexity of the action. Changes that allow applicants to skip through irrelevant sections along with linkages to spatial data may

actually result in a net savings of time and expense in completing the forms. At worst, while there may be a small increase in time for project sponsors to complete the new EAF, the added time in completing the forms can be expected to be offset by a decrease in time that is now spent in back-and-forth discussions or correspondence between project sponsors and governmental agencies to answer additional questions and clarify points that a new, more comprehensive EAF would answer at an earlier stage in the process. Adding to the comprehensiveness of the form, DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF and then eliminate the separate form. This will help reduce the multiplicity of forms. Finally, DEC expects that the new forms will be linked to the EAF workbook, which will provide a ready source of explanations plus links to data sources, thereby saving applicants time and money in answering the questions on the forms. DEC has a long running SEQR training program for local government officials and the public, although it has been pared back in recent times by travel restrictions and staff reductions. DEC has begun, and expects to continue, to increase training through its website and other electronic technologies.

Through stakeholder outreach, DEC has learned that local governments are presently using the long-form EAF in place of the short-form EAF for many Unlisted actions (where only the short-form is required). (Empirically, Unlisted actions comprise about seventy-five percent of actions reviewed under SEQR statewide, by all agencies.) The reason for this is that a number of local governments view the existing short-form as too short or cursory to be useful, an opinion which DEC now shares. Improvements to the short-form will hopefully allow users of the EAF to make more use of the short-form for Unlisted actions, which can be expected to be a significant savings in paperwork and data gathering efforts.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

DEC is strongly committed to using computer and internet technology to make the EAF forms as technologically accessible as possible. For some time now, the forms have been available in "fill out on-line" form. DEC expects to develop a workbook of narrative explanations to assist users in responding to questions, including hyper-linking questions on the new form to relevant spatial data. DEC also expects that the use of electronic technologies and the internet will assist average users, small business and local governments to more easily be able to complete the forms without assistance of costly consultants and experts.

#### 6. MINIMIZING ADVERSE IMPACT:

There are no adverse impacts. The forms replace other existing forms. The forms have been redesigned to allow users to more easily skip through irrelevant questions by using so-called gateway questions. Technological improvements in data gathering and sharing are expected to foster expanded environmental analysis capacity at the local government level. From a local government perspective, the expanded environmental analysis is a positive development as local governments often rely on the EAFs to assess their actions.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

In fall 2008, DEC circulated a draft, revised EAF for stakeholder review. Stakeholder outreach included a mass mailing that was sent to a large stakeholder mailing list including consultants who regularly represent local governments and businesses in permitting matters that are subject to SEQR. Many comments were received and many of the comments resulted in changes to the EAF. Staff continued its outreach with an innovative on-line forum bulletin board, proposed by researchers at the State University of New York at Albany (SUNY) Communications Department in conjunction with Texas Tech University. With DEC's endorsement but under the day-to-day management of the researchers, members of the public were invited to participate in an electronic deliberation about the proposed revisions. The deliberation took place over a one-month period using an online message board. The participants were invited to comment on and discuss the new draft of the revised EAF on the computer bulletin board. In contrast to earlier stakeholder processes, the SUNY/Texas Tech web venue scheme permitted discussions to be conducted state-wide and simultaneously, allowing for back and forth discussion among the participants.

<sup>1</sup> Under the SEQR regulations (specifically sections 617.2, 617.20 and 617.14 of 6 NYCRR), local governments may adopt their own forms "provided the scope of the locally created form is as comprehensive as the model."

### **Rural Area Flexibility Analysis**

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The rulemaking is statewide. Thus, it applies to all rural areas.

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

Reporting, recordkeeping and other compliance requirements are the same as for the existing forms.

## a) Reporting requirements

While the State Environmental Quality Review Act ("SEQR") has filing and publication requirements, it has no reporting requirements. Additionally, the Department of Environmental Conservation ("DEC") does not oversee local government compliance with SEQR.

## b) Other compliance requirement

While SEQR has filing and publication requirements, it does not have reporting requirements. The revised model forms do not change the filing and publication requirements. Additionally, DEC does not oversee local government compliance with SEQR.

## c) Professional services

DEC does not expect there to be a change in the types of professional services that local governments and small businesses will use to complete the forms. Presently, depending on the action, users of the form typically rely on planners and engineers. Historically, DEC has provided training and educational materials to help users of SEQR. DEC expects to take another step in its educational outreach assistance incidental to promulgation of the new forms by publishing an on-line workbook that will assist form users in answering questions.

## 3. COSTS

Because SEQR is a law that requires compliance by government agencies, any effect on rural areas is mainly to local governments. With respect to the SEQR forms, costs are difficult at best to estimate since the new forms simply replace the existing ones and the time to complete them depends on the scale and complexity of the action. Changes that allow applicants to skip through irrelevant sections along with linkages to spatial data may actually result in a net savings of time and expense in completing the forms. At worst, while there may be a small increase in time for local governments and applicants to complete the new EAF, the added time in completing the forms can be expected to be offset by the decrease in time that is now spent in back-and-forth discussions or correspondence between project sponsors and governmental agencies to answer additional questions and clarify points that a new, more comprehensive EAF would answer at an earlier stage in the process. Adding to the comprehensiveness of the EAF forms, DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF and then eliminate the addendum. This will help reduce the multiplicity of forms.

Finally, DEC expects that the new forms will be linked to an EAF workbook, which will provide a ready source of interpretation and thereby save applicants time and money in answering the questions on the forms. DEC has a long running SEQR training program for local government officials and the public though this has been pared back in recent times by travel restrictions and staff reductions. In response, DEC has increased the on-line component of its training program.

## 4. MINIMIZING ADVERSE IMPACT

There are no adverse impacts to rural areas. The forms replace other existing forms. Technological improvements in data gathering are expected to offset the expanded environmental analysis which the forms provide. From a local government perspective the expanded environmental analysis is a positive development as local governments often rely on the EAFs to assess their actions. The forms have been redesigned to allow users to more easily skip through irrelevant questions by using so-called gateway questions.

Through stakeholder outreach, DEC has learned that local governments are presently using the long-form EAF in place of the short-form EAF for many Unlisted actions (where only the short-form is required). (Empirically, Unlisted actions comprise about seventy-five percent of the actions reviewed under SEQR by all agencies.) The reason for this is that some local governments view the existing short-form as too short or cursory to be useful, an opinion which DEC now shares. Improvements to the short-form will hopefully allow users of the EAF to make more use of the short-form for Unlisted actions, which can be expected to be a savings in paperwork and data gathering efforts.

## 5. RURAL AREA PARTICIPATION

In fall 2008, DEC circulated a draft, revised EAF for stakeholder review. Stakeholder outreach included a mass mailing that was sent to a large stakeholder mailing list including consultants who regularly represent local governments and businesses in permitting matters that are subject to SEQR. DEC received many comments, and a majority of them were addressed within a redrafted version of the new EAF. Staff continued its outreach with an innovative on-line forum bulletin board, proposed by researchers at the State University of New York at Albany (SUNY) Communications Department in conjunction with Texas Tech University. The deliberation took place over an approximately three-week period, using an online message board. Essentially, the participants were invited to comment on and discuss the new draft of the revised EAF on the computer bulletin board. Even though the deliberation was statewide and not targeted specifically at rural areas, some comments were received that would be of particular importance to rural areas.

**Job Impact Statement**

The updating of the State Environmental Quality Review Act (SEQR) environmental assessment forms (EAF) should have no impact on existing or future jobs and employment opportunities. EAFs are expected to be completed in part by project sponsors and ultimately by lead agencies to determine whether a particular action may have a potentially significant, adverse impact on the environment. If the lead agency answers in the affirmative, then it must prepare or cause to be prepared an environmental impact statement the purpose of which is to evaluate the identified impacts and how to avoid or mitigate them. Local governments using EAFs or businesses who may fill in portions of the forms would be required to continue to do this, whether DEC revises the forms or continues to use the existing forms. While there may be a small increase in time to complete the new EAFs, this time should be offset by the decrease in time that is now spent in back-and-forth discussions or correspondence between project sponsors and governmental agencies to answer additional questions and clarify points that a new, more comprehensive EAF would include from the beginning. DEC also expects to make greater use of electronic information technologies with the new forms which may help to hasten the information gathering process, which is the object of the forms. DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF (6 NYCRR 617.20, Appendix A), and then eliminate the Visual EAF form. This will help reduce the multiplicity of forms.

A Job Impact Statement is not submitted with this rulemaking proposal because the proposal will not have a "substantial adverse impact on jobs or employment opportunities," which is defined in the State Administrative Procedure Act Section 201-a to mean "a decrease of more than one hundred full-time annual jobs and employment opportunities, including opportunities for self-employment, in the state, or the equivalent in part-time or seasonal employment, which would be otherwise available to the residents of the state in the two-year period commencing on the date the rule takes effect." The proposed changes to the EAFs are not expected to have any such effect and most likely will have no impact on jobs or employment opportunities.

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

**Hemlock-Canadice State Forest**

**I.D. No.** ENV-47-10-00009-P

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

**Proposed Action:** Addition of a new section 190.26 to Title 6 NYCRR.

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

**Subject:** Hemlock-Canadice State Forest.

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

**Text of proposed rule:** Section 190.26 Hemlock-Canadice State Forest (Livingston-Ontario State Reforestation Area #1)

A new section 190.26 is added to 6 NYCRR to read as follows:

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

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

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

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

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

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

*ii. Canadice Lake: northernmost 500 feet of the lake;*

*(2) operate: a mechanically propelled vessel over 17 feet in length, a*

*mechanically propelled vessel with a motor exceeding ten horsepower, or a non-mechanically propelled vessel over 24 feet in length;*

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

*(4) swim, bathe, water ski, tube;*

*(5) set, light or use a campfire, charcoal fire;*

*(6) camp;*

*(7) operate an all-terrain vehicle;*

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

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

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

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

*(12) possess a domesticated pet unless it is leashed or controlled at all times;*

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

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

**Text of proposed rule and any required statements and analyses may be obtained from:** John Gibbs, Regional Forester, NYS DEC, 7291 Coon Road, Bath, New York 14810, (607) 776-2165, email: jagibbs@gw.dec.state.ny.us

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

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

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

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

#### **Regulatory Impact Statement**

##### **1. Statutory authority:**

The Department of Environmental Conservation (Department) acquired 6,684 acres of watershed lands, including Hemlock and Canadice Lakes, Livingston-Ontario State Reforestation Area #1 (Hemlock-Canadice State Forest), pristine Finger Lakes located approximately 28 miles south of, and formerly owned by, the City of Rochester (City), in June 2010. Hemlock and Canadice Lakes are the primary source of drinking water for the City and several other communities. City stewardship of the Hemlock and Canadice Lakes watershed has resulted in both a superior water supply and a unique environmental setting. Under the City's management, the public had been welcome to pursue licensed sporting activities such as fishing and hunting as well as boating, hiking and nature study. The Department's proposed regulations will continue management of this important property in order to continue to maintain exceptional water quality and foster the remote atmosphere of the area.

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

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

ECL section 3-0301(2)(m) authorizes the Department to "Adopt such rules, regulations and procedures as may be necessary, convenient or desirable to effectuate the purposes of..." ECL section 3-0301(2)(v) empow-

ers the Department to "...administer and manage the real property under the jurisdiction of the Department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was acquired or to which it is dedicated, employing all appropriate management activities." ECL section 9-0105(3) authorizes the Department to "make necessary rules and regulations to secure proper enforcement of..." ECL Article 9.

##### **2. Legislative objectives:**

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

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

##### **3. Needs and benefits:**

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

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

There is not expected to be any opposition to the State's management of the Hemlock-Canadice State Forest, rather there is tremendous support for it. The proposed regulations will mirror those of the City of Rochester's. Over the last several years there have been meetings with local officials to work out the details of this acquisition. All along there has been unanimous support for this acquisition from local government officials, the Rochester City Council, the surrounding community, users and environmental groups. There was concern that these lands could be developed since Hemlock and Canadice lakes are the last two undeveloped Finger Lakes. Local government officials and the Rochester City Council expressed strong interest in the continued management of this property following similar restrictions as have been in place for the past few decades. These regulations will serve to satisfy their concerns.

##### **4. Costs:**

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

##### **5. Local government mandates:**

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

##### **6. Paperwork:**

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

## 7. Duplication:

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

## 8. Alternatives:

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

## 9. Federal standard:

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

## 10. Compliance schedule:

The proposed rulemaking will provide continued protection to the Hemlock-Canadice State Forest replacing the emergency regulations in place since acquisition of the property. A Unit Management Plan (UMP) for the property will be completed, which will include a public comment period, a process that could take two or more years to complete. The proposed regulations will then be reviewed and may be revised as necessary to be consistent with the UMP and public comments received. The proposed regulations will be effective on the date of publication of the rulemaking in the New York State Register. Once the regulations are adopted they are effective immediately.

**Regulatory Flexibility Analysis**

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

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulation relates solely to protecting public safety and natural resources on the Hemlock-Canadice State Forest.

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## Higher Education Services Corporation

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

**New York Higher Education Loan Program (NYHELPS)**

I.D. No. ESC-47-10-00014-P

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

**Proposed Action:** Amendment of Part 2213 and section 2004.1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 691(10) and 655(4)

**Subject:** New York Higher Education Loan Program (NYHELPS).

**Purpose:** Amend several provisions of the regulation.

**Substance of proposed rule (Full text is posted at the following State website: [www.hesc.com/NYHELPS](http://www.hesc.com/NYHELPS)):** 1. Section 2004.1. The amendment adds the New York Higher Education Loan Program (NYHELPS) to the procedures already established in this section for the temporary or permanent disqualification of schools and lenders from participation in NYHELPS for just cause as required by sections 2213.3(b) and 2213.4(c) thereby providing continuity for all parties.

2. Section 2213.1. Definitions. The amendment revises several definitions.

Those with substantive changes are:

(a) "academic year" to cover the various dates participating colleges commence their academic year;

(b) "eligible college" to clarify that only degree-granting institutions are eligible to participate;

(c) "eligible cosigner" to clarify that the requirements pertaining to a second cosigner are set forth in the Program's Underwriting Manual;

(d) "half time" to provide that graduate students must be enrolled in at least 6 credits, or the equivalent, to be eligible for a Program loan;

(e) "student" to clarify that a student must be certified as meeting satisfactory academic progress under the Federal standard to be eligible for a Program loan; and

(f) "total and permanent disability" to clarify that the disability must have occurred while the student was enrolled in college and to add the criteria that the student must also be unable to attend college as a result of the disability reflecting the Federal standard.

The amendment also adds the definition of "loan period" to clarify that term throughout the regulation.

3. Section 2213.2. Borrower eligibility requirements. The amendment conforms this section to the changes made in Section 2213.1.

4. Section 2213.3. School eligibility requirements. The amendment provides that the college default fee shall be determined annually to the extent permitted by statute and clarifies that an entity other than the student or borrower, including the State, may pay this fee on behalf of the participating college.

5. Section 2213.5. Due diligence in originating, disbursing, and servicing program loans. The amendment clarifies that Program loans must be disbursed within 180 days after the end of the loan period.

6. Section 2213.11. Program loan verification requirements. The amendment provides that lenders shall also perform any verification requirements directed by the Corporation, in addition to those outlined in the Program's Underwriting Manual.

7. Section 2213.14. Processing program loan proceeds. The amendment provides that loan applications received up to 120 days after the end of the loan period will be processed, but must also be disbursed within 180 days of the end of the loan period.

8. Section 2213.16. Disclosure requirements for participating schools. The amendment provides that the Corporation will provide entrance and exit counseling on behalf of participating colleges.

9. Section 2213.19. Reporting/retention requirements for participating holders. The amendment clarifies the documentation that holders are required to maintain. It also requires a holder, or its servicer, to maintain and file reports as directed by the Corporation.

10. Section 2213.20. Program loan repayment. The amendment eliminates the requirement that a borrower be delinquent prior to applying for either a modified payment plan or economic hardship forbearance. The amendment further provides for, and clarifies the terms of an administrative forbearance. Lastly, the amendment establishes a minimum number of payments, rather than a fixed number of payments, required after graduation for cosigner release eligibility and clarifies that all payments must be made by the borrower directly.

11. Section 2213.22. Default claims. The amendment clarifies that a holder, or its servicer, shall submit all required documents as directed by the Corporation, together with the claim. The amendment further clarifies that the Corporation shall inform the borrower that the account is in default and that the loans have been, or are subject to being, purchased by the Corporation.

12. Section 2213.28. Incorporation by reference. The amendment updates the regulation to include version 3 of both the Program's Underwriting Manual and the Program's Default Avoidance and Claim Manual.

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

Education Law § 691(10) provides that the New York State Higher Education Services Corporation (Corporation) shall have the power and duty to adopt rules and regulations to implement the New York Higher Education Loan Program (Program or NYHELPS).

Education Law § 652(2) includes in the Corporation's statutory purposes the improvement of the post-secondary educational opportunities of eligible students through the centralized administration and coordination of New York State's financial aid programs and those of other levels of government.

Education Law § 653(9) further empowers the Corporation's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the Corporation, including the promulgation of regulations.

Education Law § 655(4) authorizes the President of the Corporation (President) to propose regulations, subject to approval by the Board of Trustees, governing the application for, and the granting and administration of, student aid and loan programs, the repayment of loans or the guarantee of loans made by the Corporation, and administrative functions in support of New York State student aid programs. Under Education Law § 655(9), the Corporation's President is also authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out the President's powers, duties and functions. Finally, Education Law § 655(12) provides the President with the authority to perform such other acts as may be necessary or appropriate to effectively carry out the general objects and purposes of the Corporation.

##### **2. Legislative objectives:**

The Program, as enacted by Part J of Chapter 57 of the Laws of 2009, authorizes the Corporation to serve as the Program's administrator and empowers the Corporation to adopt rules and regulations to implement the Program.

##### **3. Needs and benefits:**

NYHELPS was enacted on April 7, 2009 to offer New York State students and families the option of an affordable private education loan to fill the gap between college costs and currently available State and federal student aid. The regulations implementing the Program were effective on November 4, 2009, which led to the sale of private activity bonds to underwrite the Program in mid-December, and the processing of the first applications on December 21, 2009.

As a new Program with no prior history, NYHELPS was structured to maximize the number of constituents served while offering the most favorable interest rate, and utilizing a relatively small pool of funds. As the Program reached the end of its first semester, the Corporation identified several sections of the regulation that required clarification or revision, which were adopted on June 2, 2010 (as a consensus rule) and on August 25, 2010.

As the Program grows, the Corporation continues to work with Program participants (especially colleges, students, and families) to enhance and streamline the Program and its processes. Additionally, the Corporation continues to review actual Program data to ascertain whether its constituency is being served as intended. As a result of these efforts, the Corporation identified several sections of the regulation that require clarification or revision. Some of the changes include:

- Section 2213.3(b) and 2213.4(c) of Title 8 of the New York Code, Rules, and Regulations (NYCRR) requires the Corporation to adopt criteria and procedures for the temporary or permanent disqualification of colleges and lenders from participation in NYHELPS for just cause. The Corporation already established procedures for the suspension, limitation or termination of program participants in the Federal Family Education Loan Program (FFELP) in Part 2004 of Title 8 of the NYCRR. This rule simply incorporates NYHELPS into these established procedures resulting in continuity for all parties.

- In developing policies and procedures in connection with the modified payment plan and economic hardship forbearance, the Corporation, in consultation with the Program's bond issuer, the State of New York Mortgage Agency (SONYMA), decided to make these benefits available to borrowers before they become delinquent.

- After consultation with SONYMA, it was decided to establish the college fee on an annual basis rather than as a fixed numerical percentage to provide flexibility in accordance with statutory requirements. The amendment also emphasizes that an entity other than the student or borrower is permitted to pay such fee on behalf of the college consistent with applicable laws.

- In developing policies and procedures in connection with loan processing, it was decided that loan applications would be accepted up to 120 days after the loan period, but that the funds must be disbursed no later than 180 days. This provides flexibility in the application process for students and borrowers while providing certainty to colleges.

- After consultation with SONYMA, the Corporation modified the credit criteria to avoid unintended limitations on loan distribution.

- Changes were made to streamline the application process by providing flexibility relative to the required documentation.

As a result, this rule provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing requirements; (v) enhancements to the credit criteria; and, (vi) program flexibility.

##### **4. Costs:**

There is no anticipated cost to the Corporation, other state agencies, or local governments for the implementation of, or continuing compliance with, this rule. In fact, the proposed amendments to this rule will result in increased efficiency and reduced complexity, which could reduce costs.

##### **5. Paperwork:**

This rule will not result in any additional paperwork on Program participants. In fact, the rule streamlines the documentation requirements and the processing of those documents.

##### **6. Local government mandates:**

No program, service, duty, or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

##### **7. Duplication:**

This rule clarifies provisions, without duplication, and conforms provisions to federal law and other provisions of the regulation.

##### **8. Alternatives:**

The 'no action' alternative was not a viable option for consideration. Continuation of the current provisions would perpetuate inconsistencies, misinterpretation, inefficient processing, and unintended limitations on distribution. For example:

- In connection with section 2004.1 of Title 8 of the NYCRR, other alternatives were considered in implementing the requirements of sections 2213.3 and 2213.4, but ultimately the Corporation concluded utilizing existing procedures would best serve program participants while avoiding unnecessary duplication of processes internally.

- In connection with the college default fee, recognizing the statute governs, the Corporation considered continuing the current provision, but ultimately concluded that the regulation should permit fixing this fee in accordance with statutory requirements thereby providing flexibility.

##### **9. Federal standards:**

This proposal does not exceed any minimum standards of the federal government. In fact, the proposal conforms provisions to federal standards.

##### **10. Compliance schedule:**

The Corporation, students, colleges and any other parties impacted by this proposal will be able to comply with this rule immediately upon its adoption.

#### **Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 and section 2004.1 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. The Corporation finds that this rule will not impose reporting, record keeping or compliance requirements on small businesses or local governments. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing requirements; (v) enhancements to the credit criteria; and, (vi) program flexibility.

The Corporation has determined that this rule will not impose an adverse economic impact or impose reporting or other compliance requirements on either small businesses or local governments; therefore, a full

Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

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

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 and section 2004.1 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. The Corporation finds that this rule will not impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing requirements; (v) enhancements to the credit criteria; and, (vi) program flexibility.

The Corporation has determined that this rule will not impose an adverse economic impact on public or private entities in rural areas and therefore a full Rural Area Flexibility Analysis is not required.

#### **Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 and section 2004.1 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) technical clean up; (ii) clarification of language with no substantive change; (iii) conformance with federal law and other provisions of the regulation; (iv) clarification of, or changes to, processing requirements; (v) enhancements to the credit criteria; and, (vi) program flexibility.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or entities and therefore a full Job Impact Statement is not necessary.

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## Department of Labor

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

#### **Apprenticeship Training Programs**

**I.D. No.** LAB-47-10-00016-P

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

**Proposed Action:** Amendment of Parts 600 and 601 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 811(1)(j)

**Subject:** Apprenticeship Training Programs.

**Purpose:** To revise Apprenticeship Training Program regulations to ensure consistency and conformity with Federal regulations applicable to State Apprenticeship Agencies.

**Substance of proposed rule (Full text is posted at the following State website: [www.labor.ny.gov](http://www.labor.ny.gov)):** The proposed revisions to 12 NYCRR Parts 600 and 601 represent the second phase of regulatory reforms adopted to clarify Apprenticeship Training Program procedures and standards, enhance the evaluation and performance of registered programs and ensure conformity with Federal regulations applicable to State Apprenticeship Agencies.

The proposed amendment to Part 600 of Title 12 modifies the provision allowing sponsors of existing programs to charge apprentices a fee for processing their applications for employment by allowing both new and existing programs to charge a fee, subject to approval by the Department.

The proposed amendments to Part 601 of Title 12 add definitions for

new terms that have been introduced or clarify expressions that have been in common usage but not incorporated in previous versions of this Part. New subsections have been added to provide guidance for registration and approval of program applications. The traditional approach to apprenticeship has been to require each apprentice to complete a specified number of hours of on-the-job training. Section 601.7 has been revised to reflect changes in the Federal rule by adding two new methods for an apprentice to progress through the apprenticeship program by demonstrating proficiency in the skills acquired by using either a competency-based approach or a hybrid method which combines both the time-based approach and the successful demonstration of competency used in a competency-based approach. A new section 601.8 has been added to outline program standards for performance and to advise registered sponsors of the requirements and procedure for recertification. Provisions for program probation and inactive status (applicable to sponsors experiencing difficulties in hiring or retaining apprentices because of harsh economic conditions), previously contained in separate unrelated provisions, have been added to this section for clarity and uniformity. Amendments to sections providing for the voluntary and formal deregistration of programs prescribe time limitations for re-instatement of those programs and outline protections for the transfer of apprentices enrolled in programs that have been cancelled. Procedures for the determination of complaints submitted to the Commissioner of Labor have been clarified. Section 601.15 has been added to address the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. Finally, corrections in the usage of terms, capitalization, punctuation and plain language have been inserted where appropriate.

Sections 601.1 and 601.2 contain technical and grammatical revisions only.

New definitions to subsections 601.3(a), (b), (e), (g), (i), (l), (n), (o), (p), (q), (r), (s), (t), (u), (v), (x), and (y) for the terms "Active Program," "Apprentice," "Apprenticeship Program," "Department," "Inactive Program," "Journeyworker," "Probation," "Projected Completion Date," "Recertification," "Reciprocal Approval," "Reinstatement of a Program," "Reinstatement of an Apprentice," "Signatory," "State," and "Substantially Owned Affiliated Entity" have been added to provide better understanding of terms that are regularly used by the Department and Program participants or clarification of new provisions that were adopted by the Department on September 29, 2009 during its initial phase of regulatory reform.

New definitions to sections 601.3 (c), (h), (j), (k), (s) and (z) for "Apprentice Probation," "Approach," "Competency," "Completion Rate," "Reciprocal Approval," and "Transfer" were added to conform to Federal regulatory requirements.

Amendments to sections 601.3 (f), (i) and (m) contain technical or grammatical revisions only. Amendments to section 601.3(d) add new text to the definition of "Apprenticeable Occupation" incorporating the alternative approaches to apprentice training contained in the Federal rule.

Section 601.4 of the regulations setting forth the requirements for eligibility and procedure for registration is amended, repealed in part and reordered by adding the location of a permanent facility within the State [601.4(a)]; outlining the application process including requirements for group programs and provision for an appeal following denial of a program application [601.4(b)]; clarifying documentation required for proof of the Department's approval of applications [601.4(c)]; providing a time-frame for modifications to essential elements of existing programs [601.(d)]; simplifying procedures for programs which provide for union participation [601.4(e)]; adding trade updates, program approaches and programs seeking reciprocal approval to the list of proposals subject to public comment after being posted on the Department's website [601.4(f)]; and requiring newly approved programs to register an apprentice within six months of approval [601.4(g)].

Former sections 601.4(c), (d) and (h) are repealed.

Section 601.5 of the regulations outlining program standards is amended, repealed in part and reordered by adding technical and grammatical revisions to subsections 601.5(a), (b), (c), (d), (e), (f) and (g). Additional provisions to program standards require identification of the approach to be used in apprentice training [601.5(c)(2)]; enhance the requirements for providing related and supplemental instruction [601.5(c)(4)]; clarify the means a sponsor may use to credit an apprentice with advanced standing [601.5(c)(11)]; add the new Federal requirement that all related and supplemental instructors meet the Department of Education's qualifications training in teaching techniques and adult learning styles [601.5(c)(13)]; amend procedures and time-frames for notifying the Department of modifications to programs [601.5(c)(15)], and provide requirements for documentation of apprentice registrations, cancellations, transfers or graduations [601.5(c)(16)], as well as the apprentice's progress under the approach used [601.5(e)]. Section 601.5(g) requires sponsors of group programs to provide copies of their membership agreements

or submit a signed agreement authorized by the Department. Former sections 601.5(h) and (i) are repealed, while a new section 601.5(h) sets forth the minimum amount of time an apprentice must work in on-the-job training in order to complete the program.

Sections 601.6(a),(b),(c),(d),(f),(g),(h),(i) and (j) contain technical and grammatical revisions to apprenticeship agreements. Section 601.6(d) addresses the Federal requirement that sponsors identify the approach used in apprentice training, including the period of time it would take to complete the program. Section 601.6(e) satisfies the Federal requirement that Apprenticeship Agreements include a period of apprentice probation and adds the methods to be used in measuring an apprentice's progress in the competency and hybrid approaches to the traditional time-based approach. Section 601.6(k) is amended to include provisions for cancellation of the Apprenticeship Agreement and a procedure for adjustment of controversies.

A new section 601.7 is added to address the Federal requirement that State Agencies offer the competency-based and hybrid approaches to apprentice training in addition to the traditional time-based method. Subsection (b) allows the program sponsor to select an appropriate method used for each trade, subject to the Commissioner's approval. The sponsor's plan for utilizing each approach, the required documentation and means for measuring each apprentice's progress are set forth in subsections (c) [time-based]; (d) [competency-based] and (e) [hybrid].

Section 601.8 is repealed and amended by adding new subsections (a),(b),(c),(d) and (e) conforming to the Federal standard that registered programs have at least one apprentice during any twelve month period; providing a period of probation for sponsors of new programs; outlining guidelines for monitoring program performance, including methods for calculating completion rates; adding requirements for re-certification of existing programs and a provision for inactive status for programs without an apprentice for extended periods of time because of current economic conditions.

Section 601.9 is amended by incorporating provisions of former section 601.7 governing the voluntary and formal deregistration of apprenticeship programs, adding the failure to register an apprentice for a period of twelve consecutive months to the categories of programs that may be deregistered.

Section 601.10 amended by adding new text to subsections (a), and (b) and new subsection (c) prohibiting sponsors, their members, participants, signatories, successors or substantially-owned affiliates of any Program formally deregistered from re-applying for Program registration for a period of three years [601.10(a)]; imposing a one-year ban on sponsors, their members, participants, signatories, successors or substantially-owned affiliates of Programs that have been either voluntarily deregistered after having been served with a Notice of Proposed Deregistration or deemed deregistered for not having registered an apprentice for a consecutive twelve month period [601.10(b)]; and allowing programs approved for voluntary deregistration to apply for reinstatement at any time [601.10(c)].

Section 601.11 incorporates and amends the provisions formerly contained in 601.9 describing the procedure for hearings conducted to formally deregister an apprenticeship program.

Section 601.12 incorporates the provisions of former section 601.10 providing that nothing in this Part shall invalidate (a) applicable standards in collective bargaining agreements or (b) special provisions for veterans, minority persons or females.

Section 601.13 is amended by incorporating the provisions of former section 601.11 expanding the categories of petitioners authorized to file a complaint with the Commissioner and adding the requirement that the complaint be submitted in writing. Section 601.13(b) clarifies the categories of petitioners authorized to file complaints relating to discrimination or equal opportunity, adding the requirement that the complaint be submitted in writing and relate to the subject of the apprenticeship program while section 601.13(c) provides that complaints relating to matters covered by a collective bargaining agreement shall be determined in accordance with the terms of that agreement and are not subject to review under this section. Section 601.13(d) describes the format for registering a complaint; section 601.13(e) provides an extension of time for the investigation of complaints involving violations of the Labor Law while section 601.13(f) provides that all complaints shall be acknowledged within ten business days of receipt, that interested parties will be provided with updates on the status of the investigation, as necessary, and outlines the procedure for resolution of the complaint.

Section 601.14 incorporates and amends the provisions of former section 601.12 with new text requiring sponsors to maintain records for all phases of the apprenticeship program and to provide those records for field inspections and review by the Department as necessary.

A new section 601.15 is added to meet the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. Section 601.15(a) provides that upon request, the Department will grant reciprocal approval to programs registered in other states

or with USDOL's Office of Apprenticeship which have been made permanent or passed probation provided they submit proof of their registration and meet requirements for good standing applicable to programs registered in New York. Program sponsors who meet these standards and their apprentices will be registered for federally funded projects in the State [601.15(c) and (d)]. Applicants who have been denied reciprocity may appeal the denial in an Article 78 proceeding [601.15(b)].

Section 601.16 is added to provide for consultation with the Apprenticeship Training Council in the construction or revision of 12 NYCRR Parts 600 and 601.

Section 601.17 contains a severability clause providing that in the event any single provision of this Part is held invalid, the remaining provisions shall not be affected.

Section 601.18 provides these proposals shall become effective upon adoption in the State Register.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kevin E. Jones, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: usakej@labor.state.ny.us

**Data, views or arguments may be submitted to:** Cathy Reardon, New York State Department of Labor, State Office Campus, Building 12, Room 455-459, Albany, NY 12240, (518) 457-6820, email: ATCO@labor.state.ny.us

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

#### Regulatory Impact Statement

##### 1. Statutory authority:

The National Apprenticeship Act ("Fitzgerald Act"), enacted in 1937 [29 U.S.C. 50], authorizes the Federal government, in cooperation with the states, to oversee the nation's apprenticeship system. Under Federal regulations, a State Apprenticeship Agency (SAA) may apply to the Secretary of Labor for recognition of its training standards for Federal purposes. Since 1978, the U.S. Department of Labor's (USDOL) Office of Apprenticeship has recognized the New York State Department of Labor as the State agency responsible for approving, registering and monitoring apprenticeship programs throughout New York for the purpose of safeguarding apprentices' welfare, establishing minimum labor standards, promoting apprenticeship as a system of training skilled workers and ensuring that apprenticeship programs conform to USDOL standards for Federal purposes.

Labor Law Article 23 was enacted to establish standards and procedures for registering apprenticeship training programs. Section 811(1)(j) authorizes the Commissioner of Labor to adopt rules and regulations necessary for the effective administration of those programs.

##### 2. Legislative objectives:

Labor Law Article 23, section 810 proclaims that it is the public policy of the State to develop sound apprenticeship training standards and to encourage employers and labor to institute apprenticeship programs as a preferred method of training and preparing workers in New York through supervised training and education. The proposed amendments fulfill those legislative objectives and strengthen apprenticeship training programs by updating program standards, clarifying procedures and re-enforcing accountability of program sponsors in meeting State and Federal requirements.

##### 3. Needs and benefits:

The 21st century economy demands a workforce with postsecondary education and training that develops skills necessary to respond to changing economic and business needs. Registered apprenticeship programs play an important role in meeting these demands by fostering talents and learning strategies that will enable workers to advance their skills and remain competitive in the global economy. Recognizing the mutual benefits of apprenticeship training for both employers and employees, New York State and many municipalities require employers to participate in registered programs to qualify for public work.

##### For employers, benefits include:

- Skilled workers trained to industry/employer specifications to produce quality results;
- Increased productivity due to well-developed on-the-job learning;
- Enhanced retention;
- A stable pipeline of skilled workers;
- An emphasis on safety training that may reduce worker compensation and employer liability costs.

##### For apprentices, benefits include:

- Immediate employment in jobs that usually pay higher wages and offer career growth opportunities;
- Higher quality of life and versatility in learning and skills;
- Portable credentials recognized throughout the state and nationally;
- Increased opportunities for advancement and future educational degrees.

To meet these growing economic demands former Governor Eliot Spitzer and the Commissioner of Labor imposed a moratorium on approval of new apprenticeship programs on August 28, 2007, in order to review and evaluate the State's program standards and procedures. Two reviews were conducted in which input from stakeholders, partners and Apprenticeship Training Program staff was obtained. Both echoed common themes and offered similar recommendations. A number of recommendations which surfaced from the reviews are reflected in regulatory amendments adopted on September 29, 2009, as well as those being proposed with these revisions.

Finally, USDOL amended Federal regulations effective December 29, 2008, setting a two-year time frame for state agencies to make changes in State law, regulation, and /or policy in order to comply with the Federal rules and receive continued recognition of their apprenticeship programs. Section 29.13(b)(9) of the Federal regulations provides that any significant modifications or departures from the Federal rule in State legislation, regulations, policies or operational procedures must be submitted to the Office of Apprenticeship for review and concurrence prior to implementation. Amendments to 12 NYCRR Part 601, adopted September 29, 2009, and these proposed revisions are submitted for that purpose.

#### 4. Costs:

##### Costs to Employers and Labor:

In general, apprenticeship training programs do not add additional costs to businesses because employers will include the cost of an apprentice's labor in submitting bids or proposals for public or private work projects. The proposed rule will not impose any significant additional costs on sponsors in administering their apprenticeship programs, although some slight increases in training costs may occur.

Sponsors of group programs with either a participating union or association of employers will be required to identify their signatory members and provide a copy of their collective bargaining agreement or association agreement on request to the Department. Since those documents will usually have been executed prior to application for registration, sponsors will not be burdened with the additional expense. Employer associations who do not already have a written agreement will be asked to sign a form provided by the Department.

Section 601.5(c)(13) was added to conform to the Federal requirement that training be conducted by qualified personnel, while instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. No additional costs are incurred for training personnel, since sponsors are authorized to qualify supervising journeymen who have attained the level of skill, abilities and competencies recognized within their industry or occupation. Sponsors who use a related instruction provider approved by the Department of Education will not incur any additional costs, while sponsors providing approved in-house instruction may incur the cost of having their instructors qualified by the Department of Education. The Department of Labor and the Department of Education have sought to minimize those costs by identifying educational resources, such as on-line courses in which certification for instructors can be obtained at minimal expense.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training may incur additional costs in evaluating the apprentice's acquisition of skills and competencies required for that trade. Section 601.7(d) requires that sponsors measure an apprentice's proficiency using testing methods recognized in evaluating both hands-on skills and written instruction conducted by a qualified, independent third-party provider. Section 601.7(d)(3) provides that sponsors assume the responsibility for any expenses incurred in administration of these tests.

At present, there are no Federal or State estimates for the expenses that may be incurred in engaging the services of an independent third-party provider. Costs are expected to vary depending upon the size of the registered program, the extent and description of the services rendered and selection of a provider from either an industry or nationally recognized trade association, labor group or other accredited educational institution, such as a community college or training organization. It is anticipated that sponsors will negotiate with providers for the costs of administering these tests, subject to the Department's approval, based on the actual or good faith estimate of such costs prior to implementation.

##### Costs to the Department:

It is not anticipated that adoption of these rules will result in any additional costs for the agency.

#### 5. Local government mandates:

The rule does not impose any program, service, duty or responsibility on local governments.

Participation in the apprenticeship program is voluntary. The regulations apply equally to all sponsors of registered apprentice programs, with certain exceptions for state agencies that do not meet the definition of an employer. Municipalities, school districts, fire districts and others who currently serve or will apply to serve as program sponsors for apprenticeship training programs will be required to comply with the new rule.

#### 6. Paperwork:

Sponsors of group programs with either a participating union or association of employers will be required to provide written information to the Department relating to their participating members, including:

- (a) Identification of their signatory members at the time of application or re-certification;
- (b) Copies of the collective bargaining agreement or association agreement on request by the Department or on a form provided by the Department;
- (c) Notification to the Department in the event a participating signatory or member is added or removed from the apprenticeship program;
- (d) A statement that all participating members or signatories agree to be bound by the terms of the Apprenticeship Agreement.

All sponsors are required to provide:

- (a) A complete and accurate Sponsor Information Sheet (Form AT-9) identifying affiliated businesses or entities;
- (b) The identification of related instruction providers for the length of the apprentice's program and method of instruction (Form AT-8);
- (c) Documentation of an apprentice's wage progression, task rotation and attendance at related instruction courses;
- (d) Notification to the Department of any proposed modifications or changes in the administration of the program (Form AT-10);
- (e) Documentation of an apprentice's progress in the event of a transfer to another registered program; and
- (f) Records documenting work performed by journeymen on job sites in the State.

In addition to the documentation demonstrating the apprentice's progress required for all sponsors, sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to submit an outline of the work processes and levels of skill required to be evaluated for that trade to the Department for its approval, as well as the means used to measure both hands-on and written proficiency. Sponsors using these approaches will also be required to identify the third-party provider who will do the testing and provide a controlled learning environment to ensure verifiable results. Finally, section 601.7(d)(4)(vi) requires sponsors using these approaches to provide the Department with the results of both the hands-on and written testing.

Programs registered in other states or the USDOL's Office of Apprenticeship seeking reciprocity in New York must submit an application to the Department and provide verification from the registration agency that the program is in good standing. In addition, section 601.15(a) provides that sponsors seeking reciprocal approval must provide proof of State unemployment, disability and workers' compensation insurance coverage; verification of current registration by the state or Federal agency and the names of apprentices and program signatories who will be working in the State.

Most of the documentation is satisfied by completion of a form provided by the Department or may be transmitted electronically. With the exception of sponsors opting for the alternative approaches to apprentice training, it is anticipated that the impact of providing additional paperwork will be minimal, since the requirements of the proposed rule relate to documents that have been completed prior to registration or are used or maintained by the sponsor in the ordinary course of business.

#### 7. Duplication:

No duplication of rules was identified. The proposed rule achieves compliance with Federal regulations [29 CFR Part 29], simplifies or clarifies previous revisions to Part 601 of Title 12 or incorporates Department policies and practices that have been previously used but not covered in Part 601.

#### 8. Alternatives:

The Department solicited comments from sponsors, stakeholders and interested parties at public forums conducted on January 28, 2010, May 14, 2010, and September 14, 2010. In addition, copies of the proposed revisions were mailed to registered sponsors prior to the Apprenticeship Council meetings held on May 14, 2010 and September 14, 2010, and published on the Department's website after the meetings were concluded. Both oral and written comments and suggestions were reviewed and considered in proposing adoption of the current rule.

Since the majority of revisions reflect changes mandated by Federal regulations, there are few practical alternatives to adopting these proposals. A few comments suggested removing the requirement for formal training in adult learning styles since journeymen often had several years of experience in training apprentices, while one commentator requested elimination of the re-certification requirement for existing programs. Since these additions reflect Federal directives, however, they have been retained in this proposal. A number of comments received have resulted in some modification to the Federal mandates and Department policies.

29 CFR 29.6(a) requiring all registered programs to have at least one apprentice except for specified periods of time is adopted in section 601.8(a) of the proposed rule. Programs failing to meet this standard are

deemed deregistered under section 601.8(e)(1). Many comments suggested the seasonal nature of some trades in New York, as well as a prolonged downturn in the economy make this requirement difficult to fulfill. As a result, in addition to exceptions contained in the Federal regulations, the Department has provided sponsors experiencing economic difficulties the opportunity to apply for "inactive status" while maintaining their registration [section 601.8(e)(2)]. Sponsors may remain inactive for a period up to one year unless a further extension of time is granted by the Commissioner.

Section 601.5(c)(13) was added to meet the Federal requirement that training shall be conducted by qualified personnel and instructors providing related and supplemental instruction who meet the Department of Education's requirements for vocational-technical instruction. The Department of Labor and the Department of Education have sought to minimize those costs by identifying educational resources, such as on-line courses in which certification for instructors can be obtained at minimal expense, or by receiving instruction through national training academies previously recognized by USDOL as meeting this requirement.

Section 601.7 was added to conform to the Federal rule that State Agencies offer alternatives to the traditional time-based approach to apprentice training [29 CFR 29.5(b)]. In an effort to expand apprenticeship to new industries, USDOL has determined that the time-based approach to training did not fit many occupations and industries seeking to use the apprenticeship model. The competency-based and hybrid approaches were added "to provide a variety of industries with greater flexibility and options [in addressing] their talent development" 73 FR 64409. While sponsors remain free to select any of the three approaches, USDOL noted "we expect that most sponsors [of traditional apprenticeship trades using the time-based method] will continue using this approach" 73 FR 64409.

Section 601.8(c)(1) was added to address the Federal requirement that State agencies evaluate a program's completion rate in comparison to the national average for completion rates [29 CFR 29.6(c)]. Several comments received suggested that might have an adverse effect on smaller programs or those whose work is largely seasonal, resulting in a lower completion rate when compared to a national scale. Subsection (e) was added to 601.8(c)(1) to allow the Department to consider other relevant factors in reviewing a program's rate of completion.

The proposed rule also contains new time frames adjusted to meet the needs of both sponsors and the Department. The period of time for receiving comments from a union that is not participating in a program proposed for registration has been expanded from 30 to 45 days [601.4(e)]; group sponsors must notify the Department within 90 days of any changes in their membership or signatories [601.5(g)] where no time limit had previously been specified; modifications to material elements of the Apprenticeship Agreement must receive Department approval prior to implementation, while minor changes may be submitted within 30 days after their effective date [601.5(b)(15)]; supervising journeyworkers may certify an apprentice's work progress on a monthly rather than weekly basis [601.5(d)]; and a 60 day period of time in which to make corrections to program applications was added [601.4(b)(5)].

Section 601.15 addresses the Federal requirement that, for Federal purposes, State Agencies must accord reciprocal approval to apprentices and programs registered in other states or by USDOL's Office of Apprenticeship. In order to avoid giving these programs an unfair advantage in bidding on Federal projects, the Federal rule requires that they abide by the host state's wage and hour provisions and apprentice ratio standards [29 CFR 29.13(b)(7)]. In order to maintain the safety and quality of apprenticeship programs, the proposed rule requires applicants seeking reciprocity to submit proof of their registration, meet requirements for good standing and provide proof of insurance coverage applicable to programs registered in New York.

In response to comments received, the proposed rule also contains provisions for posting trade updates on the Department's website with a time period for comments [601.4(f)]; the publication of comments on the website [601.4(f)]; and an appeal process for applications that have been denied registration [601.4(b)(8) and (9)].

#### 9. Federal standards:

Federal regulations effective December 29, 2008, set a two-year time frame for State agencies to make changes in State law, regulation, and/or policy in order to comply with the Federal rules in order to receive continued recognition of their apprenticeship programs for Federal purposes. Section 29.13(b)(9) of the Federal regulations provides that any significant modifications or departures from the Federal rule in State legislation, regulations, policies or operational procedures must be submitted to the Office of Apprenticeship for review and concurrence prior to implementation. Amendments to Part 601 of Title 12, adopted September 29, 2009, and this proposal have been submitted for that purpose.

#### 10. Compliance schedule:

Revisions to Part 601 of Title 12 will take effect on filing this proposal. Participants in the registered apprenticeship program will be able to

comply with the revised regulations on the effective date. Applicants will be able to provide the information required, while existing Sponsors can provide any new documentation during regularly scheduled monitoring visits or at the time of re-certification.

#### Regulatory Flexibility Analysis

##### 1. Effect of the Rule:

Adoption of the proposed rule will apply to all small businesses and local governments currently sponsoring or applying for sponsorship of registered apprenticeship programs in New York State.

All registered apprenticeship programs are regulated by the Department of Labor under a uniform set of standards applicable to large and small businesses and local governments alike. While an overwhelming majority of registered programs fall into categories such as building and construction trades (representing 321,600 employees), specialty trades (plumbing, heating and electrical, with 206,400 employees), and manufacturing trades (463,600 employees), non-traditional trades (such as baker, chef, dental lab technician or HIV counselor) are also represented. Local governments, including towns, villages, school districts or fire districts, are eligible for sponsorship in all categories and may offer training in business or health services, justice, public order and safety or human resources administration.

At present, the Department administers 835 registered programs representing 619 employers, employing 20,027 apprentices. Of the 835 registered programs, 561 (approximately two-thirds of the registered sponsors) employ fewer than 5 apprentices. Sponsors with fewer than 5 apprentices are authorized to submit an Equal Opportunity pledge to meet Department standards and are eligible for alternative selection methods in recruiting apprentices rather than the more detailed Affirmative Action Plans required for larger programs.

##### 2. Compliance Requirements:

Each small business or local government choosing to participate in the apprenticeship training program must meet eligibility requirements and provide the necessary documentation for approval of its application. After registration, all sponsors must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to the sponsor's training program.

Sponsors of group programs with either a participating union or association of employers will be required to provide written information to the Department relating to their participating members, including:

- (a) Identification of their signatory members at the time of application or re-certification;
- (b) Copies of the collective bargaining agreement or association agreement on request by the Department or on a form provided by the Department;
- (c) Notification to the Department in the event a participating signatory or member is added or removed from the apprenticeship program;
- (d) A statement that all participating members or signatories agree to be bound by the terms of the Apprenticeship Agreement.

All sponsors are required to provide:

- (a) A complete and accurate Sponsor Information Sheet (Form AT-9) identifying affiliated businesses or entities;
- (b) The identification of related instruction providers for the length of the apprentice's program and method of instruction (Form AT-8);
- (c) Documentation of an apprentice's wage progression, task rotation and attendance at related instruction courses;
- (d) Notification to the Department of any proposed modifications or changes in the administration of the program (Form AT-10);
- (e) Documentation of an apprentice's progress in the event of a transfer to another registered program;
- (f) Records documenting work performed by journeyworkers on job sites in the State.

In addition to the documentation demonstrating the apprentice's progress required for all sponsors, sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to submit an outline of the work processes and levels of skill required to be evaluated for that trade to the Department for its approval, as well as the means used to measure both hands-on and written proficiency. Sponsors using these approaches will also be required to identify the third-party provider who will do the testing and provide a controlled learning environment to ensure verifiable results. Finally, section 601.7(d)(4)(vi) requires sponsors using these approaches to provide the Department with the results of both the hands-on and written testing.

The Department will conduct on-site monitoring semi-annually and require appropriate documentation for recertification at least every five years after registration.

Adoption of section 601.15 providing for reciprocal approval of programs registered in other states or by the Office of Apprenticeship will not impose any new compliance requirements on small businesses or local governments.

##### 3. Professional Services:

Program sponsors will not be required to retain professional services to comply with the adoption of these regulations. The services and record-keeping required are performed by the sponsor's apprenticeship coordinator, project manager, or payroll/bookkeeping personnel in the ordinary course of administering an apprenticeship program.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to obtain the services of an accredited third-party provider in administering the testing used in evaluating the apprentice's acquisition of skills and competencies required for that trade.

#### 4. Compliance Costs:

The Department does not anticipate that small businesses or local governments who sponsor registered programs will incur any additional expenses for personnel or equipment due to adoption of these regulations. Some additional costs associated with providing related instruction to apprentices may be incurred although it is anticipated such costs will be minimal.

In general, apprenticeship training programs do not add additional costs to businesses because employers will include the cost of an apprentice's labor in submitting bids or proposals for private or public work projects. For local governments, any associated costs would be minimal and can be absorbed using existing staff and resources.

Section 601.5(c)(13) was added to meet the Federal requirement that training shall be conducted by qualified personnel, while instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. No additional costs are incurred for training personnel, since sponsors are authorized to qualify supervising journeyworkers who have attained the level of skill, abilities and competencies recognized within the industry or occupation. Sponsors who use a related instruction provider approved by the Department of Education will not incur any additional costs, while sponsors providing approved in-house instruction may incur the cost of having their instructors qualified by the Department of Education.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training may incur additional costs in evaluating the apprentice's acquisition of skills and competencies required for that trade. Section 601.7(d) requires that sponsors measure an apprentice's proficiency using testing methods recognized in evaluating both hands-on skills and written instruction conducted by a qualified, independent third-party provider. Section 601.7(d)(3) provides that sponsors assume the responsibility for any expenses incurred in administration of these tests.

At present, there are no Federal or State estimates for the expenses that may be incurred in engaging the services of an independent third-party provider. Costs are expected to vary depending upon the size of the registered program, the extent and description of the services rendered and selection of a provider from either an industry or nationally recognized trade association, labor group or other accredited educational institution, such as a community college or training organization. It is anticipated that sponsors will negotiate with providers for the costs of administering these tests, subject to the Department's approval, based on the actual or good faith estimate of such costs prior to implementation.

#### 5. Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses and local governments to comply with this rule. The rule relies on existing technological capabilities and services readily available to affected parties.

#### 6. Minimizing Adverse Impact:

The Department has expanded information available on its website to meet the needs of applicants and program sponsors. The proposed rule contains provisions for posting trade updates on the Department's website with a time period for comments [601.4(f)] and the publication of comments for review [601.4(f)].

Numerous provisions have been added to adjust time frames to meet the needs of both sponsors and the Department. The period of time for receiving comments from a union not participating in a program proposed for registration has been expanded from 30 to 45 days [601.4(e)]; supervising journeyworkers may certify an apprentice's work progress on a monthly rather than weekly basis [601.5(d)]; and a 60 day period of time in which to make corrections in program applications was added [601.4(b)(5)]. Applicants for sponsorship may receive technical assistance from apprenticeship training representatives and applicants who have been denied registration will be provided with notification of the grounds for denial as well as a process for appeal [601.4(b)(8) and (9)].

Under the proposed rule, instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. The Department of Labor and the Department of Education have sought to minimize those costs by identifying educational resources, such as on-line courses in which certification for instructors can be obtained at minimal expense.

Section 601.7 was added to conform to the Federal rule that State Agencies offer alternatives to the traditional time-based approach to apprentice training [29 CFR 29.5(b)] in an effort to expand apprenticeship to new

industries. The competency-based and hybrid approaches were added "to provide a variety of industries with greater flexibility and options [in addressing] their talent development" 73 FR 64409. While sponsors remain free to select any of the three approaches, USDOL noted "we expect that most sponsors [of traditional apprenticeship trades using the time-based method] will continue using this approach" 73 FR 64409.

Section 601.8(c)(1) was added to address the Federal requirement that State agencies evaluate a program's completion rate in comparison to the national average for completion rates [29 CFR 29.6(c)]. In order to minimize any adverse effect on smaller programs or those whose work is largely seasonal, resulting in a lower completion rate when compared on a national scale, subsection (e) was added to 601.8(c)(1) to allow the Department to consider other relevant factors in reviewing a program's rate of completion.

29 CFR 29.6(a) requiring all registered programs to have at least one apprentice except for specified periods of time is adopted in section 601.8(a) of the proposed rule. Programs failing to meet this standard are deemed deregistered under section 601.8(e)(1). Comments received from a number of employers have suggested the seasonal nature of some trades in New York, as well as a prolonged downturn in the economy, make this requirement difficult to fulfill. As a result, in addition to exceptions contained in the Federal regulations, the Department has provided sponsors experiencing economic difficulties the opportunity to apply for "inactive status" while maintaining their registration [section 601.8(e)(2)]. Sponsors may remain inactive for a period up to one year unless a further extension of time is granted by the Commissioner.

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

Former Governor Eliot Spitzer and the Commissioner of Labor imposed a moratorium on approval of new apprenticeship programs on August 28, 2007 in order to review and evaluate the State's program standards and procedures. Two reviews were conducted in which input from stakeholders, partners and Apprenticeship Training Program staff was obtained. Both echoed common themes and offered similar recommendations. In addition, seven public forums were held throughout the state in August and September 2008, offering the public, including small business and local government sponsors, an opportunity to provide their comments on the reports. All feedback received as a result of these activities was reviewed and considered. A number of recommendations which surfaced from the reviews are reflected in regulatory amendments adopted on September 29, 2009, as well as those being proposed with these revisions.

The Department also solicited comments from sponsors, stakeholders and interested parties at public forums conducted on January 28, 2010, May 14, 2010 and September 14, 2010. Copies of the proposed revisions were mailed to registered sponsors prior to the Apprenticeship Council meetings held on May 14, 2010 and September 14, 2010, and published on the Department's website after the meetings were concluded. Both oral and written comments and suggestions were reviewed and considered in proposing the adoption of the current rule.

#### Rural Area Flexibility Analysis

##### 1. Types and Estimated Numbers:

The proposed rule applies to all apprenticeship program sponsors in the State, whether public or private, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Approximately twenty percent of program sponsors are located within these regions.

##### 2. Compliance Requirements:

Each business or local government choosing to participate in the apprenticeship training program must meet eligibility requirements and provide the necessary documentation for approval of its application. After registration, all sponsors must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to the sponsor's training program.

Sponsors of group programs with either a participating union or association of employers will be required to provide written information to the Department relating to their participating members, including:

- (a) Identification of their signatory members at the time of application or re-certification;
- (b) Copies of the collective bargaining agreement or association agreement on request by the Department or on a form provided by the Department;
- (c) Notification to the Department in the event a participating signatory or member is added or removed from the apprenticeship program;
- (d) A statement that all participating members or signatories agree to be bound by the terms of the Apprenticeship Agreement.

All sponsors are required to provide:

- (a) A complete and accurate Sponsor Information Sheet (Form AT-9) identifying affiliated businesses or entities;
- (b) The identification of related instruction providers for the length of the apprentice's program and method of instruction (Form AT-8);

(c) Documentation of an apprentice's wage progression, task rotation and attendance at related instruction courses;

(d) Notification to the Department of any proposed modifications or changes in the administration of the program (Form AT-10);

(e) Documentation of an apprentice's progress in the event of a transfer to another registered program;

(f) Records documenting work performed by journeyworkers on job sites in the State.

In addition to the documentation demonstrating the apprentice's progress required for all sponsors, sponsors who opt for the competency-based or hybrid approaches to apprentice training will be required to submit an outline of the work processes and levels of skill required to be evaluated for that trade to the Department for its approval, as well as the means used to measure both hands-on and written proficiency. Sponsors using these approaches will also be required to identify the third-party provider who will do the testing and provide a controlled learning environment to ensure verifiable results. Finally, section 601.7(d)(4)(vi) requires sponsors using these approaches to provide the Department with the results of both the hands-on and written testing.

The Department will conduct on-site monitoring semi-annually and require appropriate documentation for recertification at least every five years after registration.

Adoption of section 601.15 providing for reciprocal approval of programs registered in other states or by the Office of Apprenticeship will not impose any new compliance requirements on small businesses or local governments in rural areas.

### 3. Costs:

The Department does not anticipate that rural area sponsors will incur any additional expenses for personnel or equipment due to adoption of these regulations. Some additional costs associated with providing related instruction to apprentices may be incurred although it is anticipated such costs will be minimal.

In general, apprenticeship training programs do not add additional costs to businesses because employers will include the cost of an apprentice's labor in submitting bids or proposals for private or public work projects. For local governments, any associated costs would be minimal and can be absorbed using existing staff and resources.

Section 601.5(c)(13) was added to meet the Federal requirement that training shall be conducted by qualified personnel, while instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. No additional costs are incurred for training personnel, since sponsors are authorized to qualify supervising journeyworkers who have attained the level of skill, abilities and competencies recognized within the industry or occupation.

Sponsors who use a related instruction provider approved by the Department of Education will not incur any additional costs, while sponsors providing approved in-house instruction may incur the cost of having their instructors qualified by the Department of Education.

Sponsors who opt for the competency-based or hybrid approaches to apprentice training may incur additional costs in evaluating the apprentice's acquisition of skills and competencies required for that trade. Section 601.7(d) requires that sponsors measure an apprentice's proficiency using testing methods recognized in evaluating both hands-on skills and written instruction conducted by a qualified, independent third-party provider. Section 601.7(d)(3) provides that sponsors assume the responsibility for any expenses incurred in administration of these tests.

At present, there are no Federal or State estimates for the expenses that may be incurred in engaging the services of an independent third-party provider. Costs are expected to vary depending upon the size of the registered program, the extent and description of the services rendered and selection of a provider from either an industry or nationally recognized trade association, labor group or other accredited educational institution, such as a community college or training organization. It is anticipated that sponsors will negotiate with providers for the costs of administering these tests, subject to the Department's approval, based on the actual or good faith estimate of such costs prior to implementation.

### 4. Minimizing Adverse Impacts:

The Department has expanded information available on its website to meet the needs of applicants and program sponsors. The proposed rule contains provisions for posting trade updates on the Department's website with a time period for comments [601.4(f)] and the publication of comments for review [601.4(f)].

Numerous provisions have been added to adjust time frames to meet the needs of both sponsors and the Department. The period of time for receiving comments from a union not participating in a program proposed for registration has been expanded from 30 to 45 days [601.4(e)]; supervising journeyworkers may certify an apprentice's work progress on a monthly rather than weekly basis [601.5(d)]; and a 60 day period of time in which to make corrections in program applications was added [601.4(b)(5)]. Ap-

plicants for sponsorship may receive technical assistance from apprenticeship training representatives. Applicants who have been denied registration will be provided with notification of the grounds for denial as well as a process for appeal [601.4(b)(8) and (9)].

Under the proposed rule, instructors providing related and supplemental instruction must meet the State Department of Education requirements for vocational-technical instruction. The Department of Labor and the Department of Education have sought to minimize those costs by identifying educational resources, such as on-line courses in which certification for instructors can be obtained at minimal expense. Having the on-line option will be especially beneficial to sponsors in rural area who would otherwise have to travel long distances to obtain the required qualifications. In addition, the Department of Labor and Department of Education are working together to expand the list of authorized instructional programs for apprentice available on a statewide basis at local community colleges or BOCES Centers. Finally, related and supplemental instruction may be provided in person or by electronic media, without limitation, subject to approval by the Department of Labor and Department of Education. The addition of an alternative to traditional classroom instruction allows sponsors in more remote areas a means of providing apprentices with the courses needed to complete their apprenticeship programs at reduced costs.

Section 601.7 was added to conform to the Federal rule that State Agencies offer alternatives to the traditional time-based approach to apprentice training [29 CFR 29.5(b)]. In an effort to expand apprenticeship to new industries, USDOL has determined that the time-based approach to training did not fit many occupations and industries seeking to use the apprenticeship model. The competency-based and hybrid approaches were added "to provide a variety of industries with greater flexibility and options [in addressing] their talent development" 73 FR 64409. While sponsors remain free to select any of the three approaches, USDOL noted "we expect that most sponsors [of traditional apprenticeship trades using the time-based method] will continue using this approach" 73 FR 64409.

Section 601.8(c)(1) was added to address the Federal requirement that State agencies evaluate a program's completion rate in comparison to the national average for completion rates [29 CFR 29.6(c)]. In order to minimize any adverse effect on smaller programs or those whose work is largely seasonal, resulting in a lower completion rate when compared on a national scale, subsection (e) was added to 601.8(c)(1) to allow the Department to consider other relevant factors in reviewing a program's rate of completion.

29 CFR 29.6(a) requiring all registered programs to have at least one apprentice except for specified periods of time is adopted in section 601.8(a) of the proposed rule. Programs failing to meet this standard are deemed deregistered under section 601.8(e)(1). Comments received from a number of employers have suggested the seasonal nature of some trades in New York, as well as a prolonged downturn in the economy, make this requirement difficult to fulfill. As a result, in addition to exceptions contained in the Federal regulations, the Department has provided sponsors who have experienced economic difficulties the opportunity to apply for "inactive status" while maintaining their registration [section 601.8(e)(2)]. Sponsors may remain inactive for a period up to one year unless a further extension of time is granted by the Commissioner. Sponsors of small businesses in rural areas may benefit most from this proposal where labor statistics for 2009 have shown unemployment rates in rural areas have remained consistently higher than those of more populated regions.<sup>1</sup>

### 5. Rural Area Participation:

Former Governor Eliot Spitzer and the Commissioner of Labor imposed a moratorium on approval of new apprenticeship programs on August 28, 2007 in order to review and evaluate the State's program standards and procedures. Two reviews were conducted in which input from stakeholders, partners and Apprenticeship Training Program staff was obtained. Both echoed common themes and offered similar recommendations. In addition, seven public forums were held throughout the state in August and September 2008, offering the public, including small business and local government sponsors, an opportunity to provide their comments on the reports. These included upstate meetings in Albany, Binghamton, Rochester and Syracuse, where small businesses from rural areas were represented. All feedback received as a result of these activities was reviewed and considered. A number of recommendations which surfaced from the reviews are reflected in regulatory amendments adopted on September 29, 2009, as well as those being proposed with these revisions.

The Department also solicited comments from sponsors, stakeholders and interested parties at public forums conducted on January 28, 2010 in New York City and May 14, 2010 and September 14, 2010 in Albany. Copies of the proposed revisions were mailed to registered sponsors prior to the Apprenticeship Council meetings held on May 14, 2010 and September 14, 2010, and published on the Department's website after the meetings were concluded. Both oral and written comments and sugges-

tions were reviewed and considered in proposing the adoption of the current rule.

<sup>1</sup> The state-wide unemployment rate for 2009 was 7.7%, while unemployment in the Southern Tier averaged 8.3%; Mohawk Valley 8.9%; Western New York 8.7% and the North Country 10.2%.

#### **Job Impact Statement**

The proposed rule is submitted in order to harmonize State regulations with the Federal rule for continued recognition of New York State as the State agency responsible for approving, registering and monitoring apprenticeship programs for Federal purposes, and to clarify application procedures and standards, enhance the evaluation and performance of registered programs and promote apprenticeship as a system for training skilled workers.

Since the proposal is aimed at maintaining increased job opportunities for apprentices in qualified programs, a Job Impact Statement pursuant to section 201-a(2)(a) of the State Administrative Procedure Act is not submitted.

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## Office for People with Developmental Disabilities

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### NOTICE OF ADOPTION

#### **Conforming Amendments to Chapter 262 of the Laws of 2010**

**I.D. No.** PDD-34-10-00007-A

**Filing No.** 1160

**Filing Date:** 2010-11-09

**Effective Date:** 2010-11-24

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

**Action taken:** Amendment of section 624.8(c)(3) of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and 33.25

**Subject:** Conforming amendments to chapter 262 of the Laws of 2010.

**Purpose:** Extends the deadline for requests for release of records pertaining to allegations of abuse.

**Text or summary was published** in the August 25, 2010 issue of the Register, I.D. No. PDD-34-10-00007-P.

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

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

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

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

The agency received no public comment.

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## Public Service Commission

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

#### **Approval of a Lightened Regulatory Regime and Financing in Connection with a 630 MW Natural Gas Electric Generating Facility**

**I.D. No.** PSC-47-10-00012-P

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

**Proposed Action:** The Commission is considering a petition by CPV Val-

ley, LLC for approval of a lightened regulatory regime and financing in connection with a natural gas electric generating facility with a nominal rating of 630 MW in the Town of Wawayanda, New York.

**Statutory authority:** Public Service Law, sections 2(13), 5(1)(b), 18-a, 19, 64, 65, 66, 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

**Subject:** Approval of a lightened regulatory regime and financing in connection with a 630 MW natural gas electric generating facility.

**Purpose:** Consideration of approval of a lightened regulatory regime and financing for a 630 MW natural gas electric generating facility.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering a petition filed on October 14, 2010, from CPV Valley, LLC, requesting approval of a lightened regulatory regime and financing in connection with a natural gas electric generating facility with a nominal rating of 630 MW in the Town of Wawayanda, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(10-E-0501SP1)

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

#### **Request Accounting Treatment and Allocation of Proceeds Between Shareholders and Ratepayers**

**I.D. No.** PSC-47-10-00013-P

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

**Proposed Action:** The Public Service Commission is considering to approve, deny, or modify in whole or in part a petition filed by Aqua New York of Sea, Cliff Inc. to allocate net settlement proceeds between shareholders and ratepayers.

**Statutory authority:** Public Service Law, section 89-c

**Subject:** Request accounting treatment and allocation of proceeds between shareholders and ratepayers.

**Purpose:** Approval of allocation of net proceeds and accounting entries.

**Substance of proposed rule:** The Public Service Commission is considering to approve, deny, or modify in whole or in part a petition filed by Aqua New York of Sea, Cliff Inc. to allocate net settlement proceeds between shareholders and ratepayers.

**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-W-0500SP1)

## Department of State

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

#### Regulation of Crematories Subject to Not-For-Profit Corporation Law Article 15

I.D. No. DOS-47-10-00010-P

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

**Proposed Action:** Repeal of Part 203 and addition of new Part 203 to Title 19 NYCRR.

**Statutory authority:** Not-for-Profit Corporation Law, sections 1501 and 1504(c)

**Subject:** Regulation of crematories subject to Not-For-Profit Corporation Law Article 15.

**Purpose:** To clarify procedures and record requirements for crematories and to enhance consumer protection.

**Substance of proposed rule (Full text is posted at the following State website: [dos.state.ny.us/cmty/cemetery.html](http://dos.state.ny.us/cmty/cemetery.html)):** The proposed revision of 19 NYCRR Part 203 is intended to do a number of things. It eliminates inconsistencies between current Part 203 and Not-For-Profit Corporation Law section 1517 which deals with crematory operations. It also incorporates language from sections of the Public Health Law which deal with cremations, funerals and funeral firms. These changes create additional clarity and uniformity in the cremation and funeral trades.

Additionally, the proposed revision restricts what types of containers are acceptable for the delivery of remains to be cremated. It provides guidance regarding the privacy of cremations and the manner in which remains should be handled and stored prior to cremation. The revision clarifies that a crematory storage facility must be a separate room or a separately enclosed area within a room and restricts who may enter a crematory's temporary storage facility and retort area. The revision encourages crematories to cremate remains within twenty-four hours of receiving them and even sooner if the circumstances warrant immediate cremation. The revision restricts the ability of crematories to have different charges based on the weight of the remains by requiring crematories which have such charges to maintain a scale on their premises. It clarifies the current regulation by requiring that crematories have in place a method for maintaining the identity of remains while the remains are in the possession of the crematory.

Finally, the proposed revision clarifies the procedure that must be used if a crematory has doubt about the identity of the remains it has received and under what circumstances a container may be opened or remains transferred to another container after remains have been received by a crematory. It limits the circumstances in which a container holding uncremated remains may be opened and who may authorize the opening of a container. The revision clarifies that normally all cremated remains shall be pulverized until no piece is recognizable as human tissue, but that if an authorized person so requests, and if the crematory consents, a crematory may keep one small piece of cremated remains from being pulverized. The revision also specifies what must be contained in a cremation authorization form and requires that crematories only use a form approved by the Department of State, Division of Cemeteries. The revision specifies what records a crematory must keep in its permanent file.

In general, these changes will lead to uniformity in the cremation industry, and clarity about what is expected of crematories and what is and is not permitted. These changes will improve the service received by persons seeking cremation and will reduce errors and complaints. These changes will also give guidance and clarity to crematory operators and funeral directors regarding their respective roles in the process of transporting remains to crematories, the conduct of cremations, and transporting the cremated remains back to the person who requested cremation. Disputes regarding these matters should be reduced as a result.

**Text of proposed rule and any required statements and analyses may be obtained from:** Antonio Milillo, Dept. of State, Office of General Counsel, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: [antonio.milillo@dos.state.ny.us](mailto:antonio.milillo@dos.state.ny.us)

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

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

#### Regulatory Impact Statement

1. Statutory Authority: Not-for-Profit Corporation Law section 1504(c) authorizes the Cemetery Board to adopt reasonable rules and regulations

for the proper administration of the Article 15 of the Not-for-Profit Corporation Law. Sections 1503(b) and 1517 of the Not-for-Profit Corporation Law, added by chapter 579 of the laws of 2006, subject crematories to the jurisdiction of the Department of State, Division of Cemeteries and regulate their operations. In addition, Public Health Law section 4145 requires crematories to maintain a record of all cremations performed and Article 19 of the Environmental Conservation Law and 6 NYCRR Part 219 regulate the emissions, maintenance, operation and monitoring of cremation equipment.

2. Legislative Objectives: The legislative intent for the enactment of Article 15 of the Not-for-Profit Corporation Law is, among other things, to promote the state's interest in the establishment, maintenance and preservation of crematories and the proper operation of the corporations which own and manage them; to protect the well-being of citizens, to promote the public welfare and to prevent crematories from falling into disrepair and dilapidation and becoming a burden upon the community; and to ensure that crematories are conducted on a non-profit basis for the mutual benefit of the public. Not-for-Profit Corporation Law section 1504 authorizes the division of cemeteries to inspect crematories and their business records. Not-for-Profit Corporation Law section 1517 imposes requirements and restrictions on the operation of crematories, especially with regard to the processing of remains and the handling of remains before and after cremation. In furtherance of these objectives, the proposed rule clarifies what is permissible or impermissible in the operation of a crematory; how a crematory facility should be organized and maintained; how human remains and cremated remains should be handled; what records must be maintained; and what information must be provided to persons requesting that human remains be cremated.

3. Needs and Benefits: The proposed revision of 19 NYCRR Part 203 will eliminate inconsistencies between current Part 203 and Not-For-Profit Corporation Law section 1517. For example, section 1517(e) sets forth how a crematory should deal with remains delivered in any container not suitable for cremation. However, current regulation section 203.6 only addresses metal caskets and does not address other containers not suitable for cremation. The proposed revision sets forth how a crematory should deal with the delivery of remains in any container not suitable for cremation. The regulation also incorporates language (e.g., "funeral firm", "funeral establishment" and "undertaker") from sections of the Public Health Law which deal with funerals and funeral firms. These changes create clarity and uniformity in the cremation and funeral trades.

Additional proposed changes to the regulation will provide greater clarity regarding acceptable crematory practice and will lead to greater uniformity in the cremation industry. Crematory operators will have clearer standards of operation and the public will be better protected from inappropriate handling of human remains. Specifically, the proposed revision:

- Clarifies that a crematory storage facility must be a separate room or a separately enclosed area within a room. Current regulation states that a crematory shall have a temporary storage area "the interior of which shall not be visible from the general retort area", it does not specify that the storage area must be a separately enclosed space or room. This has led to inconsistency among crematory operators. The revision adds clarity and protects the privacy of remains.
- Encourages crematories to cremate remains within 24 hours of receipt and sooner if circumstances warrant immediate cremation. It requires a crematory to show "good cause" if a cremation occurs more than 48 hours after receipt. Current regulation is silent on this issue and in some instances - usually involving a retort breakdown - crematories have held bodies in un-refrigerated storage for longer than Division inspectors believe is reasonable and acceptable. This revision provides crematory operators with an acceptable storage period before cremation and gives Division inspectors the ability to monitor delays in cremation beyond 48 hours.
- Restricts the ability of crematories to have different charges based on the weight of the remains by requiring crematories with such charges to maintain a scale on their premises. Crematories have requested authority to charge more to cremate remains of morbidly obese persons. The Cemetery Board has been hesitant to grant these requests because most crematories lack scales to confirm that the remains meet the threshold for a higher charge. This change will require only those crematories authorized by the Cemetery Board to have different charges for different weights to have scales.
- Clarifies that while normally all cremated remains shall be pulverized until no piece is recognizable as human tissue, if an authorized person so requests, and if the crematory consents, a crematory may keep one small piece of cremated remains from being pulverized. Current regulation does not specifically authorize a crematory to not pulverize any part of the cremated remains. Division staff is aware of two instances in which family has, for religious custom, requested a part of the cremated remains be kept identifiable as human remains.

This change will allow a crematory to consent to such a request by setting aside a small piece of remains while ensuring that the remainder is pulverized so that it is not recognizable as human remains.

- Adds clarity to the existing statutory requirement that crematories have in place a method for maintaining the identity of remains while the remains are in the possession of the crematory. It specifies the procedure to be used if a crematory has doubt about the identity of remains received and under what circumstances a crematory operator may open a container or transfer remains to another container. Current regulation is unclear about when a signed authorization is needed to move remains, who must sign the authorization and who must be present when remains are moved. The revision addresses these shortcomings.
  - Requires that remains be delivered either in a container suitable for cremation or in a ceremonial casket and requires that remains only be cremated in a container suitable for cremation. Current regulation does not restrict the type of container used to deliver remains to a crematory and does not clearly limit the type of container used during the cremation process. Crematories have received remains in non-rigid, leaking containers that exposed crematory personnel to bodily fluids and embalming material. Some crematories have damaged their retorts by incinerating remains in caskets with substantial metal ornamentation. This revision will eliminate these improper practices.
  - Provides guidance regarding the privacy of cremations and stored remains. Current statute and regulation restrict who may be present during a cremation but do not require that the persons be present only when they are there in support of cremation operations. Also, current statute and regulation do not restrict who may enter a storage area while remains are being stored. The revision corrects these omissions and ensures that only persons who are acting on behalf of the crematory will be allowed in the retort area when bodies are being cremated and that authorized persons may only enter the storage area when they are acting on behalf of crematory operations.
  - Identifies information to be contained in the cremation authorization form, requires that crematories only use a form established by the Division of Cemeteries, and specifies what records a crematory must keep in its permanent file. Currently, each crematory uses its own cremation authorization form which has created problems for funeral homes that contend with different forms from different crematories. Additionally, this has resulted in forms without complete information. The requirement that all crematories use the form established by the Division of Cemeteries will eliminate inconsistencies. With regard to crematory permanent files, Division inspectors and auditors rely on consistent recordkeeping to properly inspect and audit crematories. The revision makes clear what records must be kept in a crematory's permanent file.
4. Costs:
- a. Regulated Parties. Costs to regulated parties will be minimal. Many of the proposed revisions impose little or no cost to crematories. The largest cost would be the need to construct a self-enclosed space for storage of remains if a crematory does not have such a space. Inspectors from the Division found that almost all crematories already have such space and that those which don't can construct a space about the size of a walk-in closet for a few hundred dollars. The requirement that additional records be kept in a crematory's permanent file will result in minimal extra cost. Most crematories already substantially comply with the proposed requirement and for others the requirement that some additional paperwork be preserved will not require additional storage space beyond what is currently being used. Regarding the purchase of a scale, the regulations only require a scale if the crematory has different charges based on the weight of the remains. Although the purchase of a scale could be a small cost to crematories - industrial scales are available for under \$1,000.00 - a crematory would incur this cost only if it charges cremation rates based on the weight of the remains. The crematory could recover the cost of the scale from the extra charges.
  - b. The agency, the state and local governments. No increase or decrease in costs is anticipated.
  - c. The estimate of the cost for a scale is derived from crematories which have scales and from listed prices charged by industrial scale suppliers.
5. Local Government Mandates: None.
6. Paperwork: No additional paperwork is required of crematories. Current statute and regulations require the use of forms and documents identified in this revision. The revision merely clarifies what must be described and contained in the forms and documents and requires that they be kept by crematories in their permanent files.
7. Duplication: These regulations do not duplicate existing State and Federal regulations.
8. Alternatives: The Division of Cemeteries made changes to its initial

proposal based on comments and recommendations from representatives of crematory operators, funeral directors and consumer advocates. Initially the Division intended to mandate refrigeration at all crematories. Based on comments received, the Division moved away from that requirement to a recommendation that cremation occur within 24 hours of receipt of remains and a requirement that the crematory log indicate the reason for delay if remains are cremated more than 48 hours after receipt. The Division also decided not to require scales at all crematories since many crematories do not intend to have separate charges based on the weight of remains. Finally, some representatives expressed concern that a requirement for crematories to keep the storage area for remains separate from other areas could be read as requiring a completely separate room. The regulation was modified to clarify that a storage area may be a separately enclosed area within a room.

There was significant discussion regarding pulverizing cremated remains. After remains are subjected to heat and flame, the remains are reduced to ash and bone fragments of various sizes. Standard practice is to then pulverize the remains until no fragment is identifiable as human tissue. However, in some cases family of deceased have, for religious and cultural reasons, asked crematories to preserve fragments as recognizable human remains. A number of options were considered based on the manner in which various crematories operate and the various types of equipment that they use. While most crematories were agreeable to accommodating this type of request, some were not. It was decided that crematories should have the option of not consenting to such a request. It was also agreed that if a crematory consents to such a request, the appropriate way to comply would be to set aside one small bone fragment after the remains are removed from the retort and before they are pulverized. This would avoid any health concerns and would give the crematory operator a simple method of identifying and setting aside a recognizable bone fragment.

9. Federal Standards: At this time there are no federal standards with regard to crematory operations.

10. Compliance Schedule: These regulations will take effect sixty (60) days from date of adoption.

#### **Regulatory Flexibility Analysis**

1. Effect of Rule: There are 48 crematories throughout the State that are under the jurisdiction of the Division of Cemeteries and which will be affected by this rule. This rule will not affect any local governments.

2. Compliance Requirements: This rule specifies what information must be set forth in records which are already required by rule or statute and it specifies which currently mandated records must be kept by crematories in their permanent files. Crematories also may have to make minimal modifications to their facilities to comply with the requirement that the storage facility and any ceremony room be separated from other areas and from each other.

3. Professional Services: Crematories are unlikely to need professional services in order to comply with this proposed rule.

4. Compliance Costs: Most of the revisions require a change in procedure which involves little or no cost to crematories. By restricting the type of container which may be used to deliver remains to a crematory, the regulation will reduce crematory costs by reducing the need to move remains from an unacceptable container to an acceptable container. Regarding the purchase of a scale, the regulations only require a scale if the crematory has different charges based on the weight of the remains. Although the purchase of a scale could be a small cost to crematories - industrial scales are available for under \$1,000.00 - a crematory would incur this cost only if it decides to have different cremation rates based on the weight of the remains and the crematory could recover the cost of the scale from the extra charges.

5. Economic and Technological Feasibility: It is economically and technologically feasible for crematories to comply with the regulation.

6. Minimizing Adverse Impact: This regulation will not have an adverse impact on crematory operations and will clarify operation requirements and assure uniformity in the delivery of cremation services.

7. Small Business and Local Government Participation: The regulation was presented to the New York State Association of Cemeteries and the Association of Funeral Directors. Those associations provided numerous comments and suggestions which have been incorporated into the proposed regulation as currently submitted. The regulation was also presented at numerous meetings of the New York Cemetery Board and proposed revisions were made public at those meetings. Copies of the proposed regulation were also made available to persons in attendance at those meetings. The Director of the Department of State, Division of Local Government Efficiency and Competitiveness also attended a number of the meetings.

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

1. Types and Estimated Number of Rural Areas: Approximately one half of the 48 crematories regulated by the Division of Cemeteries are located in rural areas.

2. Reporting, Recordkeeping, and other Compliance Requirements and Professional Services: All 48 crematories will be required to comply with these regulations and conform their operations and recordkeeping to them. No new records are required to be kept, however, new information is required in existing records and the regulations make clear which records must be kept in a crematory's permanent files.

3. Costs: Most of the revisions require a change in procedure which involves little or no cost to crematories. By restricting the type of container which may be used to deliver remains to a crematory, the regulation will reduce crematory costs by reducing need to move remains from an unacceptable container to an acceptable container. Regarding the purchase of a scale, the regulations only require a scale if the crematory has different charges based on the weight of the remains. Although the purchase of a scale could be a small cost to crematories - industrial scales are available for under \$1,000.00 - a crematory would incur this cost only if it decides to have different cremation rates based on the weight of the remains and the crematory could recover the cost of the scale from the extra charges.

4. Minimizing Adverse Impact: This regulation will not have an adverse impact on crematory operations and will clarify operation requirements and assure uniformity in the delivery of cremation services.

5. Rural Area Participation: The process of drafting this regulation was an open process; the text of the draft regulations was read publicly at New York State Cemetery Board meetings; affected organizations such as cemeteries, crematories and funeral directors were made aware that the draft regulations were on the agenda of the Cemetery Board and those organizations were represented at most meetings by their trade associations. These associations represent rural as well as urban and suburban organizations. The trade associations were encouraged to submit their own proposed revisions and in most cases the proposals led to changes to the draft regulations. Individual cemetery and crematory operators who attended Cemetery Board meetings also had the chance to receive copies of the draft regulations and had the right to comment on them. The concerns of smaller, mostly rural crematories were taken into account and led to a number of modifications such as deleting requirements that all crematories have refrigeration units for storage of remains and scales for weighing remains.

#### **Job Impact Statement**

It is evident from the nature and purpose of the rule that this regulation amendment neither creates nor eliminates employment positions and/or opportunities, and therefore, has no adverse impact on employment opportunities in New York State.

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## Workers' Compensation Board

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### NOTICE OF ADOPTION

#### **Medical, Podiatry, Chiropractic, and Psychology Fee Schedules**

**I.D. No.** WCB-38-10-00008-A

**Filing No.** 1161

**Filing Date:** 2010-11-09

**Effective Date:** 2010-12-01

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

**Action taken:** Amendment of sections 329.3, 333.2, 343.2, 348.2, 401.2, 401.4, 401.5, 401.6, 411.2, 411.4, 411.5 and 411.6 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 13(a), 13-k, 13-l, 13-m, 117(a) and 157(4); and Volunteer Firefighters' Benefit Law and Volunteer Ambulance Workers' Benefit Law, sections 16, 57 and 58

**Subject:** Medical, Podiatry, Chiropractic, and Psychology Fee Schedules.

**Purpose:** Adopt updated Medical, Podiatry, Chiropractic, and Psychology Fee Schedules.

**Text or summary was published** in the September 22, 2010 issue of the Register, I.D. No. WCB-38-10-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Cheryl M Wood, Special Counsel to the Chair, NYS Workers' Compensation Board, 20 Park Street, Room 400, Albany, NY 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

#### **Revised Regulatory Impact Statement**

##### 1. Statutory Authority

The Chair of the Workers' Compensation Board (WCB) is authorized

to promulgate fee schedules governing the charges for medical treatment and care within the workers' compensation system. Workers' Compensation Law (WCL) § 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the WCL and the Labor Law. WCL § 13(a) requires employers to promptly provide medical, surgical, other attendance or treatment, and nurse and hospital services, among other things to injured workers for as long as the nature of the injury requires. Subdivision (a) mandates that the Chair prepare and establish a schedule for the state, or schedules for different regions of the state, of the fees and charges for the medical treatment and care employers must provide. Such schedule or schedules must be promulgated by regulation. WCL §§ 13-k, 13-l, and 13-m authorize treatment by podiatrists, chiropractors and psychologists, respectively, within the appropriate scope of practice for injuries covered by the WCL and require the Chair to prepare and establish fee schedules for podiatry, chiropractic, and psychological services, respectively, through regulation.

WCL § 157(4) defines "this chapter" to include the Volunteer Firefighters' Benefit Law (VFBL) and Volunteer Ambulance Workers' Benefit Law (VAWBL). Section 16 of both the VFBL and VAWBL incorporates the provisions of WCL §§ 13 through 13-m and makes them applicable to injured volunteer firefighters, volunteer ambulance workers, and political subdivisions. Section 57 of both the VFBL and VAWBL provides that the provisions of WCL Article 7, of which WCL § 117 is part, are applicable to the VFBL and VAWBL as if fully set forth in those laws. Finally, section 58 of both the VFBL and VAWBL provides that all the powers and duties conferred upon the Chair by the WCL which are necessary to administer those laws are applicable to the VFBL and VAWBL.

#### 2. Legislative Objectives

The WCL, and the VFBL and VAWBL through incorporation, require the Chair to set fee schedules for medical treatment provided to injured workers, volunteer firefighters, and volunteer ambulance workers. The proposed regulations incorporate by reference the latest versions of the workers' compensation fee schedules for medical, podiatry, chiropractic, and psychological treatment of injured or ill workers, volunteer firefighters, and volunteer ambulance workers. The updated fee schedules accomplish the following: (1) increase the fees for Evaluation and Management (E&M) service by 30%; (2) change the Chiropractic fee schedule to allow for separate billing of treatment modalities rather treating such treatment as part of E&M services; (3) modify ground rules to be consistent with the Medical Treatment Guidelines which will be effective at approximately the same time; (4) adjust for new, modified, and deleted Current Procedural Terminology (CPT) codes; and (5) minor typographical clarifications to the previous fee schedules.

#### 3. Needs and Benefits

The workers' compensation fee schedules regulate the amount that providers can charge for medical treatment and care in the workers' compensation system. The Chair, in conjunction with Ingenix which publishes the fee schedules, periodically reviews and revises the fee schedules to reflect changes to the CPT codes made by the AMA and to make such other changes as deemed necessary or desirable.

The proposed regulations are necessary to implement the revisions to the fee schedules and to make them applicable to treatment provided under the WCL, VFBL, and VAWBL. Several Board regulations refer to the most recent workers' compensation fee schedule as the applicable fee schedule. The proposed regulatory amendments simply replace the April 1, 2006 version of the medical, podiatry, and psychology fee schedules, and the August 1996 version, amended September 1997, of the chiropractic fee schedule with the updated December 1, 2010, versions.

The increase to the Evaluation and Management (E&M) fee schedule in the updated December 1, 2010, versions is critical to ensuring high quality medical care in the workers' compensation system. E&M compensates all providers for office visits. The E&M services are critical to effective diagnosis, treatment, and recovery from workplace injuries. New York's E&M rates for workers' compensation have not increased in more than fifteen years, are the lowest in the country, and significantly below Medicare. A 30% increase will make workers' compensation rates more competitive and help retain and attract quality providers.

The existing Chiropractic fee schedule includes the following ground rule: "Fees for chiropractic treatment and modalities are included in the evaluation and management service billed." As a result, chiropractors do not have to identify the types of treatment and modalities provided in their billing. New Medical Treatment Guidelines that are proposed to go into effect this year set a mandatory standard of care for treatment of the back, neck, shoulder and knee. The guidelines recommend treatment, including limitations on the number and frequency of chiropractic treatment, according to treatment modality. In order to effectively monitor compliance with the medical treatment guidelines, the Chiropractic fee schedule must change from the current office visit-based billing to modality-based billing. Modality-based billing is used currently for physical medicine

(including physical and occupational therapists) in New York and is the norm for reimbursement of chiropractic services in other states.

The medical treatment guidelines contain other recommendations and requirements that are inconsistent with existing fee schedule ground rules. For example, the guidelines include specific standards for when it is appropriate to repeat particular diagnostic tests. They also provide specific standards for when evaluation and reevaluation of a patient is recommended. The December 1, 2010, fee schedule modifies a number of fee schedule ground rules to make them consistent with the medical treatment guidelines and adds a ground rule clarifying that the medical treatment guidelines are to be followed unless a variance is approved. This will ensure consistent application and ease of use of both the guidelines and the fee schedule.

The schedules utilize standard CPT codes, which are developed by the American Medical Association (AMA). The AMA regularly reviews and revises its CPT codes to accurately reflect changes in medical procedures. The most recent revisions to the fee schedules will become effective December 1, 2010. The updated fee schedules add 283 new CPT codes, change 115 CPT codes, and delete 145 CPT codes, compared to the 2008 fee schedules.

The schedules make several changes to clarify existing ground rules. For example, the updated fee schedules add "relative value" to "units" in Ground Rule 8 of the Physical Medicine schedule to clarify the meaning of units. For each procedure, there is a Relative Value Unit (RVU) that is multiplied by a Conversion Factor (CF) to get a fee for the treatment. For example, 15 minutes of electrical stimulation is worth 2.45 RVU, or \$15.90 in Region 1. In Physical Medicine, there is a Ground Rule that limits the provider to 8 RVUs per session (\$51.92 in region 1), but it uses the term 8 "units." The term unit is sometimes misunderstood to mean a unit of treatment (i.e. one 15 minute "unit" of electrical stimulation). If that were the case, one could bill 8 units (120 minutes) of electrical stimulation for 19.6 RVUs or \$127.20.

#### 4. Costs

The increase in E&M fees is estimated to cost approximately \$45 million throughout the system, but those costs are expected to be more than offset by cost reductions from reduced medical costs elsewhere in the system as a result of a number of changes including diagnostic treatment networks, medical treatment guidelines, and changes to the frequency of medical reports required for ongoing disability payments. Using the New York State Insurance Fund's medical payment data an estimate was developed of what the 30% increase would cost if there was no change in utilization. However, with the medical treatment guidelines, less utilization is expected.

The changes to the Chiropractic Fee Schedule allow chiropractors to bill for treatment modalities performed during the visit. Currently, chiropractors only bill by office visit. During a visit a chiropractor may perform more than one modality, which may result in higher maximum payments for a particular date of service, depending on the treatment modalities that are used. The maximum rates range between 30% and 42% higher than the corresponding rates in the previous fee schedule. The medical treatment guidelines include limits on chiropractic treatments that are expected to reduce the overall system cost of chiropractic care, notwithstanding the fee increases.

Because the Insurance Law applies the workers' compensation fee schedules to no-fault insurance medical claims, the increase in the E&M fees and the change to the Chiropractic Fee Schedule to allow chiropractors to bill for treatment modalities rather than just a global office fee may increase the no-fault portion of automobile premiums. This is due to the fact that the cost reduction measures implemented for workers' compensation do not apply to no-fault claims. There is no estimate of the impact on no-fault costs.

Medical providers, self-insured employers, insurance carriers, the State Insurance Fund, and third-party administrators will have to purchase the new fee schedules from Ingenix. The cost for all of the new fee schedules in hard copy is \$85.00 plus the cost of shipping and tax, while the cost for the individual version of the chiropractic, podiatry, or psychology fee schedule will cost \$25.00 plus the cost of shipping and tax for a hard copy version. The fee schedules can also be purchased on CD for \$400.00 plus the cost of shipping and tax.

#### 5. Local Government Mandates

The rule only imposes mandates on local governments, including some volunteer fire departments, which are self-insured. The mandates on local governments are the same as those imposed on private self-insured employers, insurance carriers, the State Insurance Fund, and third party administrators. Self-insured local governments will need to incorporate the new fee schedules into their processes to properly reimburse medical providers for services rendered.

#### 6. Paperwork

There is no additional paperwork to be completed as a result of the proposed changes however payers and medical providers will need to acquire a copy of the new fee schedules.

#### 7. Duplication

The proposed regulation does not duplicate or conflict with any state or federal requirements.

#### 8. Alternatives

The Chair is required to set fee schedules by statute. The Chair considered increasing the E&M services by a smaller or greater amount. The Chair determined that 30% was the optimal increase for next year based on a balance of trying to keep workers' compensation rates reasonable while also ensuring that medical providers are paid a fair rate and continue to treat injured workers.

One alternative would be to continue to have chiropractors bill for an office visit rather than for the modalities performed during such visit. However, chiropractors would not be reporting the modalities performed and as the Medical Treatment Guidelines recommend treatment by modality, it would be impossible to track compliance with the guidelines. The Chair could have imposed an alternative reporting mechanism for treatment modalities that would not be tied to the reimbursement rate, but it would create additional burdens on both provider and payer.

Another alternative would have been to move to a relative value based fee schedule, such as Medicare, and increase reimbursements. Such a move requires careful study and consideration to ensure it provides appropriate reimbursements and its effects on the entire workers' compensation system. Over the next 12 to 18 months the entire fee schedule will be reviewed to determine the proper reimbursement to attract highly qualified providers and promote appropriate care of injured workers, without raising workers' compensation insurance rates to unreasonable levels. At this time the Chair does not have the information necessary to make such a change.

#### 9. Federal Standards

There are no federal standards applicable to reimbursement amounts and ground rules for services to treat injuries and illnesses covered by the New York WCL. The Board's medical, podiatric, psychological, and chiropractic fee schedules rely on CPT codes, which are the standard medical procedure codes used for health care fee schedules. Medicare uses the Healthcare Common Procedure Coding System (HCPCS), which is also based on CPT codes. The actual reimbursement levels and the ground rules for calculating such fees are not identical to Medicare or any other system.

#### 10. Compliance Schedule

The revised fee schedule will go into effect December 1, 2010.

### **Revised Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

Small businesses and local governments whose only involvement with the workers' compensation system is that they are employers and are required to have coverage will not be affected by this rule. Small businesses and local governments are required to maintain workers' compensation coverage, either through an insurance policy or by self-insurance, as either a stand-alone self-insured employer or as a member of a group self-insurance trust. Generally, small businesses cannot afford to meet the requirements to be individually self-insured but rather purchase workers' compensation coverage from the State Insurance Fund or a private insurance carrier authorized to write workers' compensation insurance in New York or join a group self-insured trust. It is the entity providing coverage for the small employer that must comply with all of the provisions of this rulemaking, not the covered employer. Group self-insured trusts and third party administrators hired by private insurance carriers and group self-insured trusts may be small businesses impacted by this regulation. Medical Providers authorized by the Chair to treat claimants, some of whom may be small businesses, will be affected by this rule. The Chair authorizes over 20,000 medical providers to treat claimants.

The State Insurance Fund and all private insurance carriers are not small businesses and therefore the effect on them is not discussed in this document.

Approximately 2,511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Those local governments who are not self-insured and do not own and/or operate a hospital will not be affected by this rule.

The proposed rule updates the medical, podiatric, psychological, and chiropractic fee schedules ("fee schedules") that apply to all medical providers, insurers, self-insured employers, group self-insurance trusts, and third-party administrators. The updated fee schedules accomplish the following: (1) increase the fees for Evaluation and Management (E&M) service by 30%; (2) changing the Chiropractic fee schedule to allow for separate billing of treatment modalities rather than treating such treatment as part of E&M services; (3) modifying ground rules to be consistent with the Medical Treatment Guidelines that are expected to be adopted in October 2010; (4) adjusting for new, modified, and deleted Current Procedural Terminology (CPT) codes; and (5) minor typographical clarifications to the previous fee schedules.

## 2. Compliance Requirements:

The workers' compensation fee schedules are mandatory for all medical providers, insurance carriers, self-insured employers, group self-insurance trusts, and third-party administrators. Medical providers will be required to bill in accordance with the updated fee schedules and payers will be required to pay according to them. Chiropractors will now be required to bill by modalities.

## 3. Professional Services:

It is not expected that the updated fee schedules will create any additional need for professional services. Many self-insured local governments and group self-insurance trusts already utilize third party administrators or other professional services to assist with the calculation of payments under the fee schedules. The updated fee schedules do not significantly change the nature of the medical fee schedules and do not impose any greater need for professional services.

## 4. Compliance Costs:

The updated fee schedules entail some additional costs for medical services in the form of higher Evaluation and Management and modified chiropractic fees. The additional costs are expected to be more than offset by savings from other workers' compensation medical reforms, including medical treatment guidelines and diagnostic imaging networks. In addition, competitive reimbursement rates are essential to attracting high quality medical providers, which are necessary to prevent over utilization of medical care and speed return to work.

The changes to the Chiropractic fee schedule allow chiropractors to bill for the modalities performed during the visit, up to a cap set in the fee schedule. During a visit a chiropractor will usually perform more than one modality. Under the new fee schedule the chiropractor will bill for each modality up to the set caps which will result in higher maximum payments for a particular date of service, depending on the treatment modalities that are used. The maximum rates range between 30% and 42% higher than the corresponding rates in the previous fee schedule, which only allowed for billing for an office visit. The medical treatment guidelines include limits on chiropractic treatments that are expected to reduce the overall system cost of chiropractic care, notwithstanding the fee increases.

Because the Insurance Law applies the workers' compensation fee schedules to no-fault insurance medical claims, the increase in the E&M fees and the change to the Chiropractic Fee Schedule to allow chiropractors to bill for treatment modalities rather than just a global office fee may increase the no-fault portion of automobile premiums. This is due to the fact that the cost reduction measures implemented for workers' compensation do not apply to no-fault claims. There is no estimate of the impact on no-fault costs.

Medical providers, self-insured employers, insurance carriers, the State Insurance Fund, and third-party administrators will have to purchase the new fee schedules from Ingenix. The cost for all of the new fee schedules in hard copy is \$85.00 plus the cost of shipping and tax, while the cost for the individual version of the chiropractic, podiatry, or psychology fee schedule will cost \$25.00 plus the cost of shipping and tax for a hard copy version. The fee schedules can also be purchased on CD for \$400.00 plus the cost of shipping and tax.

## 5. Economic and Technological Feasibility:

There are no additional implementation or technology costs to comply with this rule. Small businesses and local governments are already subject to the fee schedules and the changes to the fee schedules do not impose any significant implementation or technological burdens. Ingenix produces the workers' compensation fee schedule for the Board and will have updated fee schedules available for purchase before the effective date.

## 6. Minimizing Adverse Impact:

The Chair considered increasing the reimbursement for E&M services by a smaller and greater amount. The Chair determined that 30% was the optimal increase for next year based on a balance of trying to keep workers' compensation rates in check while also ensuring that medical providers are paid a fair rate and continue to treat injured workers.

Due to the provisions in the medical treatment guidelines, the Chiropractic Fee Schedule must be modified to alter the manner in which chiropractors bill for their services. Allowing chiropractors to bill by treatment modality enables providers and payers to effectively track compliance with the treatment guidelines. The Chair could have imposed an alternative reporting mechanism for treatment modalities that would not be tied to the reimbursement rate, but it would create additional burdens on both provider and payer.

The proposed regulations should have no adverse impact on medical providers, self-insured employers, group self-insured trusts, and third-party administrators who are small businesses or local governments. The additional cost associated with higher reimbursement rates should be more than offset by the elimination of unnecessary and ineffective treatment as a result of the medical treatment guidelines. Also, competitive reimbursement rates are necessary to retain and attract high quality providers who are cost-efficient because they assist injured workers to recover and return

to work without prescribing unnecessary treatment for their own personal gain.

## 7. Small Business and Local Government Participation:

The Chair solicited input from the Business Council of the State of New York (BCSNY), the state AFL-CIO, the Medical Society of the State of New York (MSSNY), the New York State Chiropractic Association (NYSCA). Many of the members of the MSSNY, BCSNY, and NYSCA are small businesses. The Chair also solicited input from the New York State Association of Counties (NYSAC), Association of Towns of the State of New York, New York Conference of Mayors (NYCOM), New York State Association of Self-Insured Counties (NYSASIC), and New York City Law Department.

## Revised Rural Area Flexibility Analysis

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

This rule incorporating the medical, podiatric, psychological, and chiropractic fee schedules ("fee schedules") will apply to all medical providers authorized to treat workers' compensation claimants, insurance carriers, the State Insurance Fund, self-insured employers, self-insured local governments, group self-insured trusts, and third party administrators across the state. These individuals and entities exist and do business in all rural areas of the state.

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

The workers' compensation fee schedules are mandatory for all medical providers, insurance carriers, self-insured employers, group self-insurance trusts, and third-party administrators, including those in rural areas. Medical providers will be required to bill in accordance with the updated fee schedules and payers will be required to pay according to them. Chiropractors will now be required to bill by modalities. The new fee schedules do not create any new reporting, recordkeeping or other compliance requirements.

### 3. Costs:

The fee schedules break the state into four regions. The reimbursement rate is different for each region. The rural areas of the state are in Region I which provides the lowest reimbursement, while NYC comprises Region IV which provides the highest reimbursement. The proposed regulations raise the reimbursement level for Evaluation and Management (E&M) services 30%, including those provided in rural areas, and change the reimbursement methodology for chiropractic services. The additional costs are estimated at approximately \$45 million per year and are expected to be more than offset by savings from additional workers' compensation medical reforms, including medical treatment guidelines and diagnostic imaging networks.

The proposed regulations would modify the billing and reimbursement methodology for chiropractic services, including those in rural areas. Currently, chiropractors bill by office visit and not by the treatment modalities performed. The new Chiropractic Fee Schedule allows chiropractors bill for each modality performed, up to the set cap. This change increases the maximum reimbursement for a single office visit by 30-42%, depending on the type of visit (initial evaluation, reevaluation, or treatment only), but will be more than offset by the reduction in unnecessary chiropractic services as a result of the medical treatment guidelines.

Because the Insurance Law applies the workers' compensation fee schedules to no-fault insurance medical claims, the increase in the E&M fees and the change to the Chiropractic Fee Schedule to allow chiropractors to bill for treatment modalities rather than just a global office fee may increase the no-fault portion of automobile premiums. This is due to the fact that the cost reduction measures implemented for workers' compensation do not apply to no-fault claims. There is no estimate of the impact on no-fault costs.

Medical providers, self-insured employers, insurance carriers, the State Insurance Fund, and third-party administrators, including those in rural areas, will have to purchase the new fee schedules from Ingenix. The cost for all of the new fee schedules in hard copy is \$85.00 plus the cost of shipping and tax, while the cost for the individual version of the chiropractic, podiatry, or psychology fee schedule will cost \$25.00 plus the cost of shipping and tax for a hard copy version. The fee schedules can also be purchased on CD for \$400.00 plus the cost of shipping and tax.

### 4. Minimizing adverse impact:

The Chair considered increasing the reimbursement for E&M services by a smaller and greater amount. The Chair determined that 30% was the optimal increase for next year based on a balance of trying to keep workers' compensation rates in check while also ensuring that medical providers are paid a fair rate and continue to treat injured workers. The 30% increase is the same across all of the state, including rural areas. The Chair did not consider increasing the reimbursement for E&M by different percentages due to location because the fee schedules are already divided into four regions with greater reimbursements for suburban and urban areas.

Due to the provisions in the medical treatment guidelines, the Chiropractic Fee Schedule must be modified to alter the manner in which

chiropractors bill for their services. Allowing chiropractors to bill by treatment modality enables providers and payers to effectively track compliance with the treatment guidelines. The Chair could have imposed an alternative reporting mechanism for treatment modalities that would not be tied to the reimbursement rate, but it would create additional burdens on both provider and payer.

The proposed regulations should have no adverse impact on claimants, carriers, self-insured employers, and medical providers in any part of the state, including rural areas. The additional cost associated with higher reimbursement rates should be more than offset by the elimination of unnecessary and ineffective treatment as a result of the medical treatment guidelines. Also, competitive reimbursement rates are necessary to retain and attract high quality providers who are cost-efficient because they assist injured workers to recover and return to work without prescribing unnecessary treatment for their own personal gain.

#### 5. Rural area participation:

The Chair solicited input from the Medical Society of the State of New York (MSSNY) and the New York State Chiropractic Association (NYSAC). Both organizations have members all across the state, including rural areas. MSSNY has indicated that an E&M increase is critical to retaining quality medical providers, particularly in rural areas. The Chair also sought input from the Business Council of the State of New York (BCSNY) and the state AFL-CIO, both of which represent organizations and members in rural areas. Finally, the Chair solicited input from the New York State Association of Counties (NYSAC), Association of Towns of the State of New York, New York Conference of Mayors (NYCOM), and New York State Association of Self-Insured Counties (NYSASIC), which have members in rural areas of the state.

#### Assessment of Public Comment

The Chair and Board received sixteen formal written comments from associations, practitioners, insurers, and others.

#### COMMENT:

One comment asks if the relative value unit (RVU) limit added to the Chiropractic Fee Schedule (CFS) applies regardless of the number of providers treating the claimant on a given date of service.

#### RESPONSE:

The proposed changes to the CFS will limit the number of relative value units (RVUs) a chiropractor can bill in one visit. However, pursuant to Part 324 of Title 12 NYCRR which will take effect for dates of service on and after December 1, 2010, chiropractors must treat injuries to the neck and mid and low back according to the treatment guidelines for those body parts, which set the number of manipulations and modalities for particular injuries to the neck and back. If a claimant is treating with a chiropractor and a physical therapist and they both bill the same CPT for modalities to the same body part for the same day, the insurance carrier is not required to pay both bills.

#### COMMENT:

Another comment asked if the Medical Treatment Guidelines referenced in the Ground Rules to the proposed fee schedules will be adopted for claims filed under the No-Fault law.

#### RESPONSE:

The Medical Treatment Guidelines were adopted by the Chair who does not have any jurisdiction over the No-Fault motor vehicle law, so the guidelines will not apply to No-Fault claims.

#### COMMENT:

The members of the Workers' Compensation Psychology Practice Committee, the New York State Association of Neuropsychology, Inc., and five psychologists note that while the new fee schedule increases the reimbursement for Evaluation and Management (E&M) codes by 30% for medical providers, this increase does not apply to psychologists. They ask that a 30% increase be applied to the codes used by psychologists.

#### RESPONSE:

The 30% increase in E&M code reimbursement does not apply to the codes in the Psychology Fee Schedule used by psychologists at this time. The Chair is embarking on a two phase process to revise all of the fee schedules. In the first year, through this regulation, the Chair is addressing a critical problem by increasing the reimbursement for E&M for medical providers by 30%. Specifically, the Chair is working to retain and attract physicians who provide the evaluation and management of the care provided to claimants. Since 2008 a number of physicians have resigned their authorization due to the lack of an increase in the Medical Fee Schedule since 1997 and changes to the medical reporting forms they must complete to require more information. In addition, for dates of service on and after December 1, 2010, any physician treating a claimant for an injury to the mid and low back, neck, knee, or shoulder must follow mandatory treatment guidelines. While psychologists have not seen an increase in their evaluation fees at this time, the psychologist reporting forms have not been changed to require the additional information and the treatment they provide is not, for the most part, governed by the treatment guidelines. Over the next year, the second phase will occur, during which all of the

fee schedules will be reviewed and revised. At that time appropriate changes in the reimbursement for psychology treatment will be adopted.

#### COMMENT:

One commentator sent comments and questions from the perspective of a no-fault carrier. The first questions posed are whether a chiropractor can legally dispense supplements in New York and why is the 72 hour limitation being removed. The second questions are why is the timeframe and frequency limitation being removed from the Ground Rules and what is the average difference in cost between CPT codes 99214 and 99212. The third questions are why are CFS Radiology Ground Rules 3, 5 and 7 being removed and whether the radiology rules in the Medical Fee Schedule will apply to chiropractors. The fourth question is whether CPT 98943 is now valid. The fifth questions relate to the CPT codes for evaluations and re-evaluations, whether chiropractic manipulations are always included in the RVU limitations in the Ground Rule and if not, why and where are they not included, whether the RVU limits apply regardless of the number and type of treating providers, and whether a physical therapist will be reimbursed for additional RVUs for CPT codes that chiropractors cannot perform if the chiropractor is being reimbursed for the maximum number of RVUs.

#### RESPONSE:

The pharmacy portion of the CFS was removed because a chiropractor cannot prescribe medication. The timeframe frequency limitations have been changed in accordance with the Medical Treatment Guidelines and the General Principles of the Medical Treatment Guidelines. CPT code 99212 reflects an approximately 46% reduction in reimbursement as compared to CPT code 99214. The reduction is warranted because chiropractors are able to bill separately for individual treatment that is provided as part of the same date of service as the reevaluation (99214), up to a limit of 11 RVUs. This is consistent with how physical and occupational therapists bill and how chiropractors bill in most other jurisdictions. The CFS Radiology Ground Rule 3 was removed because chiropractors cannot inject medication so this ground rule is not necessary, and CFS Radiology Ground Rules 5 and 7 were removed because chiropractors cannot inject medication or perform invasive procedures so there is no need for chiropractors to charge for trays or supplies related to radiology. CPT code 98943 (Chiropractic manipulation - extra spinal, one or more regions) is not a valid code in the new fee schedule. The forthcoming CFS clearly lists the five spinal regions for chiropractic manipulation therapy with no allowance for extra spinal chiropractic manipulation therapy. It was determined that there was no need to include CPT code 98943 as these services are not allowed. CPT codes 99201 through 99204 are the codes that constitute initial evaluations and only CPT code 99212 can be used for re-evaluations as CPT code 99213 is not in the CFS. CPT codes 98940 through 98942 for chiropractic manipulation therapy are subject to the maximum RVU limitation and the RVU limits do not apply regardless of the number and type of treating providers. Finally, if a chiropractor performs 8 RVUs of the 16 CPT codes he/she can perform and a physical therapist performs additional RVUs for CPT codes that cannot be performed by a chiropractor on the same day, then both can be paid as they provided different treatment.

#### COMMENT:

Two associations commented together and stated additional change to the CFS is needed to address the disparate treatment of chiropractors. The comments identify a two-fold discrepancy in the fees. First, the conversion factor for chiropractors is lower than the conversion factor for physical therapists. The comments state this discrepancy is inconsistent with the relative value of the services rendered and with the level of training, office overhead, and liability insurance involved. The second discrepancy is that reimbursement for a level of service covered by CPT codes 9894\_\_\_ is lower than under the current fee schedule. The comments propose that a change is needed to the proposed conversion factor to correct the inequities in the system and to adequately represent the true level of service. Finally, the comments request that CPT 97140 be added to the fee schedule as it is part of the fee schedules used by physical therapists and physicians.

#### RESPONSE:

As noted previously in this document, the Chair will be undertaking a complete review of all of the fee schedules and making appropriate revisions. The discrepancies noted in the above comments will be reviewed at that time and changes deemed appropriate to the Chair, with the advice and recommendation of the Medical Director and his staff, will be made. Finally, drafts of the new CFS were shared with one of the associations commenting, and the inclusion of this code was not raised. At this point, since there are other codes that can be used, as noted in the comments, there is no need to revise the fee schedule at this late date. However, this code will be reviewed for inclusion in the next fee schedule.

#### COMMENT:

One association for insurers submitted comments detailing the association's concerns with the impact the fee schedule changes will have

on automobile insurance. The association notes that in its view New York's no-fault system is broken and needs to be reformed as it is filled with fraud and abuse. It is the association's belief that much of the fraud and abuse is perpetrated by medical providers. The increase in fees raises concerns that in addition to raising auto insurance costs, increasing the fees may make the no-fault system more attractive to those who commit fraud, increasing the problems. Finally, the association notes that the medical treatment guidelines, diagnostic testing networks, and changes to reporting frequency do not apply to no-fault and will provide any savings to offset the increases.

**RESPONSE:**

The workers' compensation fee schedules apply to New York's no-fault system pursuant to Insurance Law Article 51. The Chair and Board have no jurisdiction over or direct involvement in the no-fault system. Actually, the only connection is the Insurance law provision providing that the fee schedules adopted by the Chair apply to no-fault claims. The Chair and Board are responsible for the workers' compensation system. The 30% increase is necessary to reverse the resignations of authorized physicians and attract quality physicians to treat claimants. The other changes to the fee schedules, including the change to the CFS so chiropractors bill by modality rather than a global office fee, are necessary to properly implement the medical treatment guidelines and eliminate inconsistencies. While these changes may increase medical costs, the Chair cannot forgo these changes to benefit the no-fault system at the expense of claimants. The Chair's statutory authority and direction in creating the fee schedules does not include consideration of the no-fault system. Further, the issue of no-fault reform and fraud has been the subject of major regulatory changes, task forces, and legislation for over ten years without any improvement. The Chair cannot wait for the no-fault system to be fixed before addressing significant and immediate problems in the workers' compensation system.

**COMMENT:**

One commentator requests that CPT codes 99213 and 99214 be added to the CFS.

**RESPONSE:**

Due to the proposed changes in the CFS, chiropractors will be able to bill for both the E&M component and the treatment component of the services provided during a visit. The ability to bill for both components separately is not available in the current fee schedule. Currently chiropractors bill using codes 99213 and 99214 to cover both the E&M and treatment components of the service provided during a visit. Further, re-evaluations will be required more frequently pursuant to the medical treatment guidelines so the 99212 code was deemed to be sufficient.

**COMMENT:**

One insurer wrote about ambiguities that it felt would result in excessive billing and litigation affecting not only workers' compensation costs, but no-fault insurance costs. This commentator approves of the addition of the term "relative value unit" to Ground Rule 11 of the physical medicine section of the Medical Fee Schedule. However, it has two concerns with the proposed changes to the CFS along with one other concern that impacts both the Medical Fee Schedule and CFS. The first concern with the CFS is that the addition of the 13.5 RVU and 11 RVU limitations for dates when modalities and evaluations are performed is unclear because the physical therapy evaluation codes are not being added to this fee schedule. The commentator recommends that an 8 RVU daily limit apply when a Chiropractor bills for services rendered. The second concern is that the language in the physical medicine ground rules should be modified to read "procedures and/or modalities" because if the rule only states modalities it could be interpreted that the physical therapy codes that do not use that work are not included in the daily limit. The final concern is that CPT code 97799 (unlisted physical medicine/rehabilitation service or procedure) should be added to the daily limit rules in the Medical Fee Schedule, Physical Medicine section and the CFS.

**RESPONSE:**

With respect to the first concern, the frequency of re-evaluations is directed by the General Principles to the Medical Treatment Guidelines for the neck and mid and low back. Physical Medicine Ground Rule 2 of the CFS limits when chiropractors can bill for evaluations and re-evaluations and CPT codes 99201-99204 all refer to evaluation of a new patient. As chiropractors only treat the spine there are medical treatment guidelines for all of the treatment chiropractors provide. In response to the second concern, the language in the CFS, Physical Medicine Section, Ground Rule 2 regarding limiting the RVUs to 13.5, 11 or 8 clearly states "including treatment." Though the specific language requested is not included, the ground rule is sufficiently clear and it is not necessary to make this change. Finally, with respect to the third concern, CPT code 97799 is not included in the list of codes subject to the RVU limitations in the current Medical Fee Schedule, Physical Medicine Section and this has not been an issue. Because this has not been an issue for the Chair or Board, modification is not warranted at this time.

**COMMENT:**

One comment opposes the proposed new fee schedules with the 30% increase but would support a reasonable incremental increase. The commentator believes an increase of this size will impose significant cost on employers through increased workers' compensation premiums. It is the view of this commentator that additional burdens should not be placed on businesses, as they are leaving New York, without an offset elsewhere.

**RESPONSE:**

As set forth in the impact documents filed with the Notice of Proposed Rule Making, the increase in the fee schedules will be offset. The Chair has adopted Medical Treatment Guidelines which become effective for dates of treatment on and after December 1, 2010, the same date as this rule is proposed to be effective. The costs due to the fee schedules increases are expected to be more than offset by cost reductions from reduced medical costs elsewhere in the system as a result of a number of changes including diagnostic treatment networks, medical treatment guidelines, and changes to the frequency of medical reports required for ongoing disability payments. Further, due to the current situation, as stated above, an incremental approach would not provide the increase necessary to ensure access to care. Incremental increases were considered but were rejected for this reason.