

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Species of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk to Infestation by the Emerald Ash Borer

I.D. No. AAM-01-11-00014-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 141; and addition of new Part 141 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Species of ash trees, parts thereof and products and debris therefrom which are at risk to infestation by the emerald ash borer.

Purpose: Establish a extend the emerald ash borer quarantine to prevent the further spread of this beetle to other areas.

Public hearing(s) will be held at: 11:00 a.m., March 22, 2011 at Department of Agriculture and Markets, 10B Airline Dr., 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.

Text of proposed rule: Part 141 of 1 NYCRR is repealed and a new Part 141 is added thereto, to read as follows:

Part 141

Control of the Emerald Ash Borer

(Statutory Authority: Agriculture and Markets Law sections 18, 164 and 167)

Section 141.1. Definitions

For the purpose of this Part, the following words, names and terms shall be construed respectively, to mean:

(a) *Certificate of inspection.* A valid form certifying the eligibility of products for intrastate movement under the requirements of this Part.

(b) *Compliance agreement.* An approved document, executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

(c) *Emerald Ash Borer.* The insect known as the Emerald Ash Borer, *Agrilus planipennis*, in any stage of development.

(d) *Firewood.* This term applies to any kindling, logs, chunkwood, boards, timbers or other wood cut and split, or not split, into a form and size appropriate for use as fuel.

(e) *Infestation.* This term refers to the presence of the Emerald Ash Borer in any life stage or as determined by evidence of activity of one or more of the life stages.

(f) *Inspector.* An inspector of the New York State Department of Agriculture and Markets, or cooperater from the New York State Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA), when authorized to act in that capacity.

(g) *Limited permit.* A valid form authorizing the restricted movement of regulated articles from a quarantine area to a specified destination for specified processing, handling or utilization.

(h) *Moved; movement.* Shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved into or through any area of the State.

(i) *Nursery stock.* This term applies to and includes all trees, shrubs, plants and vines and parts thereof.

(j) *Quarantine Area.* This term applies to Niagara, Erie, Orleans, Genessee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties.

(k) *Regulated article.* This terms applies to firewood from any species of tree, and any trees and all host material, living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of the following genera: White Ash (*Fraxinus Americana*); Green Ash *Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*), and any wood material that is commingled and otherwise indistinguishable from the regulated article.

Section 141.2. Quarantine area.

Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within Niagara, Erie, Orleans, Genessee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaragus Counties to any point outside of said counties, except in accordance with this Part.

Section 141.3. Regulated articles.

(a) Prohibited movement.

(1) The intrastate movement of living Emerald Ash Borer in any stage of development, whether moved independent of or in connection with any other article, except as provided in section 141.9 of this Part.

(2) The intrastate movement of nursery stock from the quarantine area to any point outside the quarantine area.

(3) The intrastate movement of regulated articles other than nursery stock from the quarantine area to any point outside the quarantine area, except as provided in section 141.5 of this Part.

(b) Regulated movement.

(1) Regulated articles shall not be moved from the quarantine area to any point outside the quarantine area, except under a limited permit or unless accompanied by a certificate of inspection indicating freedom from infestation.

(2) Regulated articles may be moved through the quarantine area if the regulated articles originated outside the regulated area and:

(i) the points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) the regulated articles, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 degrees F or higher, are moved in an enclosed vehicle or are completely covered to prevent access by the Emerald Ash Borer; and

(iii) the regulated articles are moved directly through the quarantined area without stopping, except for refueling and traffic conditions, or have been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the Emerald Ash Borer.

Section 141.4. Conditions governing the intrastate movement of regulated articles

(a) Movement from quarantine area. Unless exempted by administrative instructions of the Commissioner of Agriculture and Markets of the State of New York, regulated articles shall not be moved intrastate from the quarantine area to or through any point outside thereof unless accompanied by a valid certificate or limited permit issued by an inspector, authorizing such movement.

Section 141.5. Conditions governing the issuance of certificates and permits

(a) Certificates of inspection. Certificates of inspection may be issued for the intrastate movement of regulated articles when they have been inspected and determined to have been:

(1) treated, fumigated, or processed by approved methods; or

(2) grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby, provided that subsequent to certification, the regulated articles shall be loaded, handled, and shipped under such protection and safeguards against reinfestation as are required by the inspector.

(b) Limited permits. Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements to maintain such sanitation safeguards against the establishment and spread of infestation and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) Cancellation of certificates of inspection or limited permits. Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his or her judgment the further use of such certificates or permits might result in the dissemination of infestation.

Section 141.6. Inspection and disposition of shipments

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the quarantine area, which contains, or which the inspector has probable cause to believe may contain, infestations of the Emerald Ash Borer, or articles or things regulated under this quarantine, may be examined by an inspector at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he deems necessary to eliminate the danger of dissemination of the Emerald Ash Borer. If found to be infested, such articles or things must be free of infestation without cost to the State except that for inspection and supervision.

Section 141.7. Assembly of regulated articles for inspection

(a) Persons intending to move intrastate any regulated articles shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

Section 141.8. Marking requirements

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with these regulations: provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

Section 141.9. Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

Text of proposed rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture & Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

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

Public comment will be received until: Five days after the last scheduled public hearing.

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed regulations accord with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Emerald Ash Borer (EAB).

3. Needs and benefits:

The proposal will repeal Part 141 of 1 NYCRR and add a new Part 141 which will establish an EAB quarantine in the seven counties where EAB has been detected (i.e. Cattaraugus, Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties), as well as in the following 11 counties: Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties. Each of these additional 11 counties will serve as a buffer between the seven counties with known infestations and those which have no known infestations.

On August 9, 2010, the Pennsylvania Department of Agriculture expanded the Commonwealth's EAB quarantine by adding 31 counties to the 12 counties currently under quarantine. The quarantine in Pennsylvania now includes the 42 western counties of the commonwealth. This is significant since movement of wood products occurs frequently across the New York - Pennsylvania border and although Pennsylvania's action is not coordinated with New York's, it strongly correlates with the Department's proposed quarantine.

The Emerald Ash Borer, *Agrilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. It was

first discovered in Michigan in June 2002, and has since spread to at least twelve other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. More recently, additional detections have been confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010.

EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years.

The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color, hence its name. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*).

Since the EAB is not considered established in the State, moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

The proposed regulations would prohibit the movement of any article infested with EAB, regardless of where the articles are located in the State. Otherwise, only the movement of regulated articles, i.e. trees, firewood and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of the White Ash, Green Ash, Black Ash and Blue Ash genera susceptible to the pest, is restricted under the rule. The extent of the restrictions depends on the regulated articles in question.

In the case of nursery stock, the proposed regulations would prohibit the following: the intrastate movement of these articles from the quarantine area to any point outside the quarantine area.

In the case of all other regulated articles, the proposed regulations would prohibit the following: the intrastate movement of these articles from the quarantine area to any point outside the quarantine area, except under a limited permit or unless accompanied by a certificate of inspection indicating freedom of infestation.

In the case of all regulated articles, the proposal would permit movement of these articles through the quarantine area if the regulated articles originate outside the quarantine area and the point of origin of the regulated articles is on the waybill or bill of lading; a certificate of inspection accompanies the regulated articles; the vehicle moving the regulated articles does not stop in the quarantine area except for refueling or traffic conditions; and the vehicle moving the regulated articles during the period May 1 through August 31 is either an enclosed vehicle or is completely covered by canvas, plastic or closely woven cloth.

Under the proposed regulations, certificates of inspection may be issued when the regulated articles have been inspected and found to be free of infestation or have been grown, produced, stored or handled in such a manner that, in the judgment of the inspector, no infection is present in the articles.

Limited permits may be issued for the movement of noncertified regulated articles from the quarantine area to a specified destination outside the quarantine area for specified processing, handling or utilization.

Under the proposed rule, certificates of inspection and limited permits may be withdrawn or canceled whenever an inspector determines that further use of such certificate or permit might result in the spread of infestation.

The proposed regulations would also provide that persons shipping, transporting, or receiving regulated articles may be required to enter into written compliance agreements. These agreements would allow the shipment of these articles without a state or federal inspection. They are entered into by the Department with persons who are determined to be capable of complying with the requirements necessary to insure that EAB is not spread.

The proposal is necessary, since the effective control of the EAB within the limited areas of the State near and where this insect has been found is important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

4. Costs:

(a) Costs to the State government: None. Annual surveys would be required to monitor the natural spread of the beetle at a cost of \$200,000 to \$250,000. However, it is anticipated that this survey program would be funded by the United States Department of Agriculture (USDA) through a continuing cooperative agreement with the New York State Department of Environmental Conservation (DEC).

Additional work will be required of Department staff to inspect regulated parties and implement compliance agreements. The Department is working with USDA-APHIS to develop a cooperative agreement to fund and support the additional regulatory activity necessitated by the proposed rule.

(b) Costs to local government: None, as a result of the quarantine. Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the proposed rule does not require local governments to remove the trees from the quarantine area. Accordingly, local governments within the quarantine area will not incur any additional expenses due to the quarantine.

(c) Costs to private regulated parties: There are 2,768 licensed nursery growers and/or nursery dealers in the quarantine counties which would be affected by the quarantine set forth in the proposed regulations. However, it is anticipated that fewer than half of these establishments carry regulated articles.

There is no approved protocol for ash nursery stock. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantine area established under the proposed regulations, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option of leaving host materials within the quarantine area or transporting them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

(ii) Additional work will be required of Department staff to inspect regulated parties and implement compliance agreements. The Department is working with USDA-APHIS to develop a cooperative agreement to fund and support the additional regulatory activity required under the proposed rule.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the quarantine area established by the proposal would have to be accompanied by a state or federal certificate of inspection and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The alternative of no action was considered. However, that option was not feasible, given the threat EAB poses to the State's forests and forest-based industries. Additionally, the option of establishing a quarantine throughout the entire state was also considered, but rejected as too onerous on regulated parties in counties near or where there has been no finding of the pest. However, the failure of the State to establish the quarantine

in and near the counties where EAB has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of EAB that could result from the unrestricted movement of White Ash, Green Ash, Black Ash and Blue Ash from the quarantine areas. In light of these factors, there does not appear to be any viable alternative to the quarantine set forth in this proposal.

9. Federal standards:

The proposed regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the proposed regulations immediately.

Regulatory Flexibility Analysis

1. Effect on small businesses:

The small businesses affected by the proposed regulations establishing an Emerald Ash Borer (EAB) quarantine in Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 2,768 licensed nursery growers and/or dealers within these counties. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

2. Compliance requirements:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the proposal would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

3. Professional services:

In order to comply with the proposed regulations, small businesses shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department or the United States Department of Agriculture (USDA).

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: None.

(b) Annual cost for continuing compliance with the rule: There are 2,768 licensed growers and/or dealers which would be affected by the quarantine set forth in the regulations. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants.

According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting other types of host materials (e.g. firewood and forest products) from the quarantine area established under the proposed regulations, other than pursuant to compliance agreement, would require a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

5. Minimizing adverse impact:

The Department has designed the proposed rule to minimize adverse economic impact on small businesses. This is done by limiting the quarantine area to only those parts of New York State near or where EAB has been detected; by limiting the inspection and permit requirements to only those necessary to detect the presence of EAB; and by preventing the movement of host materials from the quarantine area. As set forth in the regulatory impact statement, the proposed regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the regulations minimize adverse economic impact as much as is currently possible.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

6. Small business and local government participation:

With the discovery of EAB in Cattaraugus County in 2009, The Department had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of the Emerald Ash Borer quarantine.

On June 25, 2009, the Department sent a letter to licensed nursery growers and nursery dealers, providing information regarding the threat the Emerald Ash Borer is posing to the State's ash trees and the State's response to that threat.

On July 9, 2009, the Department hosted an informational meeting on the Emerald Ash Borer and the needs and benefits of a quarantine to control the artificial spread of this pest. Representatives of the Empire State Forrest Products Association, New York State Nursery Landscape Association and New York State Arborist Association attended the meeting on behalf of their constituencies, which are regulated parties. Representatives of DEC and USDA also attended the meeting.

On July 14, 2009, the Empire State Forrest Products Association hosted an informational meeting on the Emerald Ash Borer in Randolph, New York. Approximately 90 people attended this informational meeting. A general public meeting on the Emerald Ash Borer was held following the informational meeting. Approximately 150 people attended the public meeting.

These discussions ultimately resulted in the establishment of an EAB quarantine in Cattaraugus and Chautauqua Counties.

With the discovery of EAB in Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties in 2010, the Department has had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of extending the EAB quarantine.

On August 4, 2010, the Department held an information meeting for regulated and interested parties to share information about EAB detections during July 2010. The meeting involved about 35 individuals representing environmental groups, forest products manufacturers, nursery and landscape businesses, local government, forest landowners and maple producers.

The group heard presentations about current survey, detections and infestation levels discovered during July and early August. A national perspective was provided by USDA- APHIS regarding survey, regulatory, and other control measures being implemented nationally and by other states. The attendees were asked to provide their views regarding what State government should be doing and specifically asked to identify issues related to where to draw lines for quarantine purposes.

There was significant agreement and support for quarantining large blocks of counties. There were strong feelings about the need to avoid gaps in the quarantine area and the resulting economic hardship that might ensue if this were done. Several individuals specifically identified the lines that NSYDAM has determined as appropriate for the quarantine region.

These discussions ultimately resulted in a consensus to establish an EAB quarantine, not only in Cattaraugus and Chautauqua Counties, but in Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties as well.

Outreach efforts will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the proposal by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties

shipping regulated articles (exclusive of nursery stock) from the quarantine area, other than pursuant to a compliance agreement would require an inspection and the issuance of a certificate of inspection. Most shipments, however, would be made pursuant to compliance agreements.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The regulated parties affected by the proposed regulations establishing an Emerald Ash Borer (EAB) quarantine in Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 2,768 licensed nursery growers and/or dealers within these counties. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

Most of these businesses are in rural areas as defined by section 481(7) of the Executive Law.

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

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the proposed rule would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the proposed regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA).

3. Costs:

There are 2,768 licensed nursery growers and/or dealers in the 18 counties which would be affected by the quarantine. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantine area established under the proposed regulations, other than pursuant to compliance agreement, would require a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the proposed regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This is done by limiting the quarantine area to only those parts of New York State near and where the Emerald Ash Borer has been detected; by limiting the inspection and permit requirements to only those necessary to detect the presence of EAB; and by preventing the movement of host materials from the quarantine area. As set forth in the regulatory impact statement, the proposed regulations would provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the proposed regulations were designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

With the discovery of EAB in Cattaraugus County in 2009, The Department had ongoing discussions with representatives of various nurseries,

arborists, the forestry industry, and local governments regarding the general needs and benefits of the Emerald Ash Borer quarantine.

On June 25, 2009, the Department sent a letter to licensed nursery growers and nursery dealers, providing information regarding the threat the Emerald Ash Borer is posing to the State's ash trees and the State's response to that threat.

On July 9, 2009, the Department hosted an informational meeting on the Emerald Ash Borer and the needs and benefits of a quarantine to control the artificial spread of this pest. Representatives of the Empire State Forrest Products Association, New York State Nursery Landscape Association and New York State Arborist Association attended the meeting on behalf of their constituencies, which are regulated parties. Representatives of DEC and USDA also attended the meeting.

On July 14, 2009, the Empire State Forrest Products Association hosted an informational meeting on the Emerald Ash Borer in Randolph, New York. Approximately 90 people attended this informational meeting. A general public meeting on the Emerald Ash Borer was held following the informational meeting. Approximately 150 people attended the public meeting.

These discussions ultimately resulted in the establishment of an EAB quarantine in Cattaraugus and Chautauqua Counties.

With the discovery of EAB in Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties in 2010, the Department has had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of extending the EAB quarantine.

On August 4, 2010, the Department held an information meeting for regulated and interested parties to share information about EAB detections during July 2010. The meeting involved about 35 individuals representing environmental groups, forest products manufacturers, nursery and landscape businesses, local government, forest landowners and maple producers.

The group heard presentations about current survey, detections and infestation levels discovered during July and early August. A national perspective was provided by USDA- APHIS regarding survey, regulatory, and other control measures being implemented nationally and by other states. The attendees were asked to provide their views regarding what State government should be doing and specifically asked to identify issues related to where to draw lines for quarantine purposes.

There was significant agreement and support for quarantining large blocks of counties. There were strong feelings about the need to avoid gaps in the quarantine area and the resulting economic hardship that might ensue if this were done. Several individuals specifically identified the lines that NSYDAM has determined as appropriate for the quarantine region.

These discussions ultimately resulted in a consensus to establish an EAB quarantine, not only in Cattaraugus and Chautauqua Counties, but in Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties as well.

Outreach efforts will continue.

Job Impact Statement

The proposed repeal of Part 141 of 1 NYCRR and the proposed addition of a new Part 141 will not have a substantial adverse impact on jobs or employment opportunities and in fact, will likely aide in protecting jobs and employment opportunities for now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

By establishing the Emerald Ash Borer (EAB) quarantine in Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties, the proposed regulation is designed to prevent the further spread of this pest to other parts of the State. There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in our forests. A spread of the infestation would have very adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of EAB, the proposed rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry and wood-working industries.

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Program

I.D. No. CFS-01-11-00010-EP

Filing No. 1280

Filing Date: 2010-12-17

Effective Date: 2011-04-01

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

Proposed Action: Amendment of Parts 426, 428, 430 and 443; and addition of Part 436 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); and L. 2010, ch. 58, part F

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

Specific reasons underlying the finding of necessity: The regulations must be filed on an emergency basis to prevent the unnecessary delay in the achievement of permanency of youth in foster care. The regulations will enable social services districts to immediately identify potential kinship guardianship arrangements and plan for the discharge of foster children into such arrangements when the act otherwise takes effect on April 1, 2011. This will enable social services districts to enter into kinship guardianship assistance agreements when the act takes effect and will expedite the seeking of court appointment of the relative as the foster child's guardian. This will also enhance the ability of social services districts to take advantage of administrative cost savings that will be experienced by this program.

Subject: Kinship guardianship assistance and non-recurring guardianship expense program.

Purpose: Implement the kinship guardianship assistance and non-recurring guardianship expense programs.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.ocfs.state.ny.us): The regulations amend the title of 18 NYCRR Part 426 and section 426.1 to add references to kinship guardianship assistance and section 101 of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 for federal eligibility purposes.

The regulations amend 18 NYCRR 428.5 to require social services districts and voluntary authorized agencies caring for children in foster care who have the permanency goal of placement with a relative and receipt of kinship guardianship assistance payments to record agency activities in regard to the examination and implementation of that goal.

The regulations amend 18 NYCRR 430.11(c)(4) to require that the notice provided to relatives when a child is removed from his or her home refer to the option of guardianship with kinship guardianship assistance.

The regulations add a new Part 436 to 18 NYCRR (kinship guardianship assistance program) which establishes the standards for the kinship guardianship assistance and non-recurring guardianship expense programs.

The new section 436.1 sets forth the definitions used in the new Part 436.

The new section 436.2 establishes the process and conditions to apply for kinship guardianship assistance. The regulation establishes that the decision whether to approve or deny an application is made by the social services district with care and custody or custody and guardianship of the foster child in question.

The new section 436.3 sets forth the eligibility standards for kinship guardianship assistance payments. Such eligibility standards include: care of a foster child by a fully certified or approved relative foster parent for six consecutive months, criminal and child abuse/maltreatment background checks of the applicant and other adult household members, required foster care court activity, a best interests determination by the social services district in regard to the kinship guardianship arrangement, consultation with the foster child who is 14 years of age or older and such child's consent if the child is 18 years of age or older, the child having a

permanency goal other than return to parent or adoption, and a strong attachment of the child to the relative and a strong commitment of the relative to the child.

The new section 436.4 sets forth the requirement that the prospective kinship guardian and the applicable social services district must enter into a written agreement before the issuance of letters of guardianship. The regulation specifies the terms and conditions of the kinship guardianship assistance agreement and that such agreement must be fully executed before the issuance of letters of guardianship.

The new section 436.5 sets forth the standards for when a kinship guardianship assistance payment must be made, the amount of such payment, who makes the payment, to whom the payment is made and when kinship guardianship assistance payment must end. The regulations also set forth the requirement that the kinship guardian must cooperate with the social services district when questions arise regarding continuation of kinship guardianship payments and the authority of the social services district to terminate kinship guardianship payments if the kinship guardian fails to cooperate.

The new section 436.6 sets forth the requirement that the social services district must annually remind the kinship guardian of the obligation to notify the social services district of any changes in circumstances that would impact ongoing eligibility for kinship guardianship assistance and the kinship guardian's obligation to provide the social services district with education, employment or disability information necessary to justify ongoing kinship guardianship assistance payments for a child who is over the age of 18.

The new section 436.7 sets forth the standards for a non-recurring guardianship expense payment to the kinship guardian in regard to the expenses incurred by the kinship guardian in being appointed guardian of the child. The regulation establishes a maximum onetime payment of \$2,000 per child and specifies those expenses that are considered allowable under this program.

The new section 436.8 addresses how the medical needs of the child will be met after the establishment of the kinship guardianship arrangement under the kinship guardianship assistance program. The regulation sets forth when such needs will be met either by medical assistance, private insurance or medical subsidy.

The new section 436.9 provides that a child who leaves foster care for a relative guardianship arrangement in which kinship guardianship assistance payments are made is eligible for independent living services and/or education and training vouchers under the Title IV-E of the Social Security Act.

The new section 436.10 sets forth the fair hearing rights to which applicants and recipients of kinship guardianship assistance and/or non-recurring guardianship expense payments are entitled.

The new section 436.12 sets forth the standards for claiming by social services districts for costs associated with the kinship guardianship assistance and non-recurring guardianship expense programs.

The regulations amend 18 NYCRR 443.2(e) to provide that training of foster parents must include information on the kinship guardianship assistance and non-recurring guardianship expense programs.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 16, 2011.

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

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

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

Regulatory Impact Statement

1. Statutory authority

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

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

Part F of Chapter 58 of the Laws of 2010 authorizes OCFS to promulgate regulations for the implementation of the kinship guardianship assistance and the non-recurring guardianship expense programs.

2. Legislative objectives

The regulations implement standards required by Part F of Chapter 58 of the Laws of 2010 that created the kinship guardianship assistance and the non-recurring guardianship expense programs. The regulations are also required to implement the standards necessary for New York State to claim funding under Title IV-E of the Social Security Act for such programs, as enacted by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

3. Needs and benefits

The regulations will enhance permanency for foster children who do not have a discharge goal of return to parent or adoption by providing safe permanent placements with relatives who receive financial and medical support for the continued care of a relative child who was in foster care.

The programs supported by the regulations will encourage relatives who are currently serving as foster parents for a related foster child to agree to be a permanent resource for the child. Often, such relatives are reluctant to see the foster care relationship end and to assume legal guardianship because of the corresponding loss of necessary financial and medical support for the child.

The regulations will assist in addressing those cases where return to the parent is not safe or suitable and adoption is also not a viable option. Often, especially with older foster children, the child will not consent to adoption. In some cases, the severing of parental rights required for an adoption with the child remaining with a relative caretaker can cause conflict and confusion for the child and can create issues and pressures within the family. Finally, the process required for the involuntary termination of parental rights is time consuming and uncertain.

The regulations establish requirements for assessing when the child and the prospective relative guardian are eligible for kinship guardianship assistance. Included in the regulatory requirements are that the child has demonstrated a strong attachment to the relative and that the relative has a strong commitment to permanently caring for the child. In addition, the regulations address safety concerns of the child through requirements involving national and New York State criminal history records checks and child abuse/maltreatment clearances.

The regulations assist a relative who is eligible for kinship guardianship assistance by providing up to \$2,000 for payment of the costs directly associated with securing letters of guardianship over the foster child.

The regulations assist children after they leave foster care as part of a kinship guardianship assistance arrangement by making independent living services and education and training vouchers available to both support permanency and to prepare the child to live independently after the termination of the kinship guardianship arrangement.

4. Costs

It is anticipated that implementation of the kinship guardianship assistance and non-recurring guardianship expense programs will result in a gross cost avoidance of \$1,636,000. This fiscal is based on the assumption that 1,000 of the 6,211 eligible youth or about 15 percent of the youth currently in a relative Foster Boarding Home (FBH) would opt to participate in the kinship guardianship assistance program. Current law does not provide for State reimbursement for either kinship guardianship assistance payments or non-recurring guardianship expenses.

- **Kinship Guardianship Assistance Payments:** An eligibility requirement for the kinship guardianship assistance is for the child to be in foster care for at least six consecutive months, and in the home of a fully approved or certified relative foster parent. Because the family would have received a foster care payment while the child resided in the FBH, the foster care payment will become the kinship guardianship assistance payment. Consequently, there will be no additional cost associated with providing kinship guardianship assistance payments.

- **Non-Recurring Guardianship Expense Payments:** The maximum gross cost associated with this fiscal per 1,000 youth for non-recurring guardianship expense payments is \$2,000,000. This would generate \$1,342,000 in Federal reimbursement. The fiscal per 1,000 youth would be a \$658,000 local cost.

- **Administration Cost:** Assuming the average cost of a foster care caseworker is \$44,230 and their average caseload is 12 youths, there is a potential cost avoidance associated with the administrative cost of \$3,686 per youth when a child moves from a foster care placement to a kinship guardianship assistance arrangement. This transfer of placement will no longer require a caseworker to manage the child's foster care case as required in current regulations. Consequently, the transfer of a case from foster care to the kinship guardianship assistance program will reduce the caseworker's caseload. Depending upon the reduction in number of foster care caseloads, such transfers can result in staffing and non personal services (NPS) cost reductions at a district level. The gross cost avoidance associated with this fiscal is \$3,686,000. This fiscal is based on a population of 1,000 youth opting into the kinship guardianship assistance program, and does not account for cost of living adjustments, fringe and/or NPS cost avoidance. Although the administrative costs are reimbursed as part of the Foster Care Block Grant, any administrative savings achieved under the proposed kinship guardianship assistance program will be costs avoidance for the local districts. The administrative cost avoidance to the districts is anticipated at \$2,449,347.

- **Federal Reimbursement:** OCFS determines that 67.1 percent of youth in a relative FBH are Title IV-E eligible. Because administrative costs are reimbursed as part of the Foster Care Block Grant, the administrative cost avoidance to the districts is anticipated at \$2,449,347 net of Federal. Any

administrative savings achieved under the proposed kinship guardianship assistance program will be cost avoidance for the local districts.

- **Educational and Training Vouchers (ETV) and Independent Living (IL) Services:** Youth in foster care who are 16 years of age or older are eligible for ETV and IL services. Under the proposed kinship guardianship assistance program, youth who are over 16 years of age and are in the kinship guardianship assistance program would remain eligible to participate in ETV and IL. Therefore, there would be no additional costs associated with ETV and IL services with the kinship guardianship assistance program.

- **Training:** OCFS' training plan includes the requirements associated with the kinship guardianship assistance program. The estimated cost to the training plan is \$50,000.

The chart below outlines the cost for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Programs.

New Cost	Gross	Federal	State	Local
Kinship Guardianship Subsidy	\$0	\$0	\$0	\$0
Non-Recurring Administration	\$2,000,000	\$1,342,000	\$0	\$658,000
Training	(\$3,686,000)	(\$1,236,653)	\$0	(\$2,449,347)
Total	\$50,000	\$0	\$50,000	\$0
	(\$1,636,000)	(\$105,347)	\$50,000	(\$1,791,347)
On-Going:				
Subsidy	\$0	\$0	\$0	\$0
Administration	(\$3,686,000)	(\$1,236,653)	\$0	(\$2,449,347)
Training	\$50,000	\$0	\$50,000	\$0
Total	(\$3,636,000)	(\$1,236,653)	\$50,000	(\$2,449,347)

Although there are cost associated with modifications to the Welfare Management System (WMS), Benefit Issuance Control System (BICS), Child Care Review Services (CCRS) and CONNECTIONS, there is no need to hire additional state and contract staff to make the necessary modifications. The gross value of the temporary redirection of employees from other systems projects would total \$220,000.

5. Local government mandates

Social services districts will be required to implement and administer the kinship guardianship assistance and non-recurring adoption expense programs enacted by New York State law and corresponding regulations. Implementation will be similar to the current adoption subsidy and non-recurring adoption expense programs with the significant exception that OCFS approval of the kinship guardianship assistance and non-recurring guardianship expense agreement is not required.

6. Paperwork

The regulations require the recording of the actions taken by the social services district or voluntary authorized agency with case management/planning responsibility in meeting the case plan standards referenced the amendments to 18 NYCRR 428.5. Such documentation will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS. A prescribed uniform kinship guardianship assistance and non-recurring guardianship expense agreement will be provided to social services districts by OCFS.

7. Duplication

The regulations do not duplicate other state or federal requirements.

8. Alternatives

Given the mandate imposed by Part F of Chapter 58 of the Laws of 2010 and corresponding federal requirements set forth in the Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that are necessary for New York State to claim federal funding for the programs addressed in the regulations, there is no viable alternative to implementing the regulations.

9. Federal standards

Section 101 of the federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) authorizes states to implement kinship guardianship assistance and non-recurring guardianship expense programs. In order to receive federal reimbursement for such programs, the federal government requires that the implementing state enact standards for the administration of the kinship guardianship assistance and non-recurring guardianship expense programs. The regulations support these federal requirements.

10. Compliance schedule

Compliance with the regulations would take effect April 1, 2011.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments

Social services districts, the St. Regis Mohawk Tribe and voluntary au-

thorized agencies that have contracts with social services districts to provide foster care will be affected by the regulations. There are 58 social services districts and approximately 160 voluntary authorized agencies.

2. Compliance Requirements

The regulations implement standards required by Part F of Chapter 58 of the Laws of 2010 that created the kinship guardianship assistance and the non-recurring guardianship expense programs. The regulations are also required to implement the standards necessary for New York State to claim funding under Title IV-E of the Social Security Act for such programs, as enacted by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

The regulations closely follow the standards set forth in the federal and State statutes noted above.

The regulations implement the kinship guardianship assistance program that provides monthly payments to persons who assume legal guardianship of foster children to whom such persons are related by blood, marriage or adoption. In order for a foster child to be eligible for kinship guardianship assistance, the child must have resided with the relative for six consecutive months; the relative must have been a fully certified or approved foster parent during this six month period; the child's permanency goal may not be not return home or adoption; the child must have a strong attachment to the relative foster parent who also must have a strong commitment to the child; if the child is 14 years of age or older, the child must be consulted regarding the kinship guardianship arrangement and the child must consent to such arrangement if the child is 18 years of age or older; and the child must have met certain judicial milestones in regard to the child's foster care case. In addition, the regulations require that criminal and child abuse/maltreatment clearances have been completed. Finally, the social services district with care and custody or custody and guardianship of the child must determine whether it is in the best interests of the child to enter into the kinship arrangement, including documenting that compelling reasons exist for determining that return home or adoption are not in the best interests of the child.

The regulations set forth standards for applying for kinship guardianship assistance. In addition, the regulations set forth standards relating to the terms and conditions for making kinship guardianship assistance payments. Included within these conditions is the provision that kinship guardianship assistance payments may not be made until the prospective kinship guardian and the applicable social services district have entered into a written kinship guardianship assistance agreement and the Family Court or the Surrogate's Court has issued letters of guardianship of the child to the kinship guardian.

The regulations address the required content of the kinship guardianship agreement that must be entered into by the prospective kinship guardian and the social services district. Such agreement must be in place before the issuance of letters of guardianship by the court. Included in the terms and conditions of such agreement are provisions relating to when and how the kinship guardianship assistance agreement may be modified or must be terminated. The regulations require that the kinship guardian must keep the social services district informed of any change in circumstance that could effect eligibility and mandate that the kinship guardian complete and return an annual certification that relates to continued eligibility. The regulations also set forth the requirement that the kinship guardian cooperate with the social services district when questions arise regarding continued payment of kinship guardianship assistance and the authority of the social services district to terminate kinship guardianship assistance if the kinship guardian fails to cooperate.

The regulations require that when a child is eligible under Title IV-E of the Social Security Act for kinship guardianship assistance, the child is also categorically eligible for medical assistance in accordance with Title XIX of the Social Security Act. If the child is not eligible for medical assistance and the relative guardian is unable to secure affordable and appropriate medical coverage for the child, the child will be eligible for medical subsidy that will reimburse the kinship guardian for medical services provided to the child at the same level as available under the medical assistance program.

The regulations set forth the standards for eligibility for non-recurring guardianship expense payments, including limitations on the amount and allowable categories of expenses.

The regulations afford hearing rights to the applicants and recipients of the kinship guardianship assistance and non-recurring guardianship expenses programs. In addition, the regulations provide that the child who is in a kinship guardianship assistance arrangement is eligible for independent living services and education and training vouchers available under the Social Security Act.

The regulations require social services districts and their contract agencies, for each foster child with a permanency goal of placement with a kinship guardian and receipt of kinship guardianship assistance, to record actions taken in regard to the assessment of the appropriateness of the kinship guardianship arrangement and where appropriate, the efforts made to implement such arrangement.

3. Professional Services

It is anticipated that the requirements imposed by the regulations will be implemented by existing social services district staff.

4. Compliance Costs

It is anticipated that implementation of the kinship guardianship assistance and non-recurring guardianship expense programs will result in a gross cost avoidance of \$1,636,000. This fiscal is based on the assumption that 1,000 of the 6,211 eligible youth or about 15 percent of the youth currently in a relative Foster Boarding Home (FBH) would opt to participate in the kinship guardianship assistance program. Current law does not provide for State reimbursement for either kinship guardianship assistance payments or non-recurring guardianship expenses.

- **Kinship Guardianship Assistance Payments:** An eligibility requirement for kinship guardianship assistance is for the child to be in foster care for at least six consecutive months, and in the home of a fully approved or certified relative foster parent. Because the family would have received a foster care payment while the child resided in the FBH, the foster care payment will become the kinship guardianship assistance payment. Consequently, there will be no additional cost associated with providing kinship guardianship assistance payments.

- **Non-Recurring Guardianship Expense Payments:** The maximum gross cost associated with this fiscal per 1,000 youth for non-recurring guardianship expense payments is \$2,000,000. This would generate \$1,342,000 in Federal reimbursement. The fiscal per 1,000 youth would be a \$658,000 local cost.

- **Administration Cost:** Assuming the average cost of a foster care caseworker is \$44,230 and their average caseload is 12 youths, there is a potential cost avoidance associated with the administrative cost of \$3,686 per youth when a child moves from a foster care placement to a kinship guardianship assistance arrangement. This transfer of placement will no longer require a caseworker to manage the child's foster care case as required in current regulations. Consequently, the transfer of a case from foster care to the kinship guardianship assistance program will reduce the caseworker's caseload. Depending upon the reduction in number of foster care caseloads, such transfers can result in staffing and non personal services (NPS) cost reductions at a district level.

The gross cost avoidance associated with this fiscal is \$3,686,000. This fiscal is based on a population of 1,000 youth opting into the kinship guardianship assistance program, and does not account for cost of living adjustments, fringe and/or NPS cost avoidance. Although the administrative costs are reimbursed as part of the Foster Care Block Grant, any administrative savings achieved under the proposed kinship guardianship assistance program will be costs avoidance for the local districts. The administrative cost avoidance to the districts is anticipated at \$2,449,347.

- **Federal Reimbursement:** OCFS determines that 67.1 percent of youth in a relative FBH are Title IV-E eligible. Because administrative costs are reimbursed as part of the Foster Care Block Grant, the administrative cost avoidance to the districts is anticipated at \$2,449,347 net of Federal. Any administrative savings achieved under the proposed kinship guardianship assistance program will be cost avoidance for the local districts.

- **Educational and Training Vouchers (ETV) and Independent Living (IL) Services:** Youth in foster care who are 16 years of age or older are eligible for ETV and IL services. Under the proposed kinship guardianship assistance program, youth who are over 16 years of age and are in the kinship guardianship assistance program would remain eligible to participate in ETV and IL. Therefore, there would be no additional costs associated with ETV and IL services with the kinship guardianship assistance program.

- **Training:** OCFS' training plan includes the requirements associated with the kinship guardianship assistance program. The estimated cost to the training plan is \$50,000.

The chart below outlines the cost for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Programs.

New Cost	Gross	Federal	State	Local
Kinship Guardian-ship Subsidy	\$0	\$0	\$0	\$0
Non-Recurring Administration	\$2,000,000	\$1,342,000	\$0	\$658,000
Training	(\$3,686,000)	(\$1,236,653)	\$0	(\$2,449,347)
Total	\$50,000		\$50,000	\$0
	(\$1,636,000)	(\$105,347)	\$50,000	(\$1,791,347)
On-Going: Subsidy	\$0	\$0	\$0	\$0

Administration	\$(3,686,000)	\$(1,236,653)	\$0	\$(2,449,347)
Training	\$50,000	\$0	\$50,000	\$0
Total	\$(3,636,000)	\$(1,236,653)	\$50,000	\$(2,449,347)

Although there are cost associated with modifications to the Welfare Management System (WMS), Benefit Issuance Control System (BICS), Child Care Review Services (CCRS) and CONNECTIONS, there is no need to hire additional state and contract staff to make the necessary modifications. The gross value of the temporary redirection of employees from other systems projects would total \$220,000.

5. Economic and Technological Feasibility

The regulations require the recording of the actions taken to comply with the regulatory standards noted above. Such information will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

6. Minimizing Adverse Impact

The standards set forth in the regulations reflect mandates imposed by New York State law (Part F of Chapter 58 of the Laws of 2010) and by corresponding federal standards set forth in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). Implementation of the new 18 NYCRR Part 436 is required to comply with Chapter 58 of the Laws of 2010. The amendments 18 NYCRR 428.5 is required to correspond with section 475(1)(F) of the Social Security Act, as added by the above referenced federal Act.

7. Small Business and Local Government Participation

On May 1, 2009, OCFS held a day long roundtable on the subject of subsidized kinship guardianship following the enactment of the federal Fostering Connection to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). Attendees included representatives from all three branches of New York State government (executive, judicial and legislative). Also invited and participating were representatives from social services districts, voluntary authorized agencies and advocacy groups. At the beginning of the roundtable, OCFS provided an overview of the kinship guardianship assistance provisions of the federal Act. In addition, a panel comprised of national experts on the subject of subsidized kinship guardianship provided information on the experience of subsidized kinship guardianship assistance in other states and responded questions from the attendees. Following the panel presentation, attendees were invited to participate in group discussions on issues relating to subsidized kinship guardianship. Information from the roundtable and input OCFS invited the attendees to provide after the session were used in the development of the State legislation and the corresponding regulations.

On July 20, 2010, OCFS participated in a panel discussion at the summer conference of the New York State Public Welfare Association at which there was a presentation on new State legislation, including the new kinship guardianship assistance and non-recurring guardianship expense programs. Representatives from social services districts were in attendance and had the opportunity to ask questions concerning such programs.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas

Social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social services districts to provide foster care will be affected by the regulations. There are 44 social services districts and the St. Regis Mohawk Tribe that are in rural areas. Currently, there are also approximately 100 voluntary authorized agencies in rural areas of New York State.

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

The regulations implement standards required by Part F of Chapter 58 of the Laws of 2010 that created the kinship guardianship assistance and the non-recurring guardianship expense programs. The regulations are also required to implement the standards necessary for New York State to claim funding under Title IV-E of the Social Security Act for such programs, as enacted by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

The regulations closely follow the standards set forth in the federal and State statutes noted above.

The regulations implement the kinship guardianship assistance program that provides monthly payment to persons who assume legal guardianship of foster children to whom they are related by blood, marriage or adoption. In order for a foster child to be eligible for kinship guardianship assistance, the child must have resided with the relative for six consecutive months; the relative must have been a fully certified or approved foster parent during the six month period; the child's permanency goal may not be return home or adoption; the child must have a strong attachment to the relative who also must have a strong commitment to the child; if the child is 14 years of age or older, the child must be consulted regarding the kinship guardianship arrangement and must consent to the arrangement if the

child is 18 years of age or older, and the child must have met certain judicial milestones in regard to the child's foster care case. The social services district must make a determination that the kinship guardianship arrangement is in the child's best interests, including documenting that compelling reasons exist for determining that return home or adoption are not in the best interests of the child. In addition, the regulations require that criminal and child abuse/maltreatment clearance have been completed.

The regulations set forth standards for applying of kinship guardianship assistance. In addition, the regulations set forth standards relating to the terms and conditions for making kinship guardianship assistance payments. Included within these conditions is the provision that kinship guardianship assistance payments may not be made until the prospective kinship guardian and the applicable social services district entered into a written kinship guardianship assistance agreement and the Family Court or the Surrogate's Court has issued letters of guardianship of the child to the kinship guardian.

The regulations address the required content of the written kinship guardianship assistance agreement that must be entered into by the prospective kinship guardian and the social services district. Such agreement must be in place before the issuance of the letters of guardianship by the court. Included in the terms and conditions of the kinship guardianship assistance agreement are provisions addressing when and how such agreement may be modified or must be terminated. The regulations require that the kinship guardian must keep the social services district informed of any change that could effect eligibility and mandate that the kinship guardian complete and return an annual certification that relates to continued eligibility. The regulations also set forth the requirement that the kinship guardian cooperate with the social services district when questions arise regarding continued payment of kinship guardianship assistance and the authority of the social services district to terminate kinship guardianship payments if the kinship guardian fails to cooperate.

The regulations require that when a child is eligible under Title IV-E of the Social Security Act for kinship guardianship assistance, the child is also categorically eligible for medical assistance under Title XIX of the Social Security Act. If the child is not eligible for medical assistance and the relative guardian is unable to secure affordable and appropriate medical coverage for the child, the child will be eligible for medical subsidy that will reimburse the kinship guardian for medical services provided to the child at the same level as available under the medical assistance program.

The regulations set forth the standards for eligibility for non-recurring guardianship expense payments, including the limitation on the amount and allowable categories of expenses.

The regulations afford hearing rights to the applicants and recipients of the kinship guardianship assistance and non-recurring guardianship expense programs. In addition, the regulations provide that the child who is in a kinship guardianship assistance arrangement is eligible for independent living services and education and training vouchers under the Social Security Act.

The regulations require social services districts and their contract agencies for each foster child with a permanency goal of placement with a kinship guardian and receipt of kinship guardianship assistance to record actions taken in regard to the assessment of the appropriateness of the kinship guardianship arrangement and where appropriate, the efforts made to implement such arrangement.

3. Costs

It is anticipated that implementation of the kinship guardianship assistance and non-recurring guardianship expense programs will result in a gross cost avoidance of \$1,636,000. This fiscal is based on the assumption that 1,000 of the 6,211 eligible youth or about 15 percent of the youth currently in a relative Foster Boarding Home (FBH) would opt to participate in the kinship guardianship assistance program. Current law does not provide for State reimbursement for either kinship guardianship assistance payments or non-recurring guardianship expenses.

- Kinship Guardianship Assistance Payments: An eligibility requirement for the kinship guardianship assistance is for the child to be in foster care for at least six consecutive months, and in the home of a fully approved or certified relative foster parent. Because the family would have received a foster care payment while the child resided in the FBH, the foster care payment will become the kinship guardianship assistance payment. Consequently, there will be no additional cost associated with providing kinship guardianship assistance payments.

- Non-Recurring Guardianship Expense Payments: The maximum gross cost associated with this fiscal per 1,000 youth for non-recurring guardianship expense payments is \$2,000,000. This would generate \$1,342,000 in Federal reimbursement. The fiscal per 1,000 youth would be a \$658,000 local cost.

- Administration Cost: Assuming the average cost of a foster care caseworker is \$44,230 and their average caseload is 12 youths, there is a potential cost avoidance associated with the administrative cost of \$3,686

per youth when a child moves from a foster care placement to a kinship guardianship assistance arrangement. This transfer of placement will no longer require a caseworker to manage the child's foster care case as required in current regulations. Consequently, the transfer of a case from foster care to the kinship guardianship assistance program will reduce the caseworker's caseload. Depending upon the reduction in number of foster care caseloads, such transfers can result in staffing and non personal services (NPS) cost reductions at a district level. The gross cost avoidance associated with this fiscal is \$3,686,000. This fiscal is based on a population of 1,000 youth opting into the kinship guardianship assistance program, and does not account for cost of living adjustments, fringe and/or NPS cost avoidance. Although the administrative costs are reimbursed as part of the Foster Care Block Grant, any administrative savings achieved under the proposed kinship guardianship assistance program will be costs avoidance for the local districts. The administrative cost avoidance to the districts is anticipated at \$2,449,347.

- **Federal Reimbursement:** OCFS determines that 67.1 percent of youth in a relative FBH are Title IV-E eligible. Because administrative costs are reimbursed as part of the Foster Care Block Grant, the administrative cost avoidance to the districts is anticipated at \$2,449,347 net of Federal. Any administrative savings achieved under the proposed kinship guardianship assistance program will be cost avoidance for the local districts.

- **Educational and Training Vouchers (ETV) and Independent Living (IL) Services:** Youth in foster care who are 16 years of age or older are eligible for ETV and IL services. Under the proposed kinship guardianship assistance program, youth who are over 16 years of age and are in the kinship guardianship assistance program would remain eligible to participate in ETV and IL. Therefore, there would be no additional costs associated with ETV and IL services with the kinship guardianship assistance program.

- **Training:** OCFS' training plan includes the requirements associated with the kinship guardianship assistance program. The estimated cost to the training plan is \$50,000.

The chart below outlines the cost for the Kinship Guardianship Assistance and Non-Recurring Guardianship Expense Programs.

New Cost	Gross	Federal	State	Local
Kinship Guardian-ship Subsidy	\$0	\$0	\$0	\$0
Non-Recurring Administration	\$2,000,000	\$1,342,000	\$0	\$658,000
Training	(\$3,686,000)	(\$1,236,653)	\$0	(\$2,449,347)
Total	\$50,000	\$0	\$50,000	\$0
	(\$1,636,000)	(\$105,347)	\$50,000	(\$1,791,347)

On-Going:				
Subsidy	\$0	\$0	\$0	\$0
Administration	(\$3,686,000)	(\$1,236,653)	\$0	(\$2,449,347)
Training	\$50,000	\$0	\$50,000	\$0
Total	(\$3,636,000)	(\$1,236,653)	\$50,000	(\$2,449,347)

Although there are cost associated with modifications to the Welfare Management System (WMS), Benefit Issuance Control System (BICS), Child Care Review Services (CCRS) and CONNECTIONS, there is no need to hire additional state and contract staff to make the necessary modifications. The gross value of the temporary redirection of employees from other systems projects would total \$220,000.

4. Minimizing adverse impact

The standards set forth in the regulations reflect mandates imposed by New York State law (Part F of Chapter 58 of the Laws of 2010) and by corresponding federal standards enacted in the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). Implementation of the new 18 NYCRR Part 436 is required to comply with Chapter 58 of the Laws of 2010. The amendment to 18 NYCRR 428.5 is required to correspond with section 475(1)(F) of the Social Security Act as added by the above referenced federal Act.

5. Rural area participation

On May 1, 2009, OCFS held a day long roundtable on the subject of subsidized kinship guardianship following the enactment of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). Attendees included representatives from all three branches of State government (executive, legislative and judicial). Also invited and participating were representatives from social services districts, voluntary authorized agencies and advocacy groups, including those that serve rural areas. At the beginning of the roundtable, OCFS provided an overview of the kinship guardianship assistance provisions of the federal Act. In addition,

a panel comprised of national experts on the subject of subsidized kinship guardianship presented on the experience of subsidized kinship guardianship in other states and responded to questions from the attendees. Following the panel presentation, attendees were invited to participate in group discussions on issues relating to subsidized kinship guardianship. Information from the roundtable and input OCFS invited attendees to provide after the session was used in the development of the State legislation and the corresponding regulations.

On July 20, 2010, OCFS participated in a panel discussion at the summer conference of the New York State Public Welfare Association at which there was a presentation on new State legislation, including the new kinship guardianship assistance and non-recurring guardianship expense programs. Representatives from social services districts were in attendance and had the opportunity to ask questions concerning such programs.

Job Impact Statement

A full job impact statement has not been prepared for the regulations. The regulations will not result in the creation of any jobs. As reflected in the fiscal impact statement, the regulations may result in a reduction of staff in some social services districts or voluntary authorized agencies.

Education Department

EMERGENCY RULE MAKING

Mandatory Quality Review Program for Public Accountancy

I.D. No. EDU-30-10-00003-E

Filing No. 1278

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Action taken: Addition of section 70.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6506(6) and 7410

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

Specific reasons underlying the finding of necessity: The proposed amendments to the Regulations of the Commissioner of Education implement amendments to the Education Law that require public accounting firms to undergo mandatory quality reviews of their attest services.

The proposed regulation implements section 7410 of the Education Law which was added by chapter 651 of the Laws of 2008 by establishing and defining the responsibilities of a Quality Review Oversight Committee to oversee the program and to perform certain functions; defining the approval process for sponsoring organizations that administer the quality reviews, including the approval and assignment of reviewers and review teams; establishing standards to be used when conducting a quality review; establishing a document retention policy; requiring the submission of the public version of a public accounting firm's Public Company Accounting Oversight Board inspection report; and providing for the acceptance of equivalent quality review reports conducted outside of New York.

Emergency action is needed at the December 2010 Regents meeting to timely implement the provisions of section 7410 of the Education Law which requires that implementing regulations be in effect on or before January 1, 2011.

Subject: Mandatory quality review program for public accountancy.

Purpose: To establish the requirements for the mandatory quality review program for public accountancy.

Substance of emergency rule: The Commissioner of Education proposes to add a new section 70.10 to the Regulations of the Commissioner of Education, relating to establishing a mandatory quality review program in public accountancy. The following is a summary of the proposed amendment:

Subdivision (a) of section 70.10 of the Regulations of the Commissioner of Education establishes a mandatory quality review program requiring all applicants seeking a firm registration or renewal of a registration, other than a sole proprietorship or firms with two or fewer professionals, to participate in a quality review of the firm's attest services no more frequently than once every three years.

Subdivision (b) of section 70.10 of the Regulations of the Commis-

sioner of Education defines terms used in section 70.10 including accountant, quality review report, review, review team, reviewer, sponsoring organization and team captain.

Subdivision (c) of section 70.10 of the Regulations of the Commissioner of Education indicates those firms that must participate in a quality review. This subdivision also requires any firm not required to participate in mandatory quality review to annually submit a written notification of exemption to the Department. Any firm that begins providing attest services or otherwise becomes subject to mandatory participation in the quality review program is required to notify the Department of its change in status within 30 days and to provide the Department with evidence that it has enrolled in an acceptable quality review program within one year of the earlier of the firm's initial registration or the firm's initial performance of services requiring a quality review. Such firms must have a quality review performed within 18 months of the date the services were first provided.

Subdivision (d) of section 70.10 of the Regulations of the Commissioner of Education establishes a Quality Review Oversight Committee (QROC) to oversee the mandatory quality review program. The QROC will consist of five members who must be New York licensed CPAs and hold a current registration with the Department. Members will serve five year terms except those first appointed will serve staggered terms so that an equal number of terms terminate annually. Responsibilities of the QROC include: receiving and approving quality review plans of entities seeking to be sponsoring organizations; monitoring sponsoring organizations to determine that each sponsoring organization is providing an acceptable level of oversight over reviewers, review teams and firms participating in the quality review program; inform the Department of issues and /or problems relating to the quality review program; annually report to the Department that the sponsoring organization holds qualifications necessary to continue as an approved sponsoring organization; annually assess the effectiveness of the quality review program; annually report on any recommended modifications to the quality review program; review each quality review report submitted by a firm to determine that the firm is complying with applicable professional standards and ensure that any documents received from a firm or reviewer, sponsoring organization or entity administering peer review outside the state of New York shall be confidential and not constitute a public record and shall not be subject to disclosure under article six and six-A of the Public Officers Law.

Subdivision (e) of section 70.10 of the Regulations of the Commissioner of Education defines the approval process for sponsoring organizations. Sponsoring organizations must submit a plan of administration that establishes committees and provides assurances that sufficient professional staff exist for the operation of the quality review program; provide assurances that the sponsoring organization will notify firms and reviewers of the latest developments in quality review standards and the most common deficiencies in quality reviews conducted by the sponsoring organization; establish procedures to resolve any disagreement between the firm and the reviewer that may arise out of the performance of a quality review; acknowledge that the sponsoring organization is subject to evaluation and periodic review; establish procedures to evaluate and document performance of each reviewer and to disqualify a reviewer who does not meet the standards for quality review; establish procedures to ensure that the sponsoring organization submits timely reports to the QROC; establish procedures to maintain the confidentiality of documents received from the firm or reviewer unless any such document is admitted into evidence in a hearing held by the Department; and provide annual reports to the QROC on the results of the quality review program, including number of reviews conducted; the number of firms complying with the quality review standards, the number of firms having some deficiencies, the number of firms not in compliance with the quality review standards.

Subdivision (f) of section 70.10 of the Regulations of the Commissioner of Education defines the process to be followed to approve and assign team captains and review teams. The sponsoring organization must provide a list of reviewers to the Department and from that list the Department must develop a roster of approved reviewers. Sponsoring organizations must perform procedures to test that review team members, including the team captain are licensed or otherwise authorized to practice in any state and that the review team and team captain meet a minimum set of competencies to commence a quality review. Competencies include specified experience performing attest services, participation in acceptable training, and knowledge of professional standards, rules and regulations appropriate to the industries included in the review.

Subdivision (g) of section 70.10 of the Regulations of the Commissioner of Education provides that the Department may upon notice and with the opportunity to be heard, remove a reviewer and/or review team member from the roster of approved reviewers for failure to meet the requirements of subdivision (f) or for having been subject to disciplinary action.

Subdivision (h) of section 70.10 of the Regulations of the Commis-

sioner of Education provides that a firm which has received a report that the firm has failed to design a system of quality control over its attest services or that receives a quality review report indicating that the firm has failed to perform and report on engagements in conformity with applicable standards in material respects may be referred by the QROC for disciplinary action under Education Law section 6510.

Subdivision (i) of section 70.10 of the Regulations of the Commissioner of Education defines the standards for quality reviews. In addition to setting the standards of quality reviews, this subdivision requires that for any firm undergoing a review of its system of quality control, the review team shall review the firm's continuing education records on a sample basis and consider whether the records demonstrate that the licensee who supervised the services meets the competency requirements set forth in professional standards for such services, and in paragraph 13 of subdivision (a) of section 29.10 of the Rules of the Board of Regents.

Subdivision (j) of section 70.10 of the Regulations of the Commissioner of Education defines the requirements for access to the results of quality reviews by the department. Any firm required to participate in the program shall submit to the department: a quality review report, the firm's letter of response, an acceptance letter from a sponsoring organization, a letter(s) signed by the firm accepting the documents and a letter from the sponsoring organization notifying the reviewed firm that required actions have been appropriately completed. The quality review report, the reviewed firm's letter of response and acceptance of the quality review report by the sponsoring organization must be made available to the department via a secure website within 30 days of the date of the acceptance letter. If applicable, a letter signed by the reviewed firm accepting the quality review documents with the understanding that the firm agrees to take any actions required by the reviewer must be made available to the department within 30 days of the date the firm signs such letter. If applicable, the letter from the sponsoring organization notifying the reviewed firm that required actions have been appropriately completed must be made available to the department within 30 days to the date of the letter from the sponsoring organization. If the sponsoring organization cannot provide access to the quality review documents via a website, the firm shall provide copies of the quality review documents by mail or facsimile within 10 days of receipt of the applicable documents. Copies of equivalent quality review reports submitted in accordance with subdivision (m) must be made available to the department via a website provided by the entity administering the quality review. If it cannot be provided via a website, the firm shall provide copies by mail or facsimile.

Subdivision (k) of section 70.10 of the Regulations of the Commissioner of Education requires each reviewer and sponsoring organization, as applicable, to maintain documentation necessary to establish that each review conformed to the review standards of the relevant review program, including the review work papers, copies of the review report, and any correspondence indicating the firm's concurrence, non-concurrence, and any proposed remedial actions and related implementation. These documents must be retained by the reviewer for a period of time corresponding to the retention period of the sponsoring organization, and must be available to the Quality Review Oversight Committee. In no event, shall the retention period be less than 120 days from the date of acceptance of the review by the sponsoring organization.

Subdivision (l) of section 70.10 of the Regulations of the Commissioner of Education requires any firm that undergoes an inspection conducted by the Public Company Accounting Oversight Board ("PCAOB") as required under the Sarbanes-Oxley Act of 2002 to submit to the Department a copy of the public version of its most recent inspection report within ten days of a receipt of the notice of completion from the PCAOB.

Subdivision (m) of section 70.10 of the Regulations of the Commissioner of Education establishes that the Department, at its discretion, may accept a review report from a firm which the Department deems to be the substantial equivalent of a quality review report issued under this section. A review report will be deemed substantially equivalent provided such reviews are conducted and reported on in accordance with the quality review standards set forth in subdivision (i) of this section. Peer reviews administered by entities located outside the state of New York acceptable to the Department and any affiliated administering entities may be accepted as substantially equivalent of a quality review report issued under this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-30-10-00003-P, Issue of July 28, 2010. The emergency rule will expire March 16, 2011.

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

Regulatory Impact Statement**1. STATUTORY AUTHORITY:**

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules in the supervision of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Section 7410 of the Education Law, as added by Chapter 651 of the Laws of 2008, establishes a mandatory quality review requirement for the renewal of public accounting firm registrations and requires the Commissioner to promulgate regulations specifying how quality reviews are to be conducted.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement the requirements of section 7410 of the Education Law, which becomes effective on January 1, 2012. The purpose of the new law is to establish a mandatory quality review program to enhance the protection of clients and the general public by requiring certain public accounting firms to undergo a quality review of the firm's attest services as a condition to renewal of their registration, as specified in the Commissioner's regulations.

3. NEEDS AND BENEFITS:

Section 7410 of the Education Law requires all firms, as a condition of renewal of their registrations, to undergo a quality review of the firms' attest services as a condition to renewal of their registration, in a manner specified in the Regulations of the Commissioner. Sole proprietorships and firms with two or fewer accounting professionals are exempt from quality review; however, such firms may voluntarily participate in the quality review program.

The quality review process must include a verification that individuals in the firm who are responsible for supervising attest services or who sign or authorize someone to sign the accountant's report on the financial statements meet competency requirements set out in professional standards for such services and in the Regulations of the Commissioner of Education.

In addition, the new law requires the Commissioner's regulation to include reasonable provisions for compliance by an applicant for firm registration showing that the firm has undergone a quality review in the last three years or a peer review in another state that is the satisfactory equivalent; require that organizations that administer quality review programs be subject to evaluations by the Department or its designee to periodically assess the effectiveness of the quality review program; and require that quality reviews be conducted by reviewers acceptable to the Department in accordance with Commissioner's regulations. In addition, the Commissioner of Education is authorized to require firms undergoing quality review and organizations administering quality review programs to timely submit quality review reports to the State Board for Public Accountancy. Reports submitted must be maintained as confidential in accordance with state law, unless the report is admitted into evidence in a hearing held by the Department.

Any firm, including a sole proprietorship or a firm with two or fewer accounting professionals, that performs attest services for any New York state or municipal entity performing a governmental or proprietary function for New York State or performs attest services specifically required pursuant to New York State law must undergo an external peer review in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

4. COSTS:

(a) Cost to State government: There are no additional costs beyond those imposed by statute.

(b) Cost to local government: There are no costs to local government.

(c) Cost to private regulated parties: There are no costs to private regulated parties beyond those imposed by statute.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendment will not impose any additional costs on SED beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the mandatory quality review of a public accounting firm's attest practice. The amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

Public accounting firms that are established for the business purpose of lawfully engaging in the practice of public accountancy pursuant to Education Law section 7401(1) and (2) or that use the title "CPA" or "CPA firm" or the title "PA" or "PA firm" are required to register with the

Department. As a condition of registration, Education Law section 7410 requires all firms, except sole proprietorships and firms with two or fewer professionals, as a condition of renewal of their registrations, to undergo a quality review of the firms' attest services conducted in a manner specified in the Regulations of the Commissioner. Any firm, including a sole proprietorship or a firm with two or fewer accounting professionals, that performs attest services for any New York State or municipal entity or performs attest services specifically required pursuant to New York State law must undergo an external peer review in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Any firm registered with the department that is not required to participate in the program shall submit an annual written notification of the basis for such non-participation, as part of the firm's submission of its annual report.

Any firm that begins providing attest services or otherwise becomes subject to mandatory participation in the quality review program shall notify the department of its change in status within 30 days and provide the Department with evidence of enrollment in an acceptable program.

Sponsoring organizations must provide annual reports to the Quality Review Oversight Committee on the results of the organization's quality review program, including information on completed reviews, including the most common deficiencies noted by reviewers, the number of reviews conducted, the number of firms found to be performing and reporting in compliance with applicable professional standards, the number of firms found to have some deficiencies in complying with applicable professional standards and the number of firms found not to be in compliance with applicable professional standards. Each sponsoring organization shall also provide a list of reviewers to the Department.

Any firm required to participate in the program shall submit the following documents to the department: a quality review report issued by an approved reviewer; the firm's letter of response; an acceptance letter from the sponsoring organization; a letter signed by the firm accepting the documents with the understanding that the firm agrees to take any actions required by the reviewer; and a letter from the sponsoring organization notifying the reviewed firm that required actions have been appropriately completed.

The proposed amendment requires each reviewer and sponsoring organization to maintain all documentation necessary to establish that each review conformed to the review standards of the relevant review program, including the review working papers, copies of the review report, and any correspondence indicating the public accounting firm's concurrence or non-concurrence and any proposed remedial actions and any related implementation. These documents must be retained by the reviewer for a period of time corresponding to the retention period established by an entity approved by the Department to oversee and facilitate quality reviews, and shall be made available upon request of the Department. In no event shall the retention period be less than 120 days from the date of acceptance of the review by the approved entity.

7. DUPLICATION:

The proposed amendment does not duplicate any other existing State or Federal requirements, except as discussed below in the Federal Standards section.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

The federal Sarbanes-Oxley Act of 2002 (Act) requires all public accounting firms that audit publicly traded companies to register with the Public Company Accounting Oversight Board (PCAOB) and undergo an inspection performed by the PCAOB to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with the Act, the rules of the PCAOB, the rules of the U.S. Securities & Exchange Commission, and professional standards, in connection with the public accountancy firm's performance of audits, issuance of audit reports, and related matters involving publicly traded companies.

The proposed regulations require public accounting firms registered with the PCAOB to provide the Department with a copy of the public version of the public accounting firm's inspection report.

Government Audit Standards issued by the Comptroller General of the United States require each public accounting firm that performs audits or attestation engagements in accordance with generally accepted government auditing standards to establish a system of quality control that is designed to provide the audit organization with reasonable assurance that the public accounting firm and its personnel comply with professional standards and applicable legal and regulatory requirements, and have an external peer review at least once every 3 years.

Education Law section 7410 requires those firms, including sole proprietorships and firms with two or fewer professionals, that perform attest services for any New York State or municipal department, board, bureau, division, commission, committee, public authority, public corpora-

tion, council, office, or other governmental entity performing a governmental or proprietary function for New York State or any one or more municipalities thereof, or performs attest services specifically required to be performed pursuant to New York State law, to undergo an external peer review in conformity with the requirements pursuant to the government auditing standards issued by the Comptroller General of the United States.

10. COMPLIANCE SCHEDULE:

Chapter 651 of the Laws of 2008, requires that the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of section 7410 of Education Law to be made and completed by the Commissioner of Education on or before January 1, 2011. The proposed amendment becomes effective on November 3, 2010. No additional period of time is necessary to enable regulated parties to comply with the regulation.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The purpose of the proposed amendment is to implement Chapter 651 of the Laws of 2008 by establishing a mandatory quality review program in New York State. It is estimated that there are approximately 3,200 registered public accounting firms in New York State. A majority of these public accounting firms are small businesses, with 100 or fewer employees.

2. COMPLIANCE REQUIREMENTS:

Section 7410 of the Education Law requires all firms, as a condition of renewal of their registrations, to undergo a quality review of the firms' attest services conducted in a manner specified in the Regulations of the Commissioner. Sole proprietorships and firms with two or fewer accounting professionals are exempt from quality review; however, such firms may voluntarily participate in the quality review program.

The quality review process must verify that individuals in the firm who are responsible for supervising attest services or who sign or authorize someone to sign the accountant's report on the financial statements meet the competency requirements set out in professional standards and in the Regulations of the Commissioner of Education. In addition, the quality review program must include reasonable provisions for compliance by an applicant for firm registration showing that the firm has undergone a quality review in the last three years or a peer review in another state that is the satisfactory equivalent; require that organizations that administer quality review programs be subject to evaluations by the Department or its designee to periodically assess the effectiveness of the quality review program; and require that quality reviews be conducted by reviewers acceptable to the Department in accordance with Commissioner's regulations. In addition, the Commissioner of Education is authorized to require firms undergoing quality review and organizations administering quality review programs to timely submit quality review reports to the State Board for Public Accountancy. Reports submitted must be maintained as confidential in accordance with state law, unless the report is admitted into evidence in a hearing held by the Department.

Any firm, including a sole proprietorship or a firm with two or fewer accounting professionals, that performs attest services for any New York state or municipal entity or performs attest services specifically required pursuant to New York State law must undergo an external peer review in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

3. PROFESSIONAL SERVICES:

The proposed regulation will require public accounting firms, except sole proprietorships and firms with two or fewer professionals, to hire an independent reviewer or review team to conduct a quality review of the accounting firm's quality controls over its attest services. Any public accounting firm, including sole proprietorships and firms with two or fewer accounting professionals, that performs attest services for any New York state or municipal entity or performs attest services specifically required pursuant to New York State law must undergo an external peer review. Public accounting firms, including those public accounting firms that are considered "small businesses" are subject to this provision.

4. COMPLIANCE COSTS:

The proposed amendment implements Chapter 651 of the Laws of 2008, which imposes costs on private regulated parties by requiring these parties to hire an independent reviewer and/or review team to conduct a quality review in accordance with the statute.

The fee paid by a registered public accounting firm to an independent reviewer or review team for a quality review varies depending on the size of the firm and the complexity of the attest engagements subject to quality review. A sole proprietorship or a small firm that performs a limited number of attest engagements may undergo an engagement review that costs approximately \$700 or more depending on the complexity of the public accounting firm's practice. A large multi-state or international firm could pay tens of thousands of dollars to undergo a quality review. It is estimated that approximately 85% of registered New York State public accounting firms voluntarily participate in and pay a fee associated with an existing peer review program established by a national professional ac-

countancy organization that is substantially equivalent to the proposed quality review program. No additional fees associated with performing a quality review are anticipated for those firms that participate in the voluntary peer review process.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements the requirements of section 7410 of the Education Law, which provides an exception to the mandatory quality review provisions for sole proprietorships and firms with two or fewer professionals. However, this exemption does not apply to firms that performs attest services for any New York State or municipal entity or performs attest services specifically required pursuant to New York State law.

7. SMALL BUSINESS PARTICIPATION:

The State Board for Public Accountancy, which includes members who have experience in a small business environment, assisted in the development of the proposed regulation. In addition, the State Education Department provided the New York State Society of Certified Public Accountants and the American Institute of Certified Public Accountants, both of which includes members who own and operate small businesses, with draft regulatory language concerning the proposed regulation and engaged in an ongoing conversation with these organizations to ensure that their comments were addressed.

(b) Local Governments:

The purpose of the proposed amendment is to implement Chapter 651 of the Laws of 2008 by establishing a mandatory quality control program for registered public accounting firms. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect an estimated 260 public accounting firms that are located in a rural county in New York State.

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

Section 7410 of the Education Law requires all firms, as a condition of renewal of their registrations, to undergo a quality review of the firms' attest services conducted in a manner specified in the Regulations of the Commissioner. Sole proprietorships and firms with two or fewer accounting professionals are exempt from quality review; however, such firms may voluntarily participate in the quality review program.

The quality review process must verify that individuals in the firm who are responsible for supervising attest services or who sign or authorize someone to sign the accountant's report on the financial statements meet the competency requirements set out in professional standards and in the Regulations of the Commissioner of Education. In addition, the quality review program must include reasonable provisions for compliance by an applicant for firm registration showing that the firm has undergone a quality review in the last three years or a peer review in another state that is the satisfactory equivalent; require that organizations that administer quality review programs be subject to evaluations by the Department or its designee to periodically assess the effectiveness of the quality review program; and require that quality reviews be conducted by reviewers acceptable to the Department in accordance with Commissioner's regulations. In addition, the Commissioner of Education is authorized to require firms undergoing quality review and organizations administering quality review programs to timely submit quality review reports to the State Board for Public Accountancy. Reports submitted must be maintained as confidential in accordance with state law, unless the report is admitted into evidence in a hearing held by the Department.

Any firm, including a sole proprietorship or a firm with two or fewer accounting professionals, that performs attest services for any New York state or municipal entity or performs attest services specifically required pursuant to New York State law must undergo an external peer review in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

3. COSTS:

The proposed amendment implements the requirements of Chapter 651 of the Laws of 2008, which imposes costs on private regulated parties by requiring them to hire an independent reviewer and/or review team to conduct a quality review in accordance with the statute.

The fee paid by a registered public accounting firm to an independent reviewer or review team for a quality review varies depending on the size of the firm and the complexity of the attest engagements subject to quality

review. A sole proprietorship or small firm that performs a limited number of attest engagements may undergo an engagement review that costs approximately \$700 or more depending on the complexity of the public accounting firm's practice. A large multi-state or international firm could pay tens of thousands of dollars to undergo a quality review. It is estimated that approximately 85% of registered New York State public accounting firms voluntarily participate in and pay a fee associated with an existing peer review program established by a national professional accountancy organization that is substantially equivalent to the proposed quality review program. No additional fees associated with performing a quality review are anticipated for those firms that currently participate in the voluntary peer review process.

4. MINIMIZING ADVERSE IMPACT:

Education Law section 7410 provides an exception to the mandatory quality review provisions for sole proprietorships and firms with two or fewer professionals. This exemption does not apply to firms that performs attest services for any New York state or municipal entity or performs attest services specifically required pursuant to New York State law.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments from the State Board for Public Accountancy, the New York State Society of Certified Public Accountants and the American Institute of Certified Public Accountants, which includes members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The purpose of the proposed amendment is establish the requirements for the mandatory quality review program for public accountancy in order to implement section 6410 of the Education Law, as added by Chapter 651 of the Laws of 2008. Because it is evident from the nature of the proposed regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Age and Four-Year Limitations for Participation in Senior High School Athletic Competition

I.D. No. EDU-32-10-00009-E

Filing No. 1316

Filing Date: 2010-12-21

Effective Date: 2010-12-26

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 803 (not subdivided), and 3204(2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment establishes a process for granting a waiver from the age and four-year limitations for senior athletic competition prescribed in section 135.4 of the Commissioner's Regulations to students with disabilities, as defined in section 4401 of the Education Law, and thereby permit their participation in non-contact sports for an additional fifth year in school. Under this waiver process, the student must apply for and be granted a waiver by the superintendent of schools or the chief executive officer of a nonpublic school. Such a waiver would be available under limited circumstances to students with disabilities who meet certain criteria specified in the proposed amendment.

The proposed amendment will advance initiatives of inclusion of students with disabilities in the overall academic experience by allowing these students who would otherwise not be able to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for an additional season if they have not yet graduated as a result of their disability delaying their education. This amendment is designed to offer students with disabilities continued socialization with teammates during practice and games and to further develop the student's skills and personal abilities associated with participation in such sport, all while assuring the safety of the given student and the other students competing in the sport and preserving fair athletic competition.

The proposed amendment was adopted at the July 2010 Regents meeting as an emergency action, effective July 27, 2010, in order to timely and

effectively implement the waiver process for the 2010-2011 school year. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on August 11, 2010. The proposed amendment was revised in response to public comment and, as so revised, adopted as second emergency action at the October 2010 Regents meeting, effective October 26, 2010. A Notice of Revised Rule Making was published in the State Register on November 3, 2010.

The proposed amendment has been adopted as a permanent rule at the December 2010 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the adopted rule can become effective is after its publication in the State Register on January 5, 2011. However, the emergency rule which took effect on October 26, 2010 will expire on December 25, 2010. The expiration of the emergency rule would disrupt administration of the waiver process for participation in senior athletic competition by students with disabilities during the 2010-2011 school year.

Therefore, a third emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the October 2010 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule, in order to avoid disruption to the administration of the waiver process for participation in senior athletic competition by students with disabilities during the 2010-2011 school year.

Subject: Age and four-year limitations for participation in senior high school athletic competition.

Purpose: To provide a waiver for a student with a disability to participate in certain high school sports for a fifth year.

Text of emergency rule: 1. Subclause (1) of clause (b) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective December 26, 2010, as follows:

(1) Duration of competition. A pupil shall be eligible for senior high school athletic competition in a sport during each of four consecutive seasons of such sport commencing with the pupil's entry into the ninth grade and prior to graduation, except as otherwise provided in this subclause, *or except as authorized by a waiver granted under clause (d) of this subparagraph to a student with a disability.* If a board of education has adopted a policy, pursuant to subclause (a)(4) of this subparagraph, to permit pupils in the seventh and eighth grades to compete in senior high school athletic competition, such pupils shall be eligible for competition during five consecutive seasons of a sport commencing with the pupil's entry into the eighth grade, or six consecutive seasons of a sport commencing with the pupil's entry into the seventh grade. A pupil enters competition in a given year when the pupil is a member of the team in the sport involved, and that team has completed at least one contest. A pupil shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which he or she attains the age of 19, except as otherwise provided in subclause (a)(4) *or clause (d)* of this subparagraph, or in this subclause. The eligibility for competition of a pupil who has not attained the age of 19 years prior to July 1st may be extended under the following circumstances:

(i) If sufficient evidence is presented by the chief school officer to the section to show that the pupil's failure to enter competition during one or more seasons of a sport was caused by illness, accident, or similar circumstances beyond the control of the student, such pupil's eligibility shall be extended accordingly in that sport. In order to be deemed sufficient, the evidence must include documentation showing that is a direct result of the illness, accident or other circumstance beyond the control of the student, the pupil will be required to attend school or one or more additional semesters in order to graduate.

(ii) If the chief school officer demonstrates to the satisfaction of the section that the pupil's failure to enter competition during one or more seasons of a sport is caused by such pupil's enrollment in a national or international student exchange program or foreign study program, that as a result of such enrollment the pupil will be required to attend school for one or more additional semesters in order to graduate, and that the pupil did not enter competition in any sport while enrolled in such program, such pupil's eligibility shall be extended accordingly in such sport.

2. Clause (d) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is added, effective December 26, 2010, as follows:

(d) *Waiver from the age requirement and four-year limitation for interschool athletic competition for students with disabilities in senior high school grades 9, 10, 11, and 12. For purposes of this clause, the term non-contact sport shall include swimming and diving, golf, track and field, cross country, rifle, bowling, gymnastics, skiing and archery, and any other such non-contact sport deemed appropriate by the Commissioner. A student with a disability, as defined in section 4401 of the Education Law,*

who has not yet graduated from high school may be eligible to participate in a senior high school noncontact athletic competition for a fifth year under the following limited conditions:

(1) such student must apply for and be granted a waiver to the age requirement and four-year limitation prescribed in subclause (b) (1) of this subparagraph. A waiver shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which he or she is applying for a waiver and the student must have been selected for such competition in the past;

(iii) such student has not already participated in an additional season of athletic competition pursuant to a waiver granted under this subclause;

(iv) such student has undergone a physical evaluation by the school physician, which shall include an assessment of the student's level of physical development and maturity, and the school physician has determined that the student's participation in such competition will not present a safety or health concern for such student; and

(v) the superintendent of schools or chief executive officer of the school or school system has determined that the given student's participation in the athletic competition will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

(2) Such student's participation in the additional season of such athletic competition shall not be scored for purposes of such competition.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-32-10-00009-RP, Issue of August 11, 2010. The emergency rule will expire February 18, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law sections 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relates to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year limitations for senior high school athletic competition.

3. NEEDS AND BENEFITS:

The proposed amendment will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will advance initiatives of inclusion by allowing students with disabilities who would otherwise not be able to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for an additional season if they have not graduated as a result of their disability delaying their education. This amendment will offer these students continued socialization with teammates and continued opportunity to develop the skills and abilities associated with his or her participation in such sport.

4. COSTS:

(a) Costs to State government: It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances and that appeals from a decision regarding a waiver will be limited, and

that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff.

(b) Costs to local government: It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

(c) Costs to private regulated parties: For the same reasons as discussed in (b) above, it is anticipated that costs to private schools will be minimal and capable of being absorbed using existing staff and resources.

(d) Costs to the regulating agency for implementation and administration of this rule: There will be minimal costs imposed on the State Education Department to implement and enforce the regulations. These costs will be absorbed by existing staff.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in high school athletic competition if such a student meets certain criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets all such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that where applicable, a decision regarding a waiver may be appealed to the New York State Public High School Athletic Association in accordance with the Association's rules. As applicable in accordance with Education Law section 310, such a decision may be appealed to the Commissioner of Education.

6. PAPERWORK:

This proposed amendment will impose minimal additional paperwork requirements on local school districts and on the State.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

The State Education Department considered applying the waiver to both non-contact and contact sports, but determined that this was not appropriate given substantial concerns for student safety. There is likely to be significant differences in physical maturity and development between a 14 year-old and a 19 or 20 year-old. Moreover, in light of selection/classification, a 12 or 13 year-old may be competing in a sport with a 19 or 20 year-old, which presents a significant difference in not only physical maturity but athletic ability and performance. These physical disparities pose a substantial risk of harm to the given student and the other students competing in the sport. Therefore, this alternative was considered, but rejected.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to each school district within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and

competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that where applicable, a decision regarding a waiver may be appealed to the New York State Public High School Athletic Association in accordance with the Association's rules. As applicable in accordance with Education Law section 310, such a decision may be appealed to the Commissioner of Education.

The proposed amendment is expected to only impose minimal reporting, recordkeeping and other compliance requirements associated with reviewing and deciding a student's application for a waiver. It is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs on school districts. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in interschool non-contact sport competition. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment will provide a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that where applicable, a decision regarding a waiver may be appealed to the New York State Public High School Athletic Association in accordance with the Association's rules. As applicable in accordance with Education Law section 310, such a decision may be appealed to the Commissioner of Education.

The proposed amendment is expected to only impose minimal reporting, recordkeeping and other compliance requirements associated with reviewing and deciding a student's application for a waiver. It is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

The proposed amendment imposes no additional professional service requirements on school districts.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs on school districts. The proposed amendment will require local school districts to implement a process for granting waivers to students with disabilities to participate for an additional season in such competition if such student meets certain eligibility criteria. The superintendent of schools or the chief executive officer of a private school will be required to determine whether the given student meets such criteria and whether the student will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in interschool non-contact sport competition. Specifically, the amendment requires that (1) the student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more, (2) the student previously was selected for and competed in the sport which he or she is applying for a waiver, (3) the student is otherwise qualified to

compete in such sport, (4) the student has not previously been granted such a waiver, (5) the student has undergone and passed an evaluation by the school physician, and (6) the superintendent of schools or chief executive officer, as applicable, has determined that the student's participation will not adversely affect the opportunity of the other students to successfully compete in the competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport. The proposed amendment implements Regents policy intended to apply State-wide to all schools, and therefore it is not possible to provide an exemption to, or prescribe lesser standards for, schools in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment provides a waiver for a student with disability to participate for a fifth year in senior high school athletic competition despite the age and four-year limitations prescribed in Section 135.4 of the Commissioner's regulations, if the student with disability meets certain criteria.

The proposed rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment

EMERGENCY RULE MAKING

New Standards for Academic Progress for Tuition Assistance Program for the 2010-11 Academic Year

I.D. No. EDU-39-10-00011-E

Filing No. 1277

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Action taken: Amendment of section 145-2.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 602(2), 661(2) and 665(2) and (6); and L. 2010, ch. 53

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

Specific reasons underlying the finding of necessity: The enacted 2010-11 New York State budget includes new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic progress (SAP) for non-remedial students first receiving State aid in 2007-08 and thereafter. These standards take effect for students enrolled in the 2010-11 academic year. These standards, however, do not apply to "students enrolled in a program of remedial study approved by the Commissioner."

The intent of the new law is to ensure that students receiving TAP funds and not needing remedial instruction or needing only a small amount of such remedial instruction demonstrate sufficient academic progress to complete their academic program in a timely manner. The intent is not to deny TAP to students who need remedial instruction.

However, a problem arises for some students who entered college on or after the 2007-08 academic year and were meeting the 2006 standards of academic progress. Now they are faced with new standards which may preclude them from being eligible for TAP for the 2010 fall term. For example, for students in a baccalaureate program based on semesters, under the 2006 SAP requirements, students must have completed at least 21 credits by the end of the fourth term in order to be eligible for TAP in the fifth term. However, under the new 2010 SAP students now must have completed 30 credits by the end of the fourth term to be eligible for TAP in the fifth term. Some students are therefore put into a situation where they were not aware of the new requirements and could not possibly have

time to take additional credit hours to meet the new standards in the 2010 SAP. A similar situation is also true for students pursuing an associate degree.

To remedy this situation, in the proposed emergency regulation, these returning students that "fall in the gap" between the 2006 and 2010 SAP, will be deemed to be remedial students for the 2010-11 academic year only and therefore can continue to be eligible for TAP if they meet the 2006 SAP. The rationale is that these "gap" students are not progressing along their academic programs at a rate of success that the State finds acceptable for participation in the TAP program. They therefore are being given an academic year to achieve the level of academic performance necessary for participation in TAP.

Emergency action is necessary at the December Regents meeting for the preservation of the general welfare to implement Chapter 53 of the Laws of 2010 and to ensure that the rule remains continuously in effect until such time as it can be adopted as a permanent rule, after expiration of the 45-day public comment period as prescribed in the State Administrative Procedure Act.

Subject: New standards for academic progress for tuition assistance program for the 2010-11 academic year.

Purpose: Implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study.

Text of emergency rule: Clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 145-2.2 of the Regulations of the Commissioner of Education shall be amended effective December 17, 2010, to read as follows:

(b)(1) for students who receive their first State award during the 2006-2007 academic year and thereafter, and who are enrolled full-time in a two-year, four-year, or five-year undergraduate program on a semester or trimester basis, or their equivalent, the applicable required minimum number of credits accrued and minimum grade point average earned at the time of the institution's certification for each payment made on the student's award, as specified in subparagraph (i), (ii), (iii) or (iv) of paragraph (c) of subdivision (6) of section 665 of the Education Law; provided that institutions operating on a trimester basis during the 2006-2007 academic year shall apply the satisfactory academic progress standard pursuant to the provisions in section 665 of the Education Law, and shall apply the particular requirements prescribed in the satisfactory academic progress charts in such section of law for the 2007-2008 academic year and thereafter.

(2)(i) notwithstanding subclause (1) of this clause, for students receiving a State award in the 2010-2011 academic year who are not enrolled in a program of remedial study, as defined in item (ii) of this subclause, and who first received aid in the 2007-2008 academic year and thereafter, and who are enrolled in a two-year, four-year or five-year undergraduate program on a semester or trimester basis, or their equivalent, shall apply the required minimum number of credits accrued and minimum grade point average earned at the time of the institution's certification for each payment made on the student's award, as applicable in Chapter 53 of the Laws of 2010; provided that students enrolled in a program of remedial study, as defined in item (ii) of this subclause, shall apply the particular requirements prescribed in the satisfactory academic progress charts in section 665 of the Education Law for the 2010-2011 academic year.

(ii) For purposes of this subclause only, students enrolled in a program of remedial study shall mean:

(A) students enrolled in remedial courses equivalent to at least six credits in their initial term of receipt of state financial aid and enrolled in at least nine credits in their first year of receipt of state financial aid; or

(B) students enrolled in remedial courses equivalent to at least three credits in their initial term of receipt of state financial aid and enrolled in at least nine credits in their first year of receipt of state financial aid; or

(C) students enrolled in the Higher Education Opportunity Program (HEOP), the Education Opportunity Program (EOP), the Search for Education, Elevation and Knowledge (SEEK) program or the College Discovery (CD) program; or

(D) students who first received an award in the 2007-2008 academic year and thereafter and who in the semester, trimester or their equivalent, preceding the 2010-2011 academic year, met the requirements prescribed in the satisfactory academic progress charts in section 665 of the Education Law for the 2007-2008 academic year but do not meet applicable standards for academic progress for the 2010-2011 academic year, as set forth in Chapter 53 of the Laws of 2010, shall be deemed to be in an approved program of remedial study for purposes of determining which standards for academic progress apply.

(E) students who first received an award in the 2007-2008 academic year and thereafter and who in the first semester, trimester

or their equivalent of the 2010-2011 academic year, met the requirements prescribed in the satisfactory academic progress charts as set forth in Chapter 53 of the Laws of 2010 but did not meet applicable standards in Chapter 53 of the laws of 2010 for academic progress for the second semester, trimester or their equivalent in the 2010-2011 academic year, for good cause, as described in guidelines prescribed by the Commissioner, shall be deemed to be in an approved program of remedial study for purposes of determining which standards for academic progress apply.

(F) For purposes of subitems (A) and (B), remedial courses taken in a prior academic year where the student was not eligible for state financial aid or in the summer preceding the student's initial term of receipt of state financial aid may be counted towards the required credits of remedial study to be considered a program of remedial study for purposes of this subclause.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-39-10-00011-P, Issue of September 29, 2010. The emergency rule will expire February 14, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Subdivision (2) of section 602 of the Education Law empowers the Commissioner of Education to promulgate regulations establishing requirements for the president to follow in determining student eligibility for State student aid relating to full-time study, part-time study, accelerated study, matriculation, loss of good academic standing, and permissible use of general and academic performance awards and loans. Subdivision (1) of section 602 of the Education Law empowers the Commissioner of Education to select qualified recipients of academic performance awards.

Subdivision (2) of section 661 of the Education Law grants the Board of Regents the power to establish times for which a student must provide certain information, as required by the Board of Regents, to his or her institution through the submission of a form provided by the Board of Regents.

Subdivision (6) of section 665 empowers the Commissioner of Education to establish standards for a student's good academic standing and loss thereof.

Chapter 53 of the Laws of 2010 establishes new standards of academic progress for TAP awards for students not enrolled in a program of remedial study approved by the commissioner and who first received aid in 2007-2008, and thereafter.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements Chapter 53 of the Laws of 2010 by establishing new standards of academic progress for the 2010-2011 academic year for students not enrolled in a program of remedial study. The proposed amendment also defines programs of remedial study for purposes of determining which standards of academic progress apply.

3. NEEDS AND BENEFITS:

The enacted 2010-11 New York State budget includes new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic progress (SAP) for non-remedial students first receiving State aid in 2007-08 and thereafter. These standards take effect for students enrolled in the 2010-11 academic year. These standards, however, do not apply to "students enrolled in a program of remedial study approved by the Commissioner."

The intent of the new law is to ensure that students receiving TAP funds and not needing remedial instruction or needing only a small amount of such remedial instruction demonstrate sufficient academic progress to complete their academic program in a timely manner. The intent is not to deny TAP to students who need remedial instruction.

However, a problem arises for some students who entered college on or after 2007-08 and were meeting the standards of academic progress established in 2006-07. Now they are faced with new standards which may preclude them from being eligible for TAP for the 2010 fall term. For example, for students in a baccalaureate program based on semesters, under the 2006 SAP requirements, students must have completed at least 21 credits by the end of the fourth term in order to be eligible for TAP in the fifth term. However, under the new 2010 SAP students now must have completed 30 credits by the end of the fourth term to be eligible for TAP in the fifth term. Some students are therefore put into a situation where they were not aware of the new requirements and could not possibly have time to take additional credit hours to meet the new standards in the 2010

SAP. A similar situation is also true for students pursuing an associate degree.

To remedy this situation, in the proposed emergency regulation, these returning students that "fall in the gap" between the 2006 and 2010 SAP, will be deemed to be remedial students for the 2010-11 academic year only and therefore can continue to be eligible for TAP under the 2006 SAP. The rationale is that these "gap" students are not progressing along their academic programs at a rate of success that the State finds acceptable for participation in the TAP program. They therefore are being given an academic year to achieve the level of academic performance necessary for participation in TAP.

For purposes of the new standards of academic progress established in Chapter 53 of the Laws of 2010, a student shall be deemed to be in a program approved by the Commissioner for remedial study if he/she: (1) is enrolled in the Higher Education Opportunity Program (HEOP), the Education Opportunity Program (EOP), The Search for Education, Elevation and Knowledge (SEEK) program or the College Discovery (CD) program; (2) takes six credit hours of remedial instruction the first semester and at least nine credit hours of remedial instruction in the first year; or (3) takes three credit hours of remedial instruction in the first semester and six credit hours of remedial instruction in the second semester. Remedial courses taken in the summer session preceding the first academic year may count towards the required nine or more credits of remedial instruction for the purpose of program approval by the Commissioner for remedial study. In addition, for students first becoming eligible for TAP in the 2010-2011 academic year due to a change in their financial circumstances, remedial courses taken in a previous academic year may also be counted. For the 2010-11 academic year only, a student who first received an award prior to the 2010-2011 academic year and does not meet the eligibility requirements to be certified for TAP under the 2010-2011 SAP shall be deemed to be in an approved program of remedial study for the 2010-11 academic year solely for the purpose of defining which standards of academic progress apply for the 2010-11 academic year. This includes students who become ineligible for TAP in the Spring 2010 term because they have insufficient time to adjust their schedule in the Fall term to carry the required number of credits under the new standards of academic progress due to courses becoming unavailable, full or because the add/drop period has ended. The Department will issue guidance on this issue to the colleges.

4. COSTS:

a. Costs to the State government. The proposed amendment will not impose any additional costs upon State government, including the State Education Department beyond those imposed by Chapter 53 of the Laws of 2010.

b. Costs to local government. None.

c. Costs to private regulated parties. The proposed amendment will not impose any additional costs upon public or nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions beyond the minimal costs to such institutions to update information materials concerning the number of credits and minimum grade point average a student must have completed before the school's certification for payment on the student's award, and to update information materials concerning the number of credits a student must have completed to qualify for payment on an award for accelerated study.

d. Costs to the regulatory agency for implementation and continued administration of this amendment. None. The proposed amendment simply conforms the Commissioner's Regulations to Chapter 53 of the Laws of 2010, and will not impose any new duties or responsibilities upon the State Education Department. The Commissioner of Education is already required to approve each institution's standard of satisfactory academic progress prior to the institution's implementation of such standard.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any new mandates, and accordingly, will not impose any additional duties or responsibilities on local governments.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting requirements on any regulated party. The paperwork requirements for public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions will be minimal. In addition, the amendment will not increase the paperwork requirements for students.

7. DUPLICATION:

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

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

The proposed amendment concerns eligibility requirements for students receiving State student aid through the tuition assistance program (TAP), and therefore, there are no applicable federal standards.

10. COMPLIANCE SCHEDULE:

The proposed amendment conforms the Commissioner's Regulations to Chapter 53 of the Laws of 2010, which becomes effective for the 2010-2011 academic year.

Regulatory Flexibility Analysis

The proposed amendment relates to the standards for academic progress for the tuition assistance program for the 2010-2011 academic year. The purpose of the proposed amendment is to implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study to determine whether the 2006 or 2010 standards of academic progress apply for the 2010-2011 academic year.

The amendment will not impose any adverse economic impact, recordkeeping, reporting, or other compliance requirements on small businesses or local governments. Because it is evident from the nature of the regulation that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The proposed amendment applies to all public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions that are eligible, where applicable, to participate in the tuition assistance program (TAP) in New York State, including those located in the 44 rural counties having less than 200,000 inhabitants and the 71 towns in urban counties having a population density of 150 per square mile or less.

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

The enacted 2010-11 New York State budget includes new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic progress (SAP) for non-remedial students first receiving State aid in 2007-08 and thereafter. These standards take effect for students enrolled in the 2010-11 academic year. These standards, however, do not apply to "students enrolled in a program of remedial study approved by the Commissioner." The purpose of the proposed amendment is to implement Chapter 53 of the Laws of 2010 and define what constitutes a program of remedial study.

The amendment does not add or alter reporting or recordkeeping requirements for public and nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions, including those located in rural areas, or impose reporting or recordkeeping requirements for students that participate in such programs. In addition, the amendment will not require regulated parties to acquire professional services.

3. COSTS:

The proposed amendment will not impose any additional costs on public and nonpublic colleges and universities, education opportunity centers, or other postsecondary institutions located in rural areas beyond minimal costs to update information materials concerning the number of credits and the grade point average a student must have before being certified for the next payment on his or her TAP award.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment establishes the minimum number of credits earned and the minimum grade point average a student must achieve before being certified for the next payment on his or her TAP award for the 2010-2011 academic year. It also defines a program of remedial study so that colleges, universities and other postsecondary institutions can determine which standards of academic progress apply. Chapter 53 of the Laws of 2010 does not make any differentiation in eligibility based upon the geographic location of the student. In the interests of equity, uniform criteria are established for all students across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

Job Impact Statement

The proposed amendment relates to the new standards for academic progress for the tuition assistance program for the 2010-2011 academic year. The purpose of the proposed amendments is to implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study to determine whether the 2006 or 2010 standards of academic progress apply for the 2010-2011 academic year.

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

Assessment of Public Comment

Since publication of the proposed amendment in the State Register on September 29, 2010, the Department received the following comments.

Comment: One comment expressed support for the proposed amendment and for the Regents development of new SAP regulations for reme-

dial students with participation and input from all sectors of higher education.

Response: SED agrees with this comment.

Comment: One comment expressed support for the proposed amendment. The SAP proposal put forward in last year's budget, which took effect via the Governor's vetoes in July, would have prevented thousands of low income and minority students from being able to remain in college. The solution put forward by the Department, and ultimately implemented via regulation, resulted in these students being able to continue with their education while also providing an opportunity for students and colleges to plan for a new set of SAP to take effect for the 2011 academic year.

Response: SED agrees with this comment.

EMERGENCY RULE MAKING

Regents Standing Committees

I.D. No. EDU-51-10-00012-E

Filing No. 1312

Filing Date: 2010-12-21

Effective Date: 2010-12-21

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

Action taken: Amendment of section 3.2 of Title 8 NYCRR.

Statutory authority: Education Law, section 207

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

Specific reasons underlying the finding of necessity: Pursuant to 8 NYCRR section 3.2, the Board of Regents has established several standing committees to assist the Board to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department. The names of standing committees generally reflect the name of the respective office within the State Education Department whose educational functions are overseen by a particular committee. For example, the Adult Education and Workforce Development committee is responsible for overseeing the functions of the Office of Adult Education and Workforce Development.

The Office of Adult Education and Workforce Development was established under a recent reorganization of the State Education Department that abolished the Office of Vocational Educational Services for Individuals with Disabilities (VESID) by transferring responsibility for adult education, workforce development, vocational rehabilitation and proprietary school supervision to the new Adult Education and Workforce Development committee, and transferring responsibility for special education to a new Office of P-12 Education.

The Office of Adult Education and Workforce Development intends to change its name to the Office of Adult Career and Continuing Education Services (ACCES). The proposed amendment is needed to make a conforming change in the name of the Regents standing committee from Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES)."

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act, is at the March 7-8, 2011 meeting of the Board of Regents. If adopted at the March Regents meeting, the earliest the amendment could become effective is March 30, 2011. However, in addition to the March 7-8, 2011 meeting, Regents meetings are also scheduled for January 10-11, 2011 and February 7-8, 2011.

The proposed amendment is being adopted as an emergency rule upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately rename the Regents standing committee known as Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES), and thereby avoid confusion to the public and otherwise assist the Board of Regents to efficiently and effectively meet its statutory responsibilities.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their March 7-8, 2011 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Regents standing committees.

Purpose: Change Adult Education and Workforce Development committee name to "Adult Career and Continuing Education Services (ACCES)".

Text of emergency rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective December 21, 2010, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .

(6) [Adult Education and Workforce Development] *Adult Career and Continuing Education Services (ACCES)*.

2. Paragraph (6) of subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective December 21, 2010 as follows:

(6) Committee on [Adult Education and Workforce Development] *Adult Career and Continuing Education Services (ACCES)*:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-51-10-00012-P, Issue of December 22, 2010. The emergency rule will expire March 20, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Regents Rules relating to the Regents standing committees to a change in name of the Office of Adult Education and Workforce Development to Office of Adult Career and Continuing Education Services (ACCES).

3. NEEDS AND BENEFITS:

The Office of Adult Education and Workforce Development was established under a recent reorganization of the State Education Department that abolished the Office of Vocational Educational Services for Individuals with Disabilities (VESID), and transferred responsibility for adult education, workforce development, vocational rehabilitation and proprietary school supervision to the new Adult Education and Workforce Development committee, and transferred responsibility for special education to a new Office of P-12 Education.

The Office of Adult Education and Workforce Development intends to change its name to Office for Adult Career and Continuing Education Services (ACCES). The proposed amendment is needed to make a conforming change in the name of the Regents standing committee from Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES)."

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Costs to private regulated parties: None.

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

The proposed amendment relates to the internal organization of the Board of Regents and merely changes the name of the Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES)," and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, record-keeping or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

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

**EMERGENCY
RULE MAKING**

Appeals to Commissioner of Education Relating to New York City Charter School Location/Co-Location and Building Usage Plans

I.D. No. EDU-52-10-00012-E

Filing No. 1314

Filing Date: 2010-12-21

Effective Date: 2010-12-21

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

Action taken: Amendment of Parts 275 and 276 of of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 305(1) and (2), 310, 311 and 2853(3)(a-5); and L. 2010, ch. 101, section 15

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The statute provides for expedited Education Law § 310 appeals to the Commissioner of:

(1) determinations by the New York City School District to locate or co-locate a charter school within a public school building;

(2) implementation of and compliance with the building usage plan developed pursuant to Education Law § 2853(a-3); and

(3) revision of a building usage plan that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B), which requires the building usage plan to include a proposal for the collaborative usage of shared resources and spaces between the charter school and the non-charter schools which assures equitable access to the facilities in a similar manner and at reasonable times to non-charter school students as provided to charter school students.

Pursuant to the statute, petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment merely modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations to provide for such expedited appeals consistent with statutory requirements.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be presented for adoption by regular (non-emergency) action, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202(1), would be at the March 7-8, 2011 Regents meeting. Since SAPA section 203(1) provides that an adopted rule cannot become effective until a Notice of Adoption is published in the State Register, the earliest date a rule adopted at the March 2011 Regents meeting can take effect is March 30, 2011. However, modified procedures for expedited New York City charter school co-location appeals need to be in place now, in order to ensure that decisions in such appeals can be timely rendered pursuant to statutory requirements.

Emergency action to amend Parts 275 and 276 of the Commissioner's Regulations is necessary for the preservation of the general welfare in order to ensure that procedures are in place as soon as possible for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5) so that the parties and their attorneys are on notice of the procedures they must follow, and decisions in such appeals are handled expeditiously pursuant to statutory requirements.

It is anticipated that the proposed amendment will be presented for permanent adoption at the March 2011 meeting of the Board of Regents, after expiration of the 45-day public comment period for proposed rule makings prescribed in the State Administrative Procedure Act.

Subject: Appeals to Commissioner of Education relating to New York City charter school location/co-location and building usage plans.

Purpose: Establish special procedures for appeals relating to New York City charter school location/co-location and building usage plans.

Substance of emergency rule: The Board of Regents has adopted an amendment of Parts 275 and 276 of the Commissioner's Regulations, as an emergency rule, effective December 21, 2010, relating to appeals concerning New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The following is a summary of the substance of the emergency rule.

Section 275.8(a) and (b) of the Commissioner's Regulations are amended to require that the memorandum of law in such appeals be served with the petition.

Section 275.9(a) is amended to require that pleadings and papers in such appeals be filed with the Department's Office of Counsel within the period specified in new section 276.11.

Section 275(a) is amended to provide that petitions in such appeal must contain the notice prescribed in section 276.11.

Section 275.13(a) is amended to provide that the time to answer in an expedited charter school location/co-location appeal shall be governed by Education Law section 2853(3)(a-5) and section 276.11.

Section 275.14(a) is amended to provide that a reply in an expedited charter school location/co-location appeal shall be served within the time prescribed by section 276.11.

Section 276.1(d) is added to provide that the provisions of section 276.1, relating to stay of proceedings, shall not apply to an expedited charter school location/co-location appeal.

Section 276.2(g) is added to provide that the provisions of section 276.2, relating to oral argument, shall not apply to an expedited charter school location/co-location appeal.

Section 276.4(a) is amended to provide that memoranda of law in expedited charter school location/co-location appeals shall be served and filed in the manner prescribed in section 276.11.

Section 276.8(f) is added to provide that the provisions of section 276.8, relating to reopening of a prior decision, shall not apply to an expedited charter school location/co-location appeal.

Section 276.11 is added to establish procedures in expedited charter school location/co-location appeals.

Section 276.11(a) sets forth definitions of "board of education" and "day."

Section 276.11(b) sets forth the applicability of the section. The procedures set forth in the section shall apply to appeals pursuant to Education Law § 2853(3)(a-5) from:

(1) final determinations of the board of education to locate or co-locate a charter school within a public school building;

(2) the implementation of, and compliance with, the building usage plan developed pursuant to Education Law § 2853(3)(a-3); and/or

(3) revisions of such a building usage plan on the grounds that such revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B).

Except as provided in section 276.11, the procedures set forth in Part 275 and Part 276 shall govern the practice in such appeals. The initiation of an appeal shall not, in and of itself, effect a stay of any proceedings on the part of respondent and a stay order shall not be available in an expedited appeal pursuant to section 276.11.

Section 276.11(c) establishes requirements relating to the petition and notice of petition in such appeals. The petition shall be served in the manner prescribed in section 275.8(a) of this Title, together with all of petitioner's affidavits, exhibits and supporting papers and petitioner's memorandum of law. The petition may not include any claims challenging actions other than determinations of the City School District of the City of New York to locate or co-locate a charter school within a public school building or the implementation of, and compliance with, the building usage plan developed pursuant to Education Law § 2853(a-3), or the revision of such a building usage plan, as set forth in subdivision (a) of this section. The petition must contain the notice prescribed in section 276.11. The failure to use the Notice of Petition required by this subdivision shall result in dismissal of the expedited appeal and the Commissioner may dismiss the appeal on such ground at any stage of the proceedings.

Section 276.11(d) establishes requirements for the filing of pleadings and papers. Within 1 day after the service of any pleading or paper, the original of any pleading or paper served under section 276.11, together with the affidavit of verification and an affidavit proving the service of a copy thereof, shall be transmitted to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234, by personal delivery, express mail delivery, or equivalent means reasonably calculated to assure receipt of such pleading or paper within 24 hours of service. The affidavit of service shall be in substantially the form set forth in section 275.9. The fee for filing the petition shall be as provided in section 275.9(c).

Section 276.11(e) establishes requirements relating to service of subsequent pleadings and supporting papers. An answer shall be served within 10 days of service of the petition and a reply to each affirmative defense raised in the answer shall be served within two days of service of the answer. The Commissioner, in his/her sole discretion, may excuse a failure to serve an answer or reply within the time prescribed herein for good cause beyond the control of the requesting party; the reasons for such failure shall be set forth in the answer or reply. Service of all subsequent pleadings and supporting papers shall be made by personal delivery or next day delivery by express mail or a private express delivery

service, in accordance with the provisions of section 275.8(b); provided that, upon consent of the receiving party, service of subsequent pleadings and supporting papers may be made by electronic mail (e-mail) communication.

Section 276.11(f) establishes requirements relating to the memorandum of law. The petitioner's memorandum of law shall be served and filed with the petition and respondent's memorandum of law shall be served and filed with the answer. The petitioner may serve and file a reply memorandum of law with the reply.

Section 276.11(g) establishes requirements relating to the dismissal of claims. Any claims included in the petition in an expedited appeal in violation of 276.11(c)(1) shall be dismissed by the Commissioner without prejudice to commencing a non-expedited appeal pursuant to Education Law § 310, Part 275 of this Title and this Part within 10 days after receipt of the decision dismissing such claims. Any claims raised in a non-expedited appeal brought pursuant to Education Law § 310, Part 275 of this Title and Part 276 which challenge actions set forth in section 276.11(b)(1) shall be dismissed with prejudice unless the petitioner has waived the right to an expedited appeal in accordance with section 276.11(h).

Section 276.11(h) establishes procedures for waiver of an expedited appeal. The petitioner may intentionally waive the right to an expedited appeal pursuant to this section and opt to commence a non-expedited appeal pursuant to Education Law § 310, Part 275 of this Title and this Part. Such waiver shall be in writing and shall explicitly state that the right to an expedited appeal pursuant to Education Law § 2853(3)(a-5) and section 276.11 of the Regulations of the Commissioner is waived.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-52-10-00012-P, Issue of December 29, 2010. The emergency rule will expire March 20, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations implementing State law regarding education.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 310 provides that an aggrieved party may appeal by petition to the Commissioner of Education in consequence of certain specified actions by school districts and school officials.

Education Law section 311 authorizes the Commissioner to regulate the practice of appeals to the Commissioner brought pursuant to Education Law section 310.

§ 15 of Chapter 101 of the Laws of 2010 amended Education Law section 2853(3) and added five new paragraphs (a-1) through (a-5) to, among other things, establish requirements for the location or co-location of a charter school in a public school building. Education Law § 2853(3)(a-5) provides for an expedited Education Law § 310 appeal to the Commissioner of:

(1) determinations by the New York City School District to locate or co-locate a charter school within a public school building;

(2) implementation of and compliance with the building usage plan developed pursuant to Education Law § 2853(a-3), that has been approved by the board of education pursuant to Education Law § 2590-g(1)(h) after satisfying the requirements of Education Law § 2590-h(2-a); and

(3) revision of a building usage plan approved by the board of education consistent with the requirements pursuant to Education Law § 2590-g(7), that is appealed on the grounds that the revision fails to meet the standards set forth in Education Law § 2853(3)(a-3)(2)(B).

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes to regulate the practice and procedures to be followed in Education Law section appeals, and is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment establishes procedures that accommodate the extremely short time frames imposed by the statute, while assuring that due process is provided through procedures which are workable and fair to both parties.

4. COSTS:

Cost to the State: None.

Costs to local government: None.

Cost to private regulated parties: None.

Cost to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment will not impose any costs on the State or local governments beyond those imposed by State law. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals relating to charter school location/co-location and building usage plans consistent with statutory requirements.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any additional program, service, duty or responsibility beyond those imposed by State statutes. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

6. PAPERWORK:

The proposed amendment imposes no additional reporting, forms or other paperwork requirements. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals relating to New York City charter school location/co-location and building usage plans consistent with statutory requirements.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with State and Federal rules or requirements, and is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

8. ALTERNATIVES:

There were no significant alternatives. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5).

9. FEDERAL STANDARDS:

The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures relating to New York charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). There are no applicable standards of the Federal government for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the provisions of the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regula-

tions, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to the City School District of the City of New York.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements beyond those imposed by State law. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs beyond those imposed by State law. The proposed amendment merely modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new economic costs or technological requirements on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or compliance costs beyond those imposed by State law. The proposed amendment is necessary to implement Chapter 101 of the Laws of 2010, by establishing procedures for appeals of New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for expedited appeals consistent with statutory requirements.

LOCAL GOVERNMENT PARTICIPATION:

A copy of the proposed amendment was provided to the New York City Department of Education for review and comment.

Rural Area Flexibility Analysis

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment is applicable to the City School District of the City of New York and will not have an adverse impact on rural areas or impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Because it is evident from the nature of the proposed amendment that it does not affect rural areas or public or private entities in rural areas, no further measures were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to appeals to the Commissioner of Education pursuant to Education Law §§ 310 and 2853(3)(a-5) relating to

New York City charter school location/co-location and building usage plans. Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The proposed amendment modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

**EMERGENCY
RULE MAKING**

Regents Standing Committees

I.D. No. EDU-52-10-00013-E

Filing No. 1313

Filing Date: 2010-12-21

Effective Date: 2010-12-21

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

Action taken: Amendment of section 3.2(a) and (d) of Title 8 NYCRR.

Statutory authority: Education Law, section 207

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to establish a Regents standing committee on Audits, Budget and Finance so that the Board of Regents may more effectively meet its statutory responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department. Specifically, the Committee on Audits, Budget and Finance will assist the Board of Regents in carrying out its financial oversight responsibilities by ensuring accountability through centralizing review and discussion of fiscal and audit issues related to the State Education Department. The Committee will:

- review State and federal budget actions;
- review financial reports and all audits of the Department;
- recommend budget priorities for the upcoming State fiscal year and actions needed to achieve budget reductions and close structural deficits;
- review select audits of other institutions in the University of the State of New York which may require Department action and submit recommendations and reports to the Full Board, as appropriate; and
- provide oversight of the Department's Office of Audit Services.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act, is at the March 7-8, 2011 meeting of the Board of Regents. If adopted at the March Regents meeting, the earliest the amendment could become effective is March 30, 2011. However, in addition to the March 7-8, 2011 meeting, Regents meetings are also scheduled for January 10-11, 2011 and February 7-8, 2011.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately establish the Committee on Audits, Budget and Finance, so that the Committee may efficiently and expeditiously assume its duties beginning with the next succeeding Regents meetings, and thereby assist the Board of Regents to efficiently and effectively meet its statutory responsibilities.

It is anticipated that the proposed amendment will be presented for permanent adoption at the March 2011 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

Subject: Regents standing committees.

Purpose: Establish the Committee on Audits/Budget and Finance as a standing committee of the Board of Regents.

Text of emergency rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective December 21, 2010, as follows:

(a) The chancellor shall appoint the following standing committees and designate the leadership of each committee:

- (1) Higher Education.
- (2) P-12 Education.
- (3) Cultural Education.
- (4) Ethics.
- (5) Professional Practice.
- (6) Adult Education and Workforce Development.
- (7) *Audits/Budget and Finance.*

2. Subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective December 21, 2010, as follows:

(d) The functions of the standing committees shall include:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .

(7) *Committee on Audits/Budget and Finance shall assist the Board of Regents in carrying out its financial oversight responsibilities by ensuring accountability through centralizing review and discussion of fiscal and audit issues related to the State Education Department. The Committee shall:*

(i) *review State and federal budget actions;*
 (ii) *review financial reports and all audits of the Department;*
 (iii) *recommend budget priorities for the upcoming State fiscal year and actions needed to achieve budget reductions and close structural deficits;*

(iv) *review select audits of other institutions in the University of the State of New York which may require Department action and submit recommendations and reports to the Full Board, as appropriate; and*

(v) *provide oversight of the Department's Office of Audit Services.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-52-10-00013-P, Issue of December 22, 2010. The emergency rule will expire March 20, 2011.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 gives the Board of Regents broad authority to adopt rules to carry into effect the laws and policies of the State pertaining to education and the functions, powers and duties conferred upon the University of the State of New York and the State Education Department. Inherent in such authority is the authority to adopt rules concerning the internal management and committee structure of the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to establish the Committee on Audits, Budget and Finance as a standing committee of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to establish the Committee on Audits, Budget and Finance as a standing committee of the Board of Regents to assist the Board of Regents in carrying out its financial

oversight responsibilities by ensuring accountability through centralizing review and discussion of fiscal and audit issues related to the State Education Department. The Committee will:

- review State and federal budget actions;
- review financial reports and all audits of the Department;
- recommend budget priorities for the upcoming State fiscal year and actions needed to achieve budget reductions and close structural deficits;
- review select audits of other institutions in the University of the State of New York which may require Department action and submit recommendations and reports to the Full Board, as appropriate; and
- provide oversight of the Department's Office of Audit Services.

4. COSTS:

- (a) Cost to State government: None.
- (b) Cost to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to the regulating agency for implementation and continuing administration of the rule: None.

The proposed amendment relates to the internal organization of the Board of Regents, specifically the committee structure of the Board of Regents, and will not impose any costs on State and local government, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to the internal organization of the Board of Regents and consequently will not impose any program, service, duty or responsibility on local governments.

6. PAPERWORK:

The proposed amendment does not impose any reporting, record-keeping or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

The amendment does not exceed any minimum federal standards for the same or similar subject areas, since it relates solely to the internal organization of the Board of Regents of New York State and there are no federal standards governing such.

10. COMPLIANCE SCHEDULE:

The proposed amendment relates solely to the internal organization of the Board of Regents and will not impose compliance requirements on local governments or private parties.

Regulatory Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will have no impact on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

The proposed amendment relates to the internal organization of the Board of Regents and therefore will not have any adverse economic impact or impose any compliance requirements on entities in rural areas. Because it is evident from the nature of the proposed amendment that it will have no impact on entities in rural areas of the State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed amendment relates to the internal organization of the Board of Regents and will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further 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.

NOTICE OF ADOPTION

Mandatory Quality Review Program for Public Accountancy**I.D. No.** EDU-30-10-00003-A**Filing No.** 1311**Filing Date:** 2010-12-21**Effective Date:** 2011-01-05

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

Action taken: Amendment of section 70.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6506(6) and 7410

Subject: Mandatory quality review program for public accountancy.

Purpose: To establish the requirements for the mandatory quality review program for public accountancy.

Text or summary was published in the July 28, 2010 issue of the Register, I.D. No. EDU-30-10-00003-P.

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

Revised rule making(s) were previously published in the State Register on October 6, 2010.

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on July 28, 2010, the State Education Department received the following comments.

COMMENT: Two commenters expressed concern that the proposed regulations require auditors performing audits for small not-for-profit entities to undergo a peer review in accordance with government auditing standards also known as the "Yellow Book" standards promulgated by the Comptroller General of the United States. The commenters believe that requiring the application of these peer review standards could raise the cost of an independent audit of small not-for-profit entities. Another commenter expressed concern that the regulation would require all NYS Charities Bureau clients to be audited according to the "Yellow Book" Continuing Professional Education requirement.

RESPONSE: The proposed regulation implements the requirements of Chapter 651 of the Laws of 2008, which requires "a firm that performs attest services for any New York State or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for New York State or any one or more municipalities thereof, or performs attest services specifically required to be performed pursuant to New York State law... to undergo an external peer review in conformity with" Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States. The proposed amendment does not impose any additional requirements above those imposed by statute.

COMMENT: One commenter expressed concerns over the ambiguity of the phrases "begins providing attest services" and "initial performance" of attest services.

RESPONSE: The AICPA standards define the date of performance as the date the accountant issues an attestation report. The same date will be used for purposes of the proposed amendment. The Department will clarify this in guidance.

COMMENT: One commenter expressed concerns over the use of the term "conducted" and suggested that the term "completed" be used to avoid ambiguity and conform to current professional standards. The regulation states that the peer review must be 'conducted' within 18 months. The commenter would prefer the term 'completed.'

RESPONSE: The Department has revised the proposed regulation to use the term completed instead of conducted to avoid any ambiguity and conform to the AICPA standards.

COMMENT: One commenter recommends that the Quality Review Oversight Committee recommend to the Department the acceptance of peer review reports rated "pass with deficiencies," similar to reports rated "pass without deficiencies."

RESPONSE: The Department believes that the Quality Review Oversight Committee should review all reports with deficiencies and reserve its ability and judgment to determine if such deficiencies warrant disciplinary action. The Department believes this to be in the public's best interest.

COMMENT: One commenter suggested a change to the reporting standard to coincide with existing peer review standards by including the wording "in all material respects" in the regulation. The commenter also suggested changing the section on referrals to the Office of Professional Discipline to include the wording "in all material respects," based on the fact that this language is used in reports on financial statements and in the proposed quality review standards.

RESPONSE: The proposed regulation provides for the adoption of AICPA standards for peer review. These standards require the review team to report whether or not a firm's is complying with applicable professional standards "in all material respects." Therefore it is not necessary to include the suggested level of specificity in the proposed regulation.

COMMENT: Professional standards require that a letter of comments be issued by the review team, if deficiencies were found during a quality review and if the quality review was commenced prior to January 1, 2009. To conform to these professional standards, the commenter suggested that the Department clarify that in addition to a quality review report, the letter of comments should also be submitted to the Department for those firms falling into this category.

RESPONSE: The Department believes that because the implementation date of the quality review requirement is January 1, 2012, many of the firms submitting reports under the regulation will have had their quality reviews commenced after January 1, 2009 and this requirement will not affect many of the firms submitting reports in compliance with the regulation. However to address this concern, the Department will clarify the need to submit a letter of comments in guidance for firms that fall into this category.

NOTICE OF ADOPTION

Age and Four-Year Limitations for Participation in Senior High School Athletic Competition**I.D. No.** EDU-32-10-00009-A**Filing No.** 1315**Filing Date:** 2010-12-21**Effective Date:** 2011-01-05

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 803 (not subdivided), and 3204(2) and (3)

Subject: Age and four-year limitations for participation in senior high school athletic competition.

Purpose: To provide a waiver for a student with a disability to participate in certain high school sports for a fifth year.

Text or summary was published in the August 11, 2010 issue of the Register, I.D. No. EDU-32-10-00009-EP.

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

Revised rule making(s) were previously published in the State Register on November 3, 2010.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New Standards for Academic Progress for Tuition Assistance Program for the 2010-11 Academic Year**I.D. No.** EDU-39-10-00011-A**Filing No.** 1310**Filing Date:** 2010-12-21**Effective Date:** 2011-01-05

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

Action taken: Amendment of section 145-2.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 602(2), 661(2) and 665(6); L. 2010, ch. 53

Subject: New standards for academic progress for tuition assistance program for the 2010-11 academic year.

Purpose: Implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study.

Text or summary was published in the September 29, 2010 issue of the Register, I.D. No. EDU-39-10-00011-P.

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

Text of 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

Assessment of Public Comment

Since publication of the proposed amendment in the State Register on September 29, 2010, the Department received the following comments.

Comment: One comment expressed support for the proposed amendment and for the Regents development of new SAP regulations for remedial students with participation and input from all sectors of higher education.

Response: SED agrees with this comment.

Comment: One comment expressed support for the proposed amendment. The SAP proposal put forward in last year's budget, which took effect via the Governor's vetoes in July, would have prevented thousands of low income and minority students from being able to remain in college. The solution put forward by the Department, and ultimately implemented via regulation, resulted in these students being able to continue with their education while also providing an opportunity for students and colleges to plan for a new set of SAP to take effect for the 2011 academic year.

Response: SED agrees with this comment.

NOTICE OF ADOPTION

Diploma Credit for Languages Other Than English and State Assessments in Social Studies

I.D. No. EDU-40-10-00022-A

Filing No. 1317

Filing Date: 2010-12-21

Effective Date: 2011-01-05

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

Action taken: Amendment of sections 100.1, 100.2, 100.4 and 100.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Diploma credit for languages other than English and State assessments in social studies.

Purpose: To implement cost-saving measures associated with administering State assessments by eliminating certain State examinations.

Text or summary was published in the October 6, 2010 issue of the Register, I.D. No. EDU-40-10-00022-P.

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

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

Assessment of Public Comment

The agency received no public comment.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Amend Teacher Education Program Registration Requirements for Special Education and Special Education Certification Requirements

I.D. No. EDU-43-10-00011-RP

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

Proposed Action: Amendment of sections 52.21, 80-3.7, 80-4.2 and 80-4.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1) and (2) and 3004(1)

Subject: Amend teacher education program registration requirements for special education and special education certification requirements.

Purpose: Restructure the adolescence level special education certificate structure to fill the need for special education teachers.

Substance of revised rule: The Board of Regents proposes to amend Sections 52.2, 80-4.2 and 80-4.3 of the Regulations of the Commissioner of Education, effective October 17, 2010, relating to teacher education program registration requirements, the structure of adolescence level students with disabilities certificates and individual evaluation requirements and timelines for such titles. The following is a summary of the substance of the proposed amendments.

Item (iii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 is amended to put in place requirements to better prepare all teachers in developing the skills necessary to provide instruction that will promote the participation and progress of students with disabilities in the general education curriculum by requiring all registered teacher education programs to include a minimum of three semester hours in understanding the needs of students with disabilities. The item identifies the areas of study that must be included in the three semester hour requirement and prescribes a process for a waiver from the requirement.

Subitems (A) and (B) are added to item (i) of subclause (2) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 to require that at least 15 of the 100 clock hours of field experience in all teacher preparation programs include a focus on understanding the needs of students with disabilities.

Subclauses (3) and (4) of clause (a) of subparagraph (iii) of paragraph (2) of subdivision (b) of section 52.21 are amended to establish a start date of September 2, 2011 for requirements for new special education adolescence level-generalist teacher preparation programs.

Subparagraph (vi) of paragraph (3) of subdivision (b) of section 52.21 is amended to establish the program registration requirements for programs registered on or after September 2, 2011 for the new students with disabilities grades 7-12 generalist certificate title to include, within the content core, six semester hours in mathematics, science, English language arts and social studies and sufficient pedagogy to teach these subjects.

Items (iii) and (iv) of subclause (1) of clause (b) of subparagraph (xvii) of paragraph (3) of subdivision (b) of section 52.21 establishes a start date of September 2, 2011 for new special education adolescence level teacher preparation programs preparing special educators for Transitional B certificates.

Item (v) is added to subclause (1) of clause (b) of subparagraph (xvii) of paragraph (3) of subdivision (b) of section 52.21 to establish the program registration requirements for Transitional B certificate candidates for the new students with disabilities grades 7-12 generalist to include, six semester hours in mathematics, science, English language arts and social studies and sufficient pedagogy to teach those subjects prior to program completion.

Items (ii) and (iii) of subclauses (2) of clause (b) of subparagraph (xvii) of paragraph (3) of section 52.21 requires that at least 6 of the 40 clock hours of field experience for Transitional B programs focus on meeting the needs of students with disabilities.

Subparagraph (i) of paragraph (4) of subdivision (b) of section 52.21 is amended to clarify that program registration requirements for programs leading to an extension for students with disabilities middle childhood titles are in effect for programs registered prior to September 2, 2011, since the students with disabilities middle childhood title will be eliminated.

Subparagraph (viii) is added to paragraph (4) of subdivision (b) of section 52.21 to establish extensions to authorize the teaching of certain subjects in grades 7 through 12 to students with disabilities for a certificate in students with disabilities adolescence (generalist) and to require study of at least 18 semester hours in the subject to be taught.

Subparagraph (v) of paragraph (2) of subdivision (a) of section 80-3.7 is amended to require that, under individual evaluation, the pedagogical core include three semester hours of study to develop the skills necessary to provide specifically designed instruction to students with disabilities to participate and progress in the general education curriculum.

Subparagraphs (vii) and (viii) of paragraph (3) of subdivision (a) of section 80-3.7 are amended to phase out individual evaluation for candidates seeking students with disabilities in middle childhood titles or students with disabilities in specialist (grades 7-12) certificate. Candidates must apply for their certificate prior to September 1, 2011 and complete all requirements before September 1, 2014 to be eligible for these certificates under individual evaluation. These subparagraphs also establish requirements for individual evaluation for the new students with disabilities grades 7-12 generalist certificate title, requiring within the content core, six semester hours in mathematics, science, English language arts and social studies and sufficient pedagogy to teach these subjects.

Paragraphs (9) and (10) are amended and new paragraphs (11) through (18) are added to subdivision (a) of section 80-4.2 to establish extensions in earth science, biology, chemistry, physics, mathematics, social studies, English language arts and languages other than English (specified) in grades 5-9 or 7-12.

Subdivision (c) is added to section 80-4.2 to provide a general requirement for all extensions which requires (candidates or applicants) to achieve at least a certain course level and course grade for the course to be credited toward the semester hour requirement for the extension sought.

Clauses (a) and (b) of subparagraph (i) of paragraph (2) of subdivision (a); clause (d) of subparagraph (ii) of paragraph (4) of subdivision (a); paragraph (2) of subdivision (b); paragraph (2) of subdivision (c); subparagraph (ii) of paragraph (2) of subdivision (d); subparagraph (ii) of paragraph (2) of subdivision (e); and subparagraph (ii) of paragraph (2) of subdivision (f) of section 80-4.3 are amended to delete duplicative language included in the proposed amendment to subdivision (c) of section 80-4.2.

A new subdivision (n) is added to section 80-4.3 establishing the requirements for subject area extensions to teach adolescence level students with disabilities including 18 semester hours or the equivalent in the subject area of the extension sought and the passage of the content specialty test in that area. For district and BOCES teachers with such an extension, weekly collaboration and monthly co-teaching with a certified general education content specialist in the subject are required to teach the subject to students with disabilities in a special class. There is an exception that allows certain schools identified in the regulation, that cannot meet the regulatory requirement for weekly collaboration and monthly co-teaching, to submit a plan acceptable to the Department with a description of the mentoring and collaboration the candidate will receive. Schools enumerated in article 81, 85, 87, 88 or 89 of the Education Law or a special act school district as defined in subdivision 8 of section 4001 of the Education Law that educates only students with disabilities are the schools identified in the regulation that may be eligible for a waiver under this subdivision.

Revised rule compared with proposed rule: Substantial revisions were made in section 80-3.7(a)(3).

Text of revised proposed rule and any required statements and analyses may be obtained from Christine Moore, New York State Education Department, 89 Washington Avenue, Albany, New York 12257, (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: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on October 27, 2010, the following substantial revisions were made to the proposed rule:

Subparagraph (vii) and (viii) of paragraph (3) of subdivision (a) of section 80-3.7 of the Regulations of the Commissioner of Education were amended to extend the time that teacher candidates

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 27, 2010, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule do not require any revisions to the previously published Regulatory Flexibility Analysis.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 27, 2010, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services sections of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed amendment requires all registered teacher education programs to include a minimum of three semester hours in educating students with disabilities to ensure that all teachers are better prepared to skillfully collaborate with other teachers and to teach students with disabilities and defines what the three semester hour requirement shall include. The proposed amendment also requires that 15 of the 100 clock hours of field experience required for teacher education programs focus on students with disabilities and that 6 of the 40 clock hours of field experience for Transitional B programs focus on students with disabilities.

The proposed amendment changes the current certification structure for students with disabilities certificates for grades 5 through 9 and 7 through 12 and the registration requirements for programs leading to certificates in these areas. Candidates will no longer be able to enroll in special education teacher preparation programs that lead to students with disabilities (grades 5-9 generalist) and students with disabilities (grades 5-9-specialist) and (grades 7-12-specialist) certificate titles after February 1, 2011. A certificate title in students with disabilities (grades 7-12- generalist will be created. For candidates seeking this certificate, the candidate will be required to complete six semester hours in mathematics, science, English language arts and social studies within their content core and have sufficient pedagogy to teach these subjects. Teachers holding this certificate will be eligible to be employed to teach in supportive roles such as consultant teachers, resource room service providers and integrated co-teachers.

Teachers holding the new students with disabilities (grades 7-12-generalist) will also have the option of obtaining an extension to this certificate, to authorize the teacher to be employed as the special class teacher of students with disabilities in a specific subject area, upon the completion of certain requirements. To obtain an extension in a specific subject, the teacher shall complete 18 semester hours of study or its equivalent in the subject area of the extension sought. For social studies, the candidate shall complete the 18 semester hours through a combination of study in United State history, world history and geography. This, coupled with passing the content specialty test in the specific subject area, will allow candidates to earn an extension to the base certificate to permit the teacher to be employed as the special class teacher of students with disabilities in that subject in the developmental level of their base certificate. Any district or BOCES that employs a candidate holding this extension must provide weekly collaboration between a certified general education content specialist in the subject area of the extension and the teacher holding the extension, with at least one period per month co-taught by both teachers. The length of the required weekly collaboration and co-taught lesson will be defined at the local level.

Schools enumerated in article 81, 85, 87, 88 or 89 of the Education Law or a special act school district that educates only students with disabilities and who cannot meet the regulatory requirement for collaboration and co-teaching for their employed special education teachers, must submit a plan acceptable to the Department with a description of the mentoring and collaboration the teacher will receive.

The proposed regulation also establishes requirements for individual evaluation for the new students with disabilities (grades 7-12- generalist) certificate by requiring candidates seeking a certificate in this area to complete, among other requirements, six semester hours in mathematics, science, social studies and English language arts and have sufficient pedagogical training to teach these subjects. The proposed amendment also phases out individual evaluation for the students with disabilities (grades 5-9-generalist) certificate and the students with disabilities (grades 5-9) and (grades 7-12) content specific certificates by requiring candidates to apply for these certificates prior to September 1, 2011 and to complete the requirements for such certificate before September 1, 2014 to obtain certification through individual evaluation in these titles.

The amendments do not impose any additional professional service requirements on rural areas, beyond those imposed by such federal statutes and regulations and State statutes.

Revised Job Impact Statement

Since publication of the Notice of Proposed Rule Making in the State Register on October 27, 2010, the proposed rule was revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to the registration of special education programs and the certification of special education teachers. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on October 27, 2010, the State Education Department received one comment, which was generally supportive, but included the following comments.

COMMENT: The commenter expressed concern that the division of grade ranges of students with disabilities certificate titles does not align with the grade ranges in existence in school buildings.

RESPONSE: To the extent practicable, the grade ranges parallel the structure of the general education certificates. The Department will be reviewing the entire structure of grades ranges for all certificates in the future, and will align, to the extent possible, with the structure of state school buildings.

COMMENT: The commenter requested greater clarity on the scope of

instructional practice for teachers with the new adolescence grades 7-12 (generalist) certificate title.

RESPONSE: Since publishing the rule, the Department has provided guidance regarding the functions of teachers with the new certificate title. Additional guidance is also being developed for the registration of programs leading to the new certificate.

COMMENT: The commenter indicated that teacher education programs preparing candidates for the new students with disabilities 7-12 Generalist certificate, must require, as part of the teacher preparation program of study, coursework that addresses the needs of students functioning at a lower developmental level.

RESPONSE: The regulations require that registered programs prepare candidates of students with disabilities programs for students functioning within a wide range of developmental levels. Additionally, the Department has developed a guidance template for teacher preparation programs to ensure they are aware of this requirement.

COMMENT: The commenter recommends that the State Education Department establish minimum requirements for co-teaching and collaboration for students with disabilities teachers with subject area extensions to guide school districts and BOCES and for accountability purposes.

RESPONSE: The regulations require weekly collaboration between a certified general education content specialist in the subject and the teacher who holds an extension under this subdivision, with at least one period per month co-taught by both teachers. The Department believes that school districts and BOCES should have the flexibility to reasonably determine the appropriate quantity of time needed, within the existing regulatory language, for collaboration and co-teaching at the local level.

COMMENT: The commenter recommends that the State Education Department extend the amount of time for individuals to complete requirements through individual evaluation for the students with disabilities certificates that are being phased out.

RESPONSE: SED agrees and the proposed amendment has been amended to extend the time for individuals to complete requirements through individual evaluation until September 1, 2014.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Otter Creek Trail System Assembly Area

I.D. No. ENV-01-11-00004-P

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

Proposed Action: Addition of section 190.32 to Title 6 NYCRR.

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

Subject: Otter Creek Trail System Assembly Area.

Purpose: To protect natural resources and public safety.

Text of proposed rule: A new section 190.32 is added to 6 NYCRR to read as follows:

190.32 Otter Creek Trail System Assembly Area

(a) *Description.* For purposes of this section, Otter Creek Trail System Assembly Area means those State lands located in Independence River State Forest (Lewis Reforestation Area 35) lying east of the Erie Canal Road (Chase's Lake Road) and west of the Adirondack park boundary. Said Otter Creek Trail System Assembly Area shall be hereinafter referred to as the "Assembly Area". In addition to other applicable general provisions of this Part, the following provisions apply to the Assembly Area. In the event of a conflict, these specific provisions shall control.

(b) *Camping.*

(1) Immediately upon arrival at the Assembly Area each camping party shall complete all required information on a self-issuing camping permit. The Department portion of the camping permit shall be placed in the provided drop box. The camping party's portion of the camping permit shall be displayed on the dashboard of the vehicle identified on the camping permit at all times.

(2) Each camping party is limited to a maximum of 9 persons. All members of the camping party shall be listed on the camping permit and shall occupy a single site.

(3) Camping permits are valid for a maximum of 14 consecutive nights after which all members of the camping party shall vacate the facility for a minimum of 5 calendar days.

(4) Camping sites shall be occupied by at least one or more members of the registered camping party every night during the duration of the permit.

(5) Camping in the overflow area of the Assembly Area (hereinafter referred to as "overflow area") is limited to no more than 3 consecutive nights.

(6) Any use of the Assembly Area by any person who is not a member of a registered camping party is considered day-use. Day-use shall be from 7 AM to 10 PM unless otherwise posted. No day-users are allowed in the facility after 10 PM and before 7 AM.

(c) *Horses and Llamas*

Definition. For the purpose of this section, horse(s) shall mean the entire family of equidae and llama(s) shall mean all new world camelids, llamas, alpacas, guanacos, and vicunas.

(1) All horses entering the Assembly Area shall have documentation of a currently valid Coggins test performed in the current or previous calendar year and shall have been found negative for Equine Infectious Anemia. Out of state horses shall also have a valid 30-day Certificate of Health. All horses will have proof of a current rabies vaccination.

(2) All llamas entering the Assembly Area are required to have a valid Certificate of Veterinary Inspection, with the animals individually identified and proof of a current rabies vaccination.

(3) Any horse or llama remaining in the Assembly Area overnight, with the exception of the overflow area, shall be harbored in a DEC covered tie stall or, in the case of a stallion, in a stud stall.

(4) Stud stalls shall only be occupied by stallions.

(5) Horses or llamas shall not be tethered to trees anywhere in the Assembly Area.

(6) Horses or llamas shall not be run, galloped or cantered in the Assembly Area.

(7) Horses or llamas in the overflow area shall be harbored in, or tethered to their trailer or in a temporary corral.

(8) The use of temporary corrals is restricted to the cleared section of the overflow area.

(9) No person shall fail to maintain an orderly camp, including horse stalls. All manure shall be removed or deposited into designated manure pits.

(10) Washing of horses or llamas within the Assembly Area is prohibited.

(d) *Animals and Household Pets*

(1) All animals, except household pets, horses and llamas, are prohibited.

(2) All household pets shall be confined on a leash or otherwise confined to restrict them to the camp site area of their owner.

(3) Dogs may be walked on a leash no more than 6 feet long provided they are under control at all times.

(4) No household pets shall be left unattended in the Assembly Area at any time.

(5) All household pets in the Assembly Area shall have proof of a current rabies vaccination.

(6) Household pet owners shall properly dispose of their pet's excrement in the designated manure pits.

(7) Disruptive or vicious animals and household pets shall be removed by their owner from the area whenever requested by Department or law enforcement personnel.

(e) *General Provisions.*

(1) No person shall possess alcoholic beverages in any container with a capacity greater than seven gallons at any time.

(2) Fires are only permitted in fire rings or fireplaces provided by the Department.

(3) Quiet hours shall be observed between 10:00 PM and 7:00 AM.

(4) Generators may only be operated from 8:00 AM to 10:00 AM and from 4:00 PM to 8:00 PM.

(5) The possession or use of fireworks of any nature is prohibited.

(f) *Enforcement*

(1) No person shall fail to comply with a lawful instruction of an employee of the Department or law enforcement personnel.

(2) Violation of any provision of this Part shall be grounds to revoke the camping permit which includes the violator as a member of the camping party, removal of the violator from the Assembly Area and denial of any use of the Assembly Area by the violator for a period of 7 days.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Messenger, Chief Bureau of State Land Management, NYS DEC, 625 Broadway, Albany, New York 12233-4255, (518) 402-9428, email: rwMESSen@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.

Regulatory Impact Statement

1. Statutory authority

Environmental Conservation Law (“ECL”) section 1-0101(3)(b) directs the Department to guarantee “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)(b) gives the Department the responsibility to “promote and coordinate management of...land resources to assure their protection...and take into account the cumulative impact upon all such resources in...promulgating any impact upon all such resources...in promulgating any rule or regulation.” ECL section 9-0105(1) authorizes the Department of Environmental Conservation to “exercise care, custody, and control” of State lands. ECL section 3-0301(2)(m) authorizes the Department of Environmental Conservation (DEC) to adopt rules and regulations “as may be necessary, convenient or desirable to effectuate the purposes of (the ECL),” and ECL 9-0105(3) authorizes DEC to “make necessary rules and regulations to secure proper enforcement of (ECL Article 9).”

2. Legislative objectives

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 DEC 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 Otter Creek Trail System Assembly Area. 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 section 3-0301(2)(m) and ECL section 9-0105(3)).

The proposed regulations will protect natural resources by requiring campers to complete a self issuing permit, as well as requiring horses and llamas to remain in the Assembly Area overnight. Additional provisions of the regulation will control the use of alcoholic beverages and generators as well as household pets using the area. A Unit Management Plan (UMP) for this area will be completed in the future. During the planning process, revisions to the proposed regulations might be made. This would depend upon the need, for instance if management of the area can be improved as evidenced by use or as a result of public input.

3. Needs and benefits

The Otter Creek Trail System Assembly Area serves as the major trailhead for approximately a seventy mile complex of recreational trails designated for use by horses, mountain bikes and hikers. The trail system is located on two State reforestation areas as well as the adjoining Independence River Wild Forest. The Assembly Area also provides camping and equestrian related facilities. Because of unregulated use of this facility during peak periods, degradation of natural resources, particularly damage to vegetation and trees has occurred. In addition, social impacts, including overcrowding, boisterous behavior and pets, particularly dogs disturbing other users, must be controlled. The major provisions of the proposed regulations that will control use on the Assembly Area include: requiring campers to complete a self-issuing permit; limiting the size of camping parties to groups of nine; requiring horses and llamas to remain in the Assembly Area overnight to be tethered in a DEC covered tie stall or, in the case of a stallion, in a stud stall; tethering of horses and llamas in the Overflow Area to a trailer or to a temporary corral; restrictions on alcoholic beverages and household pets and allowing the operation of generators from 8:00 a.m. to 10:00 a.m. and from 4:00 p.m. to 8:00 p.m.

Additional regulations that may apply to the Assembly Area are covered under 6 NYCRR Part 190, Use of State Lands.

The proposed regulations relating to the self-issuing permit system provides a mechanism to limit the amount of use within the Assembly Area to a level within the area’s capacity to withstand that use. In addition, it would provide the Department with valuable user data for the area. Limiting the size of camping groups to nine would lessen the potential for environmental damage to the area as well as limiting the potential for social impacts, such as inappropriate behavior causing disturbance to other users. The proposed regulations require horses and llamas remaining in the Assembly Area overnight be tethered in a covered tie stall or horses(s) in a stud stall as well as requiring horses and llamas in the Overflow Area be tethered to a trailer or to a temporary corral. This will provide protection to vegetation and trees in the Assembly Area by prohibiting tethering of horses and llamas to trees which can cause damage to bark. This is a potential problem, particularly during high peak use periods.

The proposed regulations will extend hours to allow generator use to accommodate users who are on the trails late in the day. The seven gallon container restriction on alcohol is necessary so that excessive drinking can be minimized. The regulation on household pets is necessary, particularly to control dogs in the Assembly Area.

The Department went beyond its initial responsibility regarding outreach. The following groups, as well as users, had the opportunity to review the draft regulations. As a result, further staff review along with public input resulted in some revisions to the regulations. These included establishing a self-issuing permit system, rather than the designation of campsites, eliminating the restriction on glass containers and changing the seven gallon container to only cover alcoholic beverages, allowing extended hours for generator use, allowing overnight camping in the Overflow Area for up to three nights, permitting the use of temporary corrals in the Overflow Area, and removing the requirement that stallions in stud stalls also have a tie stall assigned to them.

Individual members of the New York State Trails Council, New York State Horse Council, Upper Canada Equestrian Association, Ride New York and the Leatherstocking Riding Club received an announcement of the DEC’s intent to propose this regulation, along with a request for preliminary comments. The proposed regulations were also posted at the facility with contact information to allow individual users of the facility the opportunity to comment.

4. Costs

There will be no increased staffing, construction or compliance costs projected for State or local governments or to private regulated parties as a result of this rulemaking. Costs to the regulating agency would be minimal, approximately \$300 for the necessary signage and printing costs for self issuing permits.

5. Local government mandates

This proposal will not impose any program, service, duty nor responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

Self-issuing permits will be required for overnight campers, however, this will not result in an increase in paperwork since these permits will replace the existing trail register system. It is possible there will be a slight increase in the number of citations issued by the Department during the first few months after the regulation takes effect, however this should also not result in an increase in paperwork. The regulations will not impose any additional 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.

8. Alternative approaches

Several alternatives were considered to determine which management strategies would best protect the resource and best serve the public using this facility. The “No Action” alternative would continue to allow unregulated use of the facility and the adjoining trail system and would do nothing to provide protection to the natural resources of the area or the experience of visitors.

There were many variations of the proposed regulations considered. Staff considered additional regulations to control every aspect of use in the area but felt that the proposed regulations represented the “minimal tool” necessary for the management of this facility. Consideration was given to requiring users to obtain permits from the Lowville DEC Office prior to arrival, however, it was felt this would not only place an additional burden on users, but also on Department staff.

9. Federal standard

There is no relevant Federal standard governing the use of State lands.

10. Compliance schedule

The proposed rule with respect to the Otter Creek Trail System Assembly Area will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations. 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 the natural resources and the public safety on the Otter Creek Trail System Assembly Area.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or

other compliance requirements on rural areas. The proposed regulation relates solely to protecting the natural resources and the public safety on the Otter Creek Trail System Assembly Area.

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 natural resources and the public safety on the Otter Creek Trail System Assembly Area.

Department of Health

EMERGENCY RULE MAKING

NYS Newborn Screening Panel

I.D. No. HLT-01-11-00002-E

Filing No. 1272

Filing Date: 2010-12-16

Effective Date: 2010-12-16

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

Action taken: Amendment of section 69-1.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

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

Specific reasons underlying the finding of necessity: Advancing technology, and emerging and rising public expectations for this critical public health program demand that the panel of screening conditions be expanded through this amendment of 10 NYCRR Section 69-1.2, which would add one inherited disorder of the immune system to the scope of newborn screening services already provided by the Department's Wadsworth Center. This regulatory amendment adds one condition – severe combined immunodeficiency (SCID) – to the 44 genetic/congenital disorders and one infectious disease that comprise New York State's newborn screening test panel. The Department of Health finds that immediate adoption of this rule is necessary to preserve the public health, safety and general welfare, and that compliance with State Administrative Procedure Act (SAPA) Section 202(1) requirements for this rulemaking would be contrary to the public interest.

Immediate implementation of the proposed screening for SCID is both feasible and obligatory at this time. A laboratory test method using a dried blood spot specimen was recently validated by the Department's Newborn Screening Program. The Program has determined that a scaled-up version of the recently developed test method reproducibly generates reliable results for the large number of newborns' specimens accepted by the Program. The required instrumentation (i.e., robots to prepare DNA and thermal cyclers to detect TRECs) is already in operation at the Department's Wadsworth Center laboratory and dedicated to newborn screening. A system for follow-up and ensuring access to necessary treatment for identified infants is fully established and adequately staffed.

Early detection through screening is critical to successful treatment of SCID. A survey of more than 150 patients commissioned by the Immune Deficiency Foundation found that SCID patients who were diagnosed early and treated by 3.5 months showed a 91-percent survival rate; those treated after 3.5 months had a 76-percent survival rate. Average costs for a bone marrow transplant also increase significantly after the infant reaches 3.5 months of age, exceeding \$300,000 because of additional complications and the need for more supportive care. Now that the Program is technically proficient in DNA technology, data collection and interpretation, and has demonstrated proficiency in triage and referral procedures, failure to include SCID screening immediately would mean infants would go untested, undetected, and may suffer serious systemic infections and even succumb to an early death. Accordingly, the Department is obligated to avoid further delays in implementing screening for SCID.

Subject: NYS Newborn Screening Panel.

Purpose: Adds Severe Combined Immunodeficiency (SCID) to NYS Newborn Screening Panel.

Text of emergency rule: Section 69-1.2(b) is amended as follows:

(b) Diseases and conditions to be tested for shall include:
argininemia (ARG);

* * * *

propionic acidemia (PA);
severe combined immunodeficiency and other inherited T-cell deficiencies (SCID)
short-chain acyl-CoA dehydrogenase deficiency (SCADD);
tyrosinemia (TYR); and
very long-chain acyl-CoA dehydrogenase deficiency (VLCADD)

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 15, 2011.

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

Summary of Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Section 2500-a (a) provides statutory authority for the Commissioner of Health to designate in regulation diseases or conditions for newborn testing in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood.

Legislative Objectives:

In enacting PHL Section 2500-a, the Legislature intended to promote public health through mandatory screening of New York State newborns to detect those with serious but treatable neonatal conditions and to ensure their referral for medical intervention. Emerging medical treatments and the complexity of genetic testing require periodic reassessments of the benefits of newborn screening. These reassessments ensure that the New York State's Newborn Screening Program (the NYS Program) meets the legislative intent of preventing childhood diseases and disorders by early detection. This proposal, which would modify the newborn screening panel currently in regulation by adding severe combined immunodeficiency (SCID), is in keeping with the legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens.

Needs and Benefits:

Severe Combined Immunodeficiency (SCID) is a primary immune deficiency, which results in the infant's failure to develop a normal immune system. The defining characteristic for SCID is a severe defect in the production and function of T-cells and/or B-cells. Affected infants are susceptible to a wide range of infections that are typically controlled by a normal immune system. If undetected and untreated, SCID typically leads to death in the first year of life. It is noteworthy that, in May of 2010, the U.S. Department of Health and Human Services (DHHS) Secretary Kathleen Sebelius added SCID to the core newborn screening panel that represents a national standard 30-test panel that states are encouraged to adopt.

The pediatric immunology community now recognizes this once-fatal disease is a disorder that can be treated and most likely cured at a reasonable cost. Early detection through screening is critical to successful treatment. Current estimates suggest that one in every 50,000 to 100,000 newborns may be affected; however, since many infants may succumb to infection before being diagnosed, the true incidence of SCID and related forms of T-cell immune deficiency may be higher. A DNA-based test for immune deficiency has been recently modified for accurate, high-throughput analyses, making possible its use for newborn screening. This test detects T-cell Receptor Gene Excision Circles or TRECs, which are produced during normal T-cell maturation but are absent or severely reduced in infants with SCID.

Immediately after confirming a SCID diagnosis, infants are started on intravenous immunoglobulins (IVIG) and antibiotics, and a donor search is initiated to perform stem cell transplant from donor bone marrow or cord blood. SCID infants and children require IVIG for as long as they lack the ability to produce antibodies - before and often for some time after a transplant. If the transplant proves not totally corrective, IVIG may be needed for life. Alternatively, enzyme replacement therapy with bovine pegademase (PEG-ADA), an injectable medication, can be used to treat the approximately 40-percent of SCID patients with a form of the disorder characterized by a deficiency of the enzyme adenosine deaminase. This treatment is typically used only when the patient is not a candidate for the more conventional bone marrow transplant treatment.

General health care costs attributable to treatment of SCID-confirmed infants, including those related to a stem cell transplant (i.e., use of a surgical suite, stays in the neonatal intensive care unit) cannot be assessed due to large variations in charges for the professional component of specialists' and ancillary providers' services, and the scope of potentially required donor-matching services. However, overall health care costs would be reduced since early diagnosis of SCID provides the opportunity

for less expensive treatments, and avoids medical complications, thereby reducing the number and average length of hospital stays, and emergency and intensive care services necessary due to recurrent infections in affected children.

If a matched, related donor cannot be found or a transplant fails, infants diagnosed with SCID typically are initially treated using IVIG as an outpatient procedure. Since IVIG only replaces the missing end product, but does not correct the deficiency in antibody production, the replacement therapy usually becomes necessary for the patient's entire lifespan. The cost of lifetime IVIG replacement therapy is estimated to be approximately \$600,000. Costs for enzyme replacement therapy for one form of SCID with PEG-ADA, which is designated as an orphan drug, are estimated at \$3,800 per injection. PEG-ADA is administered by intramuscular injection twice weekly and once weekly after stabilization is reached, usually in one to three weeks. Costs for a transplant including a 1 year follow-up period are \$300,000, while costs for an unscreened and undiagnosed child who does not receive early treatment can exceed \$600,000.

Costs:

Costs to Private Regulated Parties:

Birth facilities would incur no new costs related to collection and submission of blood specimens to the NYS Program, since the dried blood spot specimens now collected would also be tested for SCID.

The NYS Program estimates that following implementation of this proposal, 125 newborns would screen positive for SCID annually statewide, with SCID being confirmed in seven of those infants.

Birth facilities would likely incur minimal additional costs related to fulfilling their responsibilities for referral of screen-positive infants; such costs would be limited to human resources costs for less than 0.5 person-hour. Any birthing facility can calculate its specific cost impact based on its annual number of births and related expenses, and a referral rate of one infant per 2,100 births. The Department estimates that on average specialized care facilities would receive referrals of fewer than two infants per month for clinical assessment and additional testing to confirm or refute screening results.

Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from 1/2 of \$40 to 1/2 of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (i.e., those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility.

Costs for Implementation and Administration of the Rule:

Costs to State Government:

State-operated facilities providing birthing services and infant follow-up and medical care would incur costs and savings as described above for private regulated parties.

State Medicaid costs will not increase with regard to referral costs, as such costs are included in rates for delivery-related services, and are not separately reimbursed. Costs associated with treatment for SCIDS for Medicaid-eligible infants would generally be borne by the State, as most counties have already reached their cap for Medicaid liability. However, there would likely be a net savings to Medicaid since early diagnosis provides the opportunity for less expensive treatment, (on the order of \$300,000) and avoids medical complications, thereby reducing the number and average length of hospital stays, and emergency and intensive care services necessary due to recurrent infections (which can exceed \$600,000).

Costs to the Department:

Costs incurred by the Department's Wadsworth Center for performing SCID screening tests, providing short- and long-term follow-up, and supporting continuing research in neonatal and genetic diseases will be covered by State budget appropriations. The Program expects minimal to no additional laboratory instrumentation costs related to this proposal, since the necessary technology has already been purchased.

The Department will incur minimal administrative costs for notifying all New York State-licensed physicians, hospital chief executive officers (CEOs) and their designees, and other affected parties, by letter informing them of a newborn screening panel expansion or, on an ongoing basis, of information regarding positive SCID screening results.

Costs to Local Government:

Local government-operated facilities providing birthing services and medical care to affected infants would incur the costs and savings described above for private regulated parties.

Local Government Mandates:

The proposed regulations impose no new mandates on any county, city, town or village government; or school, fire or other special district, unless a county, city, town or village government; or school, fire or other special district operates a facility, such as a hospital, caring for infants 28 days of age or under and, therefore, is subject to these regulations to the same extent as a private regulated party.

Paperwork:

No increase in paperwork would be attributable to activities related to specimen collection, and reporting and filing of test results. Facilities that submit newborn specimens will sustain minimal to no increases in paperwork, specifically, only that necessary to conduct and document follow-up and/or referral of infants with abnormal screening results. Educational materials for parents and health care professionals and forms will be updated to include information on SCID at minimal costs at the next printing.

Duplication:

These rules do not duplicate any other law, rule or regulation.

Alternative Approaches:

Potential delays in detection of SCID until onset of clinical symptoms would result in increased infant morbidity and mortality, and are therefore unacceptable. Given the recent recommendation by DHHS, which takes into account that treatment is available to ameliorate adverse clinical outcomes in affected infants, the Department has determined that there are no alternatives to requiring newborn screening for this condition.

Federal Standards:

The DHHS has recommended a core newborn screening panel that represents a national standard 30-test panel that states are encouraged to adopt. A DHHS-commissioned Advisory Committee on Heritable Disorders of Newborns and Children recently recommended that states' newborn screening programs amend their test panels to include SCID. With the addition of SCID to its panel, the NYS Program would include all the DHHS-recommended tests.

Compliance Schedule:

The Commissioner of Health is expected to notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. The letter will also be distributed to hospital CEOs and their designees responsible for newborn screening, as well as to other affected parties.

The infrastructure and mechanisms for making the necessary referrals is already in place in birthing facilities. Consequently, regulated parties should be able to comply with these regulations as of their effective date.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This proposed amendment to add one new condition – an immunodeficiency disorder known as severe combined immunodeficiency (SCID) to the list of 44 genetic/congenital disorders and one infectious disease, for which every newborn in New York State must be tested, will affect hospitals; alternative birthing centers; and physician and midwifery practices operating as small businesses, or operated by local government, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that ten hospitals and one birthing center in the State meet the definition of a small business. No facility recognized as having medical expertise in clinical assessment and treatment of SCID is operated as a small business. Local governments, including the New York City Health and Hospitals Corporation, operate 21 hospitals. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom, specifically those in private practice, operate as small businesses. It is not possible, however, to estimate the number of these medical professionals operating an affected small business, primarily because the number of physicians involved in delivering infants cannot be ascertained.

Compliance Requirements:

The Department expects that affected facilities, and medical practices operated as small businesses or by local governments, will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to mandatory newborn screening are already embedded in established policies and practices of affected institutions and individuals. Activities related to collection and submission of blood specimens to the State's Newborn Screening Program will not change, since newborn dried blood spot specimens now collected and mailed to the Program for other currently performed testing would also be used for the additional test proposed by this amendment.

Birthing facilities and at-home birth attendants (i.e., licensed midwives) would be required to follow up infants screening positive for SCID, and assume some responsibility for referral for medical evaluation and additional testing as they do for other conditions. The anticipated increased burden is expected to have a minimal effect on the ability of small businesses or local government-operated facilities to comply, as no such facility would experience an increase of more than one to two per month in the number of infants requiring referral.

On average, each birthing facility can expect to refer no more than one additional infant per year for clinical assessment and confirmatory testing as a result of this amendment's proposal to add SCID screening to the existing newborn screening panel. This increase is expected to have minimal effect on a birthing facility's workload since at present approximately 30 infants, on average, are referred by birthing facilities

statewide; with the addition of SCID this number would increase by an average of one infant. Therefore, no additional staff would be required for these institutions to comply with this proposal.

The Department anticipates that more than 95 percent of approximately 125 referred infants will ultimately be found not to be afflicted with SCID, based on clinical assessment and laboratory tests.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staff are expected to be able to assume any increase in workload resulting from the Program's newborn screening for SCID and identification of screen-positive infants. Infants with positive screening tests for SCID would be referred to a facility employing a physician and other medical professionals with expertise in SCID.

Compliance Costs:

Birthing facilities operated as small businesses and by local governments, and practitioners who are small business owners (e.g., private practicing licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities, and, to a lesser extent, at-home birth attendants, would likely incur minimal costs related to following up infants screening positive for SCID, primarily because the testing proposed under this regulation is expected to result in, on average, fewer than one referral per year at each of the 11 birthing facilities that are small businesses.

The NYS Program estimates that following implementation of this proposal, 125 newborns would screen positive for SCID annually statewide. Since timing is crucial, i.e., treatment must commence early to be effective, newborns who screen positive will require immediate referral to a facility with the requisite expertise for clinical assessment and laboratory testing. The Department estimates that on average such a facility would receive referrals of fewer than one infant per month for clinical assessment and additional testing to confirm or refute screening results. Cost figures that follow are based on 125 as a high-end estimate for the maximum number of infants statewide needing immediate referral.

Communicating the need for and/or arranging referral for medical evaluation of an identified infant would require less than 0.5 person-hour; no additional staff would be required. Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from 1/2 of \$40 to 1/2 of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (i.e., those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for specimen collection and referrals of affected infants are already in place.

Minimizing Adverse Impact:

The Department did not consider alternate, less stringent compliance requirements, or regulatory exceptions for facilities operated as small businesses or by local government, because of the importance of the proposed testing to statewide public health. The addition of SCID to the newborn screening panel will not impose a unique burden on facilities and practitioners that are operated by a local government or as a small business. These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements for mandatory newborn screening, as full compliance would require minimal enhancements to present specimen collection, reporting, follow-up and recordkeeping practices.

Small Business and Local Government Participation:

The Program will notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. An informational letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as to other affected parties. Regulated parties that are small businesses and local governments are expected to be prepared to participate in screening and follow-up for SCID on the effective date of this amendment because the staff and infrastructure needed for specimen collection and referrals of affected infants are already in place.

Rural Area Flexibility Analysis

Types of Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population of fewer than 200,000 residents; and, for counties with a population larger than 200,000, rural areas are defined as towns with population densities of 150 or fewer

persons per square mile. Forty-four counties in New York State with a population under 200,000 are classified as rural, and nine other counties include certain townships with population densities characteristic of rural areas.

This proposed amendment to add one new condition – severe combined immunodeficiency (SCID) – to the list of 44 genetic/congenital disorders and one infectious disease, for which every newborn in the State must be tested, would affect hospitals, alternative birthing centers, and physician and midwifery practices located in rural areas, provided such facilities care for infants 28 days of age or under, or are required to register the birth of a child. The Department estimates that 54 hospitals and birthing centers operate in rural areas, and another 30 birthing facilities are located in counties with low-population density townships. No facility recognized as having medical expertise in clinical assessment and treatment of SCID operates in a rural area. New York State licenses 67,790 physicians and certifies 350 licensed midwives, some of whom are engaged in private practice in areas designated as rural; however, the number of professionals practicing in rural areas cannot be estimated because licensing agencies do not maintain records of licensees' employment addresses.

Reporting, Recordkeeping and Other Compliance Requirements:

The Department expects that birthing facilities and medical practices affected by this amendment and operating in rural areas will experience minimal additional regulatory burdens in complying with the amendment's requirements, as activities related to mandatory newborn screening are already part of established policies and practices of affected institutions and individuals. Collection and submission of blood specimens to the State's Newborn Screening Program will not be altered by this amendment; the dried blood spot specimens now collected and mailed to the Program for other currently available newborn testing would also be used for the additional test proposed by this amendment. However, birthing facilities and at-home birth attendants (i.e., licensed midwives) would be required to follow up infants screening positive for SCID, and assume referral responsibility for medical evaluation and additional testing. This requirement is expected to affect minimally the ability of rural facilities to comply, as no such facility would experience an increase of more than one to two per month in infants requiring referral. Therefore, the Department anticipates that regulated parties in rural areas will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Birthing facilities' existing professional staff are expected to be able to assume any increase in workload resulting from the Program's newborn screening for SCID and identification of screen-positive infants. Infants with a positive screening test for SCID will be referred to a facility employing a physician and other medical professionals with expertise in SCID.

Compliance Costs:

Birthing facilities operating in rural areas and practitioners in private practice in rural areas (i.e., licensed midwives who assist with at-home births) will incur no new costs related to collection and submission of blood specimens to the State's Newborn Screening Program, since the dried blood spot specimens now collected and mailed to the Program for other currently available testing would also be used for the additional test proposed by this amendment. However, such facilities and, to a lesser extent, at-home birth attendants would likely incur minimal costs related to follow-up of infants screening positive, since the proposed added testing is expected to result in no more than one additional referral per month. Communicating the need and/or arranging referral for medical evaluation of one additional identified infant would require less than 0.5 person-hour, and these tasks are expected to be able to be accomplished with existing staff. Annual cost for arranging for SCID-related referrals for a facility at which 2,000 babies are delivered each year would range from 1/2 of \$40 to 1/2 of \$100, depending on whether clerical staff or nursing staff arranged for the referral, or specifically \$20-50 a year. Larger birthing facilities (i.e., those with the resources to perform transplants) would not incur even these minimal costs for referral to another facility. The Department estimates that more than 95 percent of infants will be ultimately found not to be afflicted with the target condition, based on clinical assessment and additional testing.

Minimizing Adverse Impact:

The Department did not consider less stringent compliance requirements or regulatory exceptions for facilities located in rural areas because of the importance of expanded infant testing to statewide public health and welfare. The addition of SCID to the newborn screening panel will not impose a unique burden on facilities and practitioners operating in rural areas. These amendments will not have an adverse impact on the ability of regulated parties in rural areas to comply with Department requirements for mandatory newborn screening, as full compliance would entail minimal changes to present collection, reporting, follow-up and recordkeeping practices.

Rural Area Participation:

The Program will notify all New York State-licensed physicians by letter informing them of this newborn screening panel expansion. An informational letter will also be distributed to hospital chief executive officers (CEOs) and their designees responsible for newborn screening, as well as to other affected parties. Regulated parties in rural areas are expected to be able to participate in screening and follow-up for SCID on the effective date of this amendment.

Job Impact Statement

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities. The amendment proposes the addition of an immune system disorder, severe combined immunodeficiency (SCID), to the scope of newborn screening services provided by the Department. It is expected that no regulated parties will experience other than minimal impact on their workload, and therefore none will need to hire new personnel. Therefore, this proposed amendment carries no adverse implications for job opportunities.

NOTICE OF ADOPTION**Ambulatory Patient Groups (APGs) Payment Methodology****I.D. No.** HLT-44-10-00002-A**Filing No.** 1318**Filing Date:** 2010-12-21**Effective Date:** 2011-01-05

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.**Statutory authority:** Public Health Law, section 2807(2-a)(e)**Subject:** Ambulatory Patient Groups (APGs) Payment Methodology.**Purpose:** To refine the APG payment methodology.**Text or summary was published in** the November 3, 2010 issue of the Register, I.D. No. HLT-44-10-00002-P.**Final rule as compared with last published rule:** No changes.

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

Assessment of Public Comment

The agency received no public comment.

reflect experience mortality rates; removal of current restrictions will allow this to occur. In many cases, this will reduce the amount of deficiency reserves held by an insurer. However, in order to safeguard against inappropriate reserve levels, every insurer using an X factor that is less than 100 percent at any duration for any policy is required by Section 98.4(b)(5) of the Regulation to submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves. The opinion must be supported by an actuarial report that complies with the requirements of the Actuarial Standards of Practice. In September 2010, the NAIC extended the sunset provision in Actuarial Guideline 38, which allowed the use of lapse decrements in the reserve calculations for certain universal life with secondary guarantee policies, from January 1, 2011 to January 1, 2014. This provision is included in this emergency adoption of the amendment to Regulation 147.

This amendment also provides clarification in the calculation of the segment length, and addresses whether recalculation is required when valuation mortality changes. Specifically, for companies that are using the 2001 CSO Preferred Structure Mortality Table, there may be instances where the valuation mortality must be changed to meet the requirements of 11 NYCRR 100 (Regulation 179) with respect to the present value of death benefits over certain future periods. In such instances, the segment length would not need to be recalculated for policies issued prior to January 1, 2009.

These standards have already been adopted by the National Association of Insurance Commissioners through its Accounting Practices and Procedures Manual, and many states have already adopted these changes for year-end 2009. Since New York has a separate regulation addressing this subject matter, the revised standards are not automatically adopted and need to be adopted via an amendment to Regulation No. 147. Insurers domiciled in states that do not adopt these changes by December 31, 2009 year-end will be forced to hold higher reserves relative to companies domiciled in states that have adopted these changes. Adopting these standards will encourage regulatory uniformity and enable insurers authorized in New York to be subject to the same reserve levels as in states that have adopted the standards.

Adoption of the amendment will decrease reserves on inforce business for New York authorized life insurers - in some cases by a material amount. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure on maintaining the high level of risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to manage, and thereby increase costs to consumers. Thus, the amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if these amendments are not adopted by year-end 2009. Failure to implement the changes in New York at the same time they are implemented in other states will make New York-authorized companies look weaker financially than their peer companies. If New York-authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies - an impression that may negatively impact market share of New York-authorized insurers throughout the year.

Insurers subject to this regulation must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the December 31, 2010 annual statement is March 1, 2011. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. This regulation was previously promulgated on an emergency basis on December 28, 2009, March 25, 2010, June 21, 2010, and September 16, 2010. The proposal was sent to the Governor's Office of Regulatory Reform on January 12, 2010 and the Department is awaiting approval to publish the regulation. It is essential that this regulation be continued on an emergency basis.

For all of the reasons stated above, an emergency adoption of this third amendment to Regulation No. 147 is necessary for the general welfare.

Subject: Valuation of Life Insurance Reserves.**Purpose:** Incorporates revisions to National Association of Insurance Commissioners model regulation and actuarial guideline.**Text of emergency rule:** Subparagraphs (ii) and (iii) of Section 98.4(b)(5) of this Part are repealed and subparagraphs (iv) through (ix) are renumbered (ii) through (vii).

Section 98.4(b)(5)(v) of this Part, as re-lettered by this amendment above, is amended to read as follows:

(v) The appointed actuary may decrease X at any valuation date as

Insurance Department

**EMERGENCY
RULE MAKING****Valuation of Life Insurance Reserves****I.D. No.** INS-01-11-00001-E**Filing No.** 1269**Filing Date:** 2010-12-15**Effective Date:** 2010-12-15

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.**Statutory authority:** Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517**Finding of necessity for emergency rule:** Preservation of general welfare.

Specific reasons underlying the finding of necessity: This amendment to Regulation No. 147 removes restrictions on the mortality adjustment factors (known as X factors) in the deficiency reserve calculation. The current restrictions on the X factors prevent some insurers from using mortality rates with a slope similar to their expected mortality. The purpose of the X factor in the deficiency reserve calculation is to allow insurers to adjust the valuation mortality assumptions so that the mortality rates better

long as X [does not decrease in any successive policy years and as long as it] continues to meet all the requirements of this paragraph;

New subdivisions (c) and (d) are added to section 98.5 to read as follows:

(c) For policies subject to a non-elective change in valuation mortality rates because the requirements for continued use of the prior rates were no longer satisfied, the insurer may, but shall not be required to, recalculate the segments.

(d) For policies subject to an insurer-election to substitute the 2001 Preferred Class Structure Mortality Table for the 2001 CSO Mortality Table:

(1) If the policy was issued on a policy form filed for approval prior to January 1, 2009, the insurer may, but shall not be required to, recalculate the segments; and

(2) If the policy was issued on a policy form filed for approval after January 1, 2009, the insurer shall recalculate the segments using the new valuation mortality rates.

Section 98.9(c)(2)(viii)(b)(2) is amended to read as follows:

For policies issued on or after January 1, 2007 and prior to January 1, [2011]2014, for the purposes of applying section 98.7(b)(1) of this Part, an insurer may use a lapse rate of no more than two percent per year for the first five years, followed by no more than one percent per year to the policy anniversary specified in the following table based on issue age, and zero percent per year thereafter.

Section 98.9(c)(2)(viii)(e) is amended to read as follows:

For purposes of calculating the net single premium for policies issued on or after January 1, 2007 and prior to January 1, [2011]2014, a lapse rate subject to the same criteria as the lapse rate used in applying clause (b) of this subparagraph may be used.

Section 98.9(c)(2)(viii)(h)(2) is amended to read as follows:

Calculate both net premiums using the maximum allowable valuation interest rate and the minimum mortality standards allowable for calculating basic reserves. However, except for policies issued on or after January 1, 2007 through January 1, [2011]2014, if no future premiums are required to support the guarantee period being valued, there is no reduction for surrender charges.

Section 98.9(c)(2)(viii)(j) is amended to read as follows:

With respect to any policy issued pursuant to this subparagraph, on or after January 1, 2007 and prior to January 1, [2011]2014, the insurer shall annually submit an actuarial opinion and memorandum on or before March 1, in form and substance satisfactory to the superintendent, which satisfies the requirements of Part 95 of this Title (Regulation 126).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 14, 2011.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the Third Amendment to Regulation No. 147 (11 NYCRR 98) derives from Sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

These sections establish the Superintendent's authority to promulgate regulations governing reserve requirements for life insurers and fraternal benefit societies.

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

Section 1304 of the Insurance Law requires every insurer authorized under this chapter to transact the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter to maintain reserves necessary on account of such insurer's policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted, and the effect that reinsurance will have on reserves.

Section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurance company doing business in New York. Section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of the reserves. Reserving has not historically included lapse as a factor in calculations, because it was not relevant to traditional forms of life insurance contracts, and therefore Section 4217 does not expressly include references to lapses. However, new products have been developed that were not contemplated at the time Section 4217 was written, such that lapses may be relevant in reserve calculations in some cases.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of Section 4217(c)(6).

Section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for Section 4217 to such policies and contracts as the Superintendent deems appropriate.

Section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in Section 4217(c)(6) and Section 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of Sections 4217 and 4218, as determined by the Superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for the policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) states that the Superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

Section 4517(b)(2) provides, for fraternal benefit societies, that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b).

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principle focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. At the same time, an insurer benefits when the insurer has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: This amendment to section 98.4(b)(5) of Regulation No. 147 (11 NYCRR 98) is necessary to help ensure the solvency of life insurers doing business in New York. The original version of Regulation No. 147, which incorporated the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), was permanently adopted in 2003. In 2004, the Department and other states became aware that some insurers were creating new products in order to avoid the reserve methodologies described in Regulation No. 147. As a result, the NAIC began developing an Actuarial Guideline in 2004 that addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the standards for policies issued July 1, 2005 and later. This revision was adopted by the NAIC in October 2005, and Regulation No. 147 thereafter was amended on an emergency basis to reflect the principles of Section 4217 of the Insurance Law and the NAIC standards for policies issued July 1, 2005 and later. The amendment was permanently adopted effective January 10, 2007.

In September 2006, the NAIC adopted a new version of Actuarial Guideline 38, which included provisions on lapse decrements and a separate asset adequacy analysis requirement for certain universal life with secondary guarantee policies. Regulation 147 was thereafter amended again, and the amendments were adopted on December 26, 2007.

In September 2009, the NAIC adopted revisions to its model regulation related to X factors used for calculating deficiency reserves. The purpose of the X factor in the deficiency reserve calculation is to allow companies to adjust the valuation mortality to mortality that approximates the expected mortality experience of the company. Specifically, the NAIC's revisions remove the following provisions: (1) X could not be less than 20%; and (2) X could not decrease in successive policy years. Additionally, the NAIC adopted a new Actuarial Guideline 46, which provides guidance on the interpretation of the calculation of segment length when there is a change in the valuation mortality rates subsequent to issuance of the policy. For policies issued prior to January 1, 2009, the segment length would not need to be recalculated.

The current restrictions on the X factors in Regulation No. 147 prevent some companies from obtaining mortality with a slope similar to their expected mortality. The removal of these restrictions will enable companies to adjust the valuation mortality to mortality that approximates the expected mortality experience of the company. However, in order to safeguard insureds against inappropriate reserve levels by insurers, the Department requires every insurer using X factors to submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves.

Additionally, in September 2010, the NAIC extended the sunset provision in Actuarial Guideline 38, which allowed the use of lapse decrements in the reserve calculations for certain universal life with secondary guarantee policies, from January 1, 2011 to January 1, 2014.

This amendment to Regulation No. 147 incorporates both the NAIC revisions to the model regulation and the interpretation of the Actuarial Guideline, thus resulting in consistency between the NAIC and New York and promoting regulatory uniformity across the U.S. Companies domiciled in states that do not adopt these changes by December 31, 2009 year-end will be forced to hold higher reserves relative to companies domiciled in states that have adopted these changes.

Adoption of the amendment will decrease reserves on inforce business for New York authorized life insurers - in some cases by a material amount. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure to maintain higher risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to manage, and thereby increase costs to consumers. Thus, the amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if these amendments are not adopted. Failure to implement the changes in New York at the same time they are implemented in other states will make New York authorized companies look weaker financially than their peer companies. If New York authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies - an impression that may negatively impact market share of New York authorized insurers throughout the year.

4. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefit societies authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in Regulation No. 147 have been in effect since the adoption of the prior two amendments in 2007, most insurers would only need to update their current computer programs to implement the changes in the X factor requirements for those policies that use an X factor in calculating the deficiency reserves. The Department does not expect any material additional costs to be incurred related to modifications for the calculation of the segment length. An insurer that needs to modify its current system could produce the modifications internally, or if the system was purchased from a consultant, have its consultant produce the modifications. The cost would include the actual modifications, as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred.

Based on an American Council of Life Insurers study, the industry-wide impact of the change in the X factor provisions would be an estimated decrease in reserves of approximately \$2 to \$3 billion. That, in turn, will result in insurers realizing greater capital. It is not expected that there would be any reserve relief related to the calculation of the segment length. However, in order to safeguard against inappropriate reserve levels, every company using X factors must submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves. The opinion must be supported by an actuarial report which complies with the requirements of the Actuarial Standards of Practice.

Costs to the Insurance Department of this amendment will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The amendment to the regulation imposes no new reporting requirements.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered by the Department was to not remove the provisions for the X factors and to not include the guidance included in Actuarial Guideline 46 that were adopted by the NAIC in September 2009. The X factor provisions consisted of removing the requirement that X could not be less than 20% and that X could not decrease in successive policy years. The Actuarial Guideline 46 guidance relates to policies issued prior to January 1, 2009, and does not require the contract segments to be recalculated when the valuation mortality rates change after issuance of the policy.

The Department has had numerous discussions with affected insurers and their trade associations, including the Life Insurance Council of New York and American Council of Life Insurers, during the course of the development of a national standard through the National Association of Insurance Commissioners. These items are part of a larger capital and surplus relief plan for insurers. Adopting these standards will allow New York insurers to be subject to the same standards that have already been adopted by the NAIC and which are being implemented in other states. Insurers authorized in states that do not adopt these changes will be forced to hold higher reserves relative to companies authorized in states that have adopted these changes and in those circumstances, New York authorized companies would be at a deficit, from the impression that there is a significant difference in financial stability of New York authorized insurers and those authorized outside the state.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment to the regulation applies to financial statements filed on or after December 31, 2009. This amendment removes two provisions from the X factors used in calculating deficiency reserves. However, these changes are voluntary, and insurers are not required to make either of these changes. Additionally, these changes would only affect those insurers that use X factors in calculating deficiency reserves. Since the removal of these provisions were already adopted by the NAIC, insurers that wish to incorporate these changes into their reserve methodology should have adequate time to make these changes.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers and fraternal benefit societies authorized to do business in New York State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies, and believes that none of them fall within the definition of "small business", because there are none that are both independently owned and have under one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies covered by the amendment do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no reporting, recordkeeping or other compliance requirements associated with this amendment to the regulation. Entities subject to the regulation will not need to engage professional services to comply with the amendment.

3. Costs: This amendment provides for lower minimum standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefit societies authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in Regulation No. 147 have been in effect since the adoption of the prior two amendments in 2007, most insurers would only need to update their current computer programs to implement the changes in the X factor requirements for those policies that use an X factor in calculating the deficiency reserves. The Department does not expect any material additional costs to be incurred related to modifications for the calculation of the segment length. An insurer that needs to modify its current system could produce the modifications internally, or if the system was purchased from a consultant, have its consultant produce the modifications. The cost would include the actual modifications, as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred.

Based on an American Council of Life Insurers study, the industry-wide impact of the change in the X factor provisions would be an estimated decrease in reserves of approximately \$2 to \$3 billion. That, in turn, will result in insurers realizing greater capital. It is not expected that there would be any reserve relief related to the calculation of the segment length. However, in order to safeguard against inappropriate reserve levels, every company using X factors must submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves. The opinion must be supported by an actuarial report which complies with the requirements of the Actuarial Standards of Practice.

Costs to the Insurance Department of this amendment will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The Department has had numerous discussions with affected insurers and their trade associations, including the Life Insurance Council of New York and American Council of Life Insurers, during the course of the development of a national standard through the National Association of Insurance Commissioners.

Job Impact Statement

The Insurance Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment sets standards for setting life insurance reserves for insurers and fraternal benefit societies. Compliance should not require the employment of additional personnel or outside contractors.

EMERGENCY RULE MAKING

Recognition of the 2001 CSO Mortality Table and Preferred Mortality Tables in Determining Minimum Reserve Liabilities

I.D. No. INS-01-11-00005-E

Filing No. 1274

Filing Date: 2010-12-16

Effective Date: 2010-12-16

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

Action taken: Amendment of Part 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240 and 4517, and arts. 24 and 26

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

Specific reasons underlying the finding of necessity: This amendment to Regulation No. 179 extends the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004 with the superintendent's approval and if certain conditions are met by the insurer related to policies or portions of policies which are coinsured. Previously, this table could only be used for policies issued on or after January 1, 2007. The use of this table allows for the reserves to better match the risks associated with different underwriting classifications.

This standard has already been adopted by the National Association of Insurance Commissioners through its Accounting Practices and Procedures Manual, and many states have already adopted this change for year-end 2009. Since New York has a separate regulation addressing this subject matter, the revised standard is not automatically adopted and needs to be adopted via an amendment to Regulation No. 179. Insurers domiciled in states that do not adopt this change will be forced to hold higher reserves relative to companies domiciled in states that have adopted this change. Adopting this standard will encourage regulatory uniformity and enable insurers authorized in New York to be subject to the same reserve levels as in states that have adopted the standards.

While the anticipated impact of the adoption of this proposed amendment will vary by insurer and product, some insurers may experience a material reduction in reserves for policies issued on a preferred basis on inforce business for New York authorized life insurers. Additionally, the impact of this change will likely increase over time. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure on maintaining the high level of risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to

manage, and thereby increase costs to consumers. Thus, the proposed amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if this amendment is not adopted. Failure to implement the changes in New York at the same time they are implemented in other states will make New York-authorized companies look weaker financially than their peer companies. If New York-authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies – an impression that may negatively impact market share of New York-authorized insurers throughout the year.

Insurers subject to this regulation must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the December 31, 2010 annual statement is March 1, 2011. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner. This regulation was previously promulgated on an emergency basis on December 28, 2009, March 25, 2010, June 21, 2010, and September 16, 2010. The proposal was sent to the Governor's Office of Regulatory Reform on January 12, 2010 and the Department is awaiting approval to publish the regulation.

For all of the reasons stated above, it is essential that this regulation be continued on an emergency basis for the general welfare.

Subject: Recognition Of The 2001 CSO Mortality Table and Preferred Mortality Tables in Determining Minimum Reserve Liabilities.

Purpose: This amendment extends the use of the 2001 CSO Preferred Mortality Table to policies issued on or after January 1, 2004.

Text of emergency rule: Paragraph (3) of subdivision (a) of section 100.6 is amended to read as follows:

(3) Part 98.4(b)(5) of this Title: The 2001 CSO Mortality Table is the minimum mortality standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Parts 98.4(b)(5)(i) – 98.4(b)(5)(ix)(vii) of this Title. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

Subdivision (a) of section 100.8 is amended to read as follows:

(a) At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in section 100.9 of this Part, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum mortality standard for policies issued on or after January 1, 2007. *For policies issued on or after January 1, 2004, and prior to January 1, 2007, the 2001 CSO Preferred Class Structure Mortality Table may be substituted with the prior approval of the superintendent and subject to the conditions of section 100.9 of this Part.* A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this Part, will only be treated as part of the 2001 CSO Mortality Table for purposes of reserve valuation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 15, 2011.

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

Regulatory Impact Statement

1. Statutory authority: The superintendent's authority for the adoption of 11 NYCRR 100 (Regulation No. 179) derives from sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240, 4517, Article 24, and Article 26 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers and fraternal benefit societies.

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

Section 1304 of the Insurance Law requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners (NAIC) after 1980, and approved by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table, adopted by the NAIC after 1980, and approved by the superintendent, for use in determining the minimum nonforfeiture standard.

Section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

Section 4240(d)(7) states the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section, which covers various issues related to separate accounts of insurance companies, including reserve issues.

Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

Article 24 describes unfair methods of competition and unfair and deceptive acts and practices.

Article 26 describes unfair claim settlement practices, other misconduct and discrimination.

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principal focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when the insurer has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: This amendment extends the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004. Use of this table allows for the reserves to better match the risks associated with different underwriting classifications. However, use of the 2001 CSO Preferred Class Structure Mortality Table is not mandatory. While the anticipated impact of this amendment will vary by insurer and product, some insurers may experience a material reduction in reserves for policies issued on a preferred basis. Based on a survey conducted by the American Council of Life Insurers, the industry wide impact of allowing the use of this table for policies issued on or after January 1, 2004 is estimated to be a decrease in reserves of approximately \$600 million - \$1.2 billion. The retroactive use of such table will not jeopardize New York's long-standing tradition of protecting insureds from insurers that under-reserve since the use of such table is conditional, dependent upon the requirements set forth in the current rule being met by the insurer. Companies domiciled in states that do not adopt these changes by December 31, 2009 year-end will be forced to hold higher reserves relative to companies domiciled in states that have adopted these changes.

Adoption of the proposed amendment will decrease reserves on inforce business for New York authorized life insurers - in some cases, by a material amount. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure to maintain higher risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to manage, and thereby increase costs to consumers. Thus, the proposed amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if this amendment is not adopted. Failure to implement the changes in New York at the same time they are implemented in other states will make New York authorized companies look weaker financially than their peer companies. If New York authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies - an impression that may negatively impact market share of New York authorized insurers throughout the year.

4. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves. Administrative costs to most insurers and fraternal benefit societies authorized to do business in New York State will be minimal, since the 2001 CSO Preferred Class Structure

Mortality Table has been available for use by insurers since January 1, 2007. This amendment will extend the date for using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004, and the use of this table is optional.

Costs to the Insurance Department of this amendment will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by this amendment to Regulation No. 179. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The current rule imposes reporting requirements related to the actuarial certification and supporting actuarial report required for insurers using the 2001 CSO Preferred Class Structure Mortality Table for valuation. Additionally, the current rule requires that insurers opting to use the table provide data for mortality and other company specific experience in a statistical report for life insurance policies and group life insurance products sold to individuals by certificate with premium rates guaranteed from issue for at least two years.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered was to not extend the date of using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004. However, this would result in higher reserve requirements for New York authorized life insurers and fraternal benefit societies on some policies, since this change was adopted by the NAIC in September 2009. This change was discussed during various NAIC conference calls and the Department conducted outreach with affected stakeholders, including the Life Insurance Council of New York. Additionally, the American Council of Life Insurers was instrumental in drafting the language for the revised regulation.

This item is part of a larger capital and surplus relief plan for insurers. Adopting this amendment will allow New York insurers to be subject to the same standard that has already been adopted by the NAIC and which is being implemented in other states. Insurers authorized in states that do not adopt this change will be forced to hold higher reserves relative to companies authorized in states that have adopted this change and in those circumstances, New York authorized companies would be at a disadvantage, from the impression that there is a significant difference in financial stability of New York authorized insurers and those authorized outside the state.

9. Federal standards: There are no federal standards in the subject area.

10. Compliance schedule: This amendment to the regulation applies to financial statements filed on or after December 31, 2009. This amendment allows the use of 2001 CSO Preferred Class Structure Mortality Table for policies issued on or after January 1, 2004. Use of the 2001 CSO Preferred Class Structure Mortality Table, however, is not mandatory. Voluntary election of such table is conditional, dependent upon the requirements set forth in the current rule being met by the insurer. The actuarial certification and supporting actuarial report is due annually on March 1. The statistical report required for insurers that use the 2001 CSO Preferred Class Structure Mortality Table is due annually on July 1. Since use of the 2001 CSO Preferred Class Structure Mortality Table was previously in effect and this amendment only extends the date for using the table, insurers should have ample time to meet the reporting requirements.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers and fraternal benefit societies authorized to do business in New York State, none of which fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers covered by the regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The amendment extends the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004. The current regulation imposes reporting requirements related to the actuarial certification and supporting actuarial report required for insurers using the 2001 CSO Preferred Class Structure Mortality Table for valuation. Additionally, the current rule requires that insurers opting to use the table provide data for mortality and other company specific experience in a statistical report for life insurance policies and group life insurance products sold to individuals by certificate with premium rates guaranteed from issue for at least two years. Use of the 2001 CSO Preferred Class Structure Mortality Table is not mandatory. Voluntary election of such table is conditional on the requirements set forth in the prior version of the regulation, which became effective on December 26, 2007, being met by the insurer.

3. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefits societies authorized to do business in New York State will be minimal, since the 2001 CSO Preferred Class Structure Mortality Table has been able to be used since January 1, 2007. This amendment will extend the date for using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004 and the use of this table is optional.

Costs to the Insurance Department will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by this rule. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: This amendment was discussed during various public NAIC conference calls, and the Department conducted outreach with affected stakeholders, including the Life Insurance Council of New York. Additionally, the American Council of Life Insurers was instrumental in drafting the language for the revised regulation.

Job Impact Statement

The Insurance Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment extends the use of the 2001 CSO Preferred Class Structure Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits back to policies issued on or after January 1, 2004. Previously, this table could be used for policies issued on or after January 1, 2007. This rule will lower reserve requirements for those insurers that elect to use this table for policies issued on or after January 1, 2004 and therefore decrease the cost of doing business in New York. Compliance should not require the employment of additional personnel or outside contractors.

EMERGENCY RULE MAKING

Workers' Compensation Insurance

I.D. No. INS-01-11-00006-E

Filing No. 1275

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Action taken: Addition of Subpart 151-6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; and Workers' Compensation Law, sections 15(8)(h)(4) and 151(2)(b)

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

Specific reasons underlying the finding of necessity: Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the Workers' Compensation Board ("WCB") to assess insurers and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers' WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers' Compensation Law required the Workers' Compensation Board to assess insurers on the total "direct premiums" they wrote in the preceding calendar year, whereas

the insurers were collecting the assessments from their insureds on the basis of "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected, and the assessment the insured was required to remit to the Workers' Compensation Board.

Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the WCB collects the portion of the allocation from each insurer from "direct premiums" to "standard premium" in order to ensure that insurers are not overcharged or under-charged for the assessment, and to ensure that insureds with high deductible policies are charged the appropriate assessment. Effective January 1, 2010, therefore, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent of Insurance to define "standard premium," for the purposes of setting the assessments, and to set rules, in consultation with the WCB, and New York Compensation Rating Board, for collecting the assessment from insureds.

This regulation was previously promulgated on an emergency basis on December 29, 2009, March 25, 2010, June 24, 2010, and September 20, 2010. The proposal was sent to the Governor's Office of Regulatory Reform on January 14, 2010 and the Department is awaiting approval to publish the regulation, however because the effective date of the relevant provision of the law is January 1, 2010, and the need that the assessments be calculated and collected in a timely manner, it is essential that this regulation, which establishes procedures that implement provisions of the law, be continued on an emergency basis.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the benefit of the general welfare.

Subject: Workers' Compensation Insurance.

Purpose: This regulation is necessary to standardize the basis upon which the workers' compensation assessments are calculated.

Text of emergency rule: A new sub-part 151-6 entitled Workers' Compensation Insurance Assessments is added to read as follows:

Section 151-6.0 Preamble

(a) Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the workers compensation board to assess insurers, and the state insurance fund for the special disability fund, the fund for reopened cases, and the operations of the Board, respectively. First, the assessments are allocated to insurers, self-insurers, group self-insurers, and SIF based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, each pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

(b) Prior to January 1, 2010, each insurer paid a percentage of the allocation based on the total direct written premiums it wrote in the preceding calendar year. However, Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4), and 151(2)(b) to change the basis upon which the board collects the portion of the allocation from each insurer. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the superintendent of insurance (the "superintendent") to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the board, and NYCIRB for collecting the assessment from insureds.

Section 151-6.1 Definitions

As used in this Part:

(a) Board means the New York workers' compensation board.

(b) Insurer means an insurer authorized to write workers' compensation insurance in this state, except for the SIF.

(c) NYCIRB means the New York workers compensation rating board.

(d) SIF means the state insurance fund.

(e) Standard Premium means

(i) the premium determined on the basis of the insurer's approved rates; as modified by:

- (a) any experience modification or merit rating factor;
 - (b) any applicable territory differential premium;
 - (c) the minimum premium;
 - (d) any Construction Classification Premium Adjustment Program credits;
 - (e) any credit from return to work and / or drug and alcohol prevention programs;
 - (f) any surcharge or credit from a workplace safety program;
 - (g) any credit from independently-filed insurer specialty programs (for example, alternative dispute resolution, drug-free workplace, managed care or preferred provider organization programs);
 - (h) any charge for the waiver of subrogation;
 - (i) any charge for foreign voluntary coverage; and
 - (j) the additional charge for terrorism, and the charge for natural disasters and catastrophic industrial accidents.
- (ii) For purposes of determining standard premium, the insurer's expense constant, including the expense constant in the minimum premium, the insurer's premium discount, and premium credits for participation in any deductible program shall be excluded from the premium base.
- (iii) The insurer shall use the definition of standard premium set forth in this Part to report standard premium to the Board.

Section 151-6.2 Collection of assessments

Any assessments required by Workers' Compensation Law sections 15(8)(h)(4), 25-A(3) and 151(2)(b) that are collected by an insurer or SIF from policyholders shall be collected through a surcharge based on standard premium in a percentage to be determined by the superintendent in consultation with NYCIRB and the Board.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 16, 2011.

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

Regulatory Impact Statement

1. Statutory authority: The authority of the Superintendent of Insurance for the promulgation of Part 151-6 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Fifth Amendment to Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law, and Sections 15, 25-A, and 151 of the Workers' Compensation Law.

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

Sections 15, 25-A, and 151 of the Workers' Compensation Law, as amended by Part QQ of Chapter 56 of the Laws of 2009 require the Superintendent to define the "standard premium" upon which assessments are made for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the Workers' Compensation Board ("WCB"). Section 15 of the Workers' Compensation Law further requires workers' compensation insurers to collect the assessments from their policyholders through a surcharge based on premiums in accordance with the rules set forth by the Superintendent, in consultation with the New York Workers' Compensation Insurance Rating Board ("NYCIRB"), and the chair of the WCB.

2. Legislative objectives: (a) Workers' Compensation Law sections 15(8)(h)(4), 25-A(3), and 151(2)(b) require the WCB to assess insurers writing workers' compensation insurance and the State Insurance Fund, for the Special Disability Fund, the Fund for Reopened Cases, and the operations of the WCB, respectively. The assessments are allocated to insurers, self-insurers, group self-insurers, and the State Insurance Fund based upon the total compensation payments made by all such entities. In the case of an insurer, once the assessment amount is determined, the insurer pays the percentage of the allocation based on the total premiums it wrote during the preceding calendar year.

Prior to January 1, 2010, the Workers' Compensation Law required the WCB to assess insurers based on the total "direct premiums" they wrote in the preceding calendar year, whereas the insurers collected assessments from their insureds based on the "standard premium," which took into account high deductible policies. As high deductible policies increased in the marketplace, a discrepancy developed between the assessment an insurer collected and the assessment the insurer was required to remit to the WCB.

Therefore, Part QQ of Chapter 56 of the Laws of 2009 ("Part QQ") amended Workers' Compensation Law sections 15(8)(h)(4) and 151(2)(b) to change the basis upon which the Board collects the portion of the allocation from each insurer from "direct premiums" to "standard premium" to ensure that insurers are not overcharged or under-charged for the assessment, and to make certain that insureds with high deductible policies are charged the appropriate assessment. Thus, effective January 1, 2010, each insurer pays a percentage of the allocation based on the total standard premium it wrote during the preceding calendar year. Part QQ requires the Superintendent to define "standard premium," for the purposes of the assessments, and to set rules, in consultation with the WCB and NYCIRB, for collecting assessments from insureds.

3. Needs and benefits: This amendment is necessary, and mandated by the Workers' Compensation Law, to standardize the basis upon which the workers' compensation assessments are calculated to eliminate any discrepancy between the amount that an insurer collects from employers and the amount that an insurer remits to the WCB.

The discrepancy in the assessment calculation and remittance became evident as a result of the proliferation of large deductible policies. In many instances, the "direct premium" paid on a large deductible policy is less than the "standard premium" would be for that policy. Insurers that offered high-deductible policies collected assessments based on the "standard premium," but the Workers' Compensation Law required the WCB to use "direct premiums" to bill insurers. Thus, in some instances, workers' compensation insurers collected from employers more money than they remitted to the WCB.

4. Costs: This amendment standardizes the basis upon which the workers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

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

6. Paperwork: This amendment requires no new paperwork. Insurers and the State Insurance Fund already collect and remit assessments to the WCB. This regulation only standardizes the basis upon which the assessments are calculated, as required by the Workers' Compensation Law.

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

8. Alternatives: No alternatives were considered, because Part QQ requires the Superintendent to define "standard premium" for the purpose of the assessments, and to set rules, in consultation with the WCB and NYCIRB, for collecting the assessment from insureds. Based on discussions with NYCIRB and the WCB, the Superintendent determined that the term "standard premium" should conform to the definition currently used by insurers, and should ensure that the definition accounts for high deductible policies.

NYCIRB has been collecting premium data on a "standard" basis since its inception nearly 100 years ago. The "standard premium" is the premium without regard to credits, deviations, or deductibles. As new credits and types of policies (such as large deductible policies) develop, NYCIRB adjusts the definition to account for the changes. The Insurance Department is merely adopting NYCIRB's current definition.

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

10. Compliance schedule: The effective date of the relevant provision of the law is January 1, 2010. The assessments must be calculated and collected as of January 1, 2010.

Regulatory Flexibility Analysis

1. Small businesses:

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

This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as to the State Insurance Fund ("SIF"). It standardizes the basis upon which the workers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board.

The basis for this finding is that this rule is directed at workers' compensation insurers authorized to do business in New York State, none of which falls within the definition of "small business" pursuant to section 102(8) of the State Administrative Procedure Act. The Insurance Department has monitored Annual Statements and Reports on Examination of authorized workers' compensation insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees. Nor does SIF come within the definition of "small business" pursuant to section 102(8) of the State Administrative Procedure Act, because SIF is neither independently owned nor operated, and does not employ one hundred or fewer individuals.

2. Local governments:

The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. This amendment does not affect self-insured local governments, because it applies only to insurers.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This amendment applies to all workers' compensation insurers authorized to do business in New York State, as well as the State Insurance Fund ("SIF"). These entities do business throughout New York State, including rural areas as defined in section 102(10) of the State Administrative Procedure Act ("SAPA").

2. Reporting, recordkeeping and other compliance requirements, and professional services: This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers and SIF already collect and remit assessments to the Workers' Compensation Board ("WCB"). This amendment simply standardizes the basis upon which the assessments are calculated.

3. Costs: This amendment standardizes the basis upon which the workers' compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the WCB. Although the amendment itself does not impose new costs, the impact of changing the basis for workers' compensation assessments may increase costs for some insurers, but reduce costs for others. Taken together, the amendment aims to level the playing field for insurers that offer large deductible policies and those that do not.

4. Minimizing adverse impact: The amendment does not impose any impact unique to rural areas.

5. Rural area participation: This amendment is required by statute. The entities covered by this amendment - workers' compensation insurers authorized to do business in New York State and the State Insurance Fund - do business in every county in this state, including rural areas as defined in section 102(10) of SAPA. This amendment standardizes the basis upon which the workers' compensation assessments are calculated.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. The rule merely standardizes the basis upon which workers'

compensation assessments are calculated to ensure that there is no discrepancy between the amount that an insurer collects from employers, and the amount that an insurer remits to the Workers' Compensation Board. An insurer's existing personnel should be able to perform this task. There should be no region in New York that would experience an adverse impact on jobs and employment opportunities. This rule should not have a measurable impact on self-employment opportunities.

EMERGENCY RULE MAKING

Audited Financial Statements

I.D. No. INS-01-11-00008-E

Filing No. 1279

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Action taken: Repeal of Part 89; and addition of new Part 89 (Regulation 118) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b)

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

Specific reasons underlying the finding of necessity: In September 2009, the New York State Insurance Department, after several years of working closely with the National Association of Insurance Commissioners ("NAIC"), received its accreditation under the NAIC's Financial Regulations Standards and Accreditation Program ("accreditation program"). This accreditation program is the cornerstone of uniform solvency regulation across the country. By obtaining accreditation, New York was recognized as having demonstrated its continued commitment to the NAIC and state-based regulation of insurers and other regulated entities. The regulatory regime acknowledged through the accreditation program provides substantial protection for the policyholders and for state and local governments that rely on the stability and solvency of insurers that do an insurance business within their borders.

The accreditation program is designed principally to ensure that all regulated insurers are required to maintain financial solvency. Other goals achieved by states that have been approved by the accreditation program are verification that the state conducts effective and efficient financial analysis and examination process, and has in place the appropriate organizational and personnel practices.

The benefits of accreditation for the Insurance Department are many. The chief benefit is that New York's examinations, audits and other reviews of its regulated insurers will be recognized by her sister states so that other states will not subject New York domestic insurers to greater barriers of entry and operation than non-New York insurers. Further, accreditation indicates that the Insurance Department examination and audit operations and controls meet a nationally recognized standard assuring potential policyholders that the prospective insurers meet desirable levels of financial solvency.

Accreditation is not a one-time event. Accredited insurance departments are required to undergo a comprehensive review by an independent review team every five years to ensure departments continue to meet baseline financial solvency oversight standards. Newly accredited insurance departments undergo this review both to obtain the initial approval and, in the case of the New York State Insurance Department, an additional review within two years of accreditation. The accreditation standards require state insurance departments to have adequate statutory and administrative authority to regulate an insurer's corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Among the commitments made by the Insurance Department to the NAIC as a condition of New York's approval under the accreditation program is an assurance that an NAIC model audit rule (NAIC model) would be timely adopted to be effective for regulated insurers as of January 1, 2010. The purpose of the NAIC model is to implement a state statute or regulation that contains a requirement for an annual audit of each domestic insurer by an independent certified public accountant (CPA), based on the June 1998 version of the NAIC's Model Rule Requiring Annual Audited Financial Reports. Further, the NAIC model, once adopted by a state, requires that an insurer comply with certain best practices related to auditor independence, corporate governance and internal controls over financial reporting. The NAIC model reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The NAIC model closely hews to the

audit and controls standards established by the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq., and extends that statute's application to regulated companies.

Continuation of accreditation by the NAIC requires New York to adopt specific rules in addition to those already imposed by current 11 NYCRR 89 (Regulation 118). For example, New York must prohibit each CPA from entering into an agreement of indemnity or release from liability, and must require CPA partner rotation in a manner similar to the NAIC's model.

Each of the required elements is contained in the proposed rule, either as a result of the adoption of the standards of the NAIC model or the continuation of the standards contained in present Regulation 118. New York has made every effort to conform the proposed rule to the NAIC model, except where inconsistent with a statutory requirement expressly established by New York law. Furthermore, and critically, the effective date stated in the proposed rule is required to maintain accreditation – January 1, 2010.

This regulation was previously promulgated on an emergency basis on December 28, 2009; March 25, 2010; and June 23, 2010. The proposal was sent to the Governor's Office of Regulatory Reform (GORR) on March 12, 2010. The Department and GORR had a conference call on May 6, 2010 to discuss questions and comments on the rule package. The Department sent revisions to GORR on June 23, 2010 and GORR responded with written suggestions on July 14, 2010, which are currently being reviewed. Pending GORR's approval, this regulation must be continued on an emergency basis because of the accreditation deadline.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Audited Financial Statements.

Purpose: To implement provisions of Insurance Law Section 307(b), and add provisions required pursuant to the federal Sarbanes-Oxley Act of 2002.

Substance of emergency rule: Part 89 (Regulation No. 118) consists of 17 sections addressing the regulation of audits conducted by regulated insurers, fraternal benefit societies and managed care organizations (collectively the "companies").

Section 89.0 states that the purpose of the regulation is to apply audit and reporting standards upon each company.

Section 89.1 lists all definitions needed for the application of the regulation.

Section 89.2 contains the requirement that each company file audited financial statements and also directs each company to its correct filing location.

Section 89.3 sets forth the details of the items to be included in each audited financial statement.

Section 89.4 requires each company to notify the superintendent of the identity of its certified independent public accountant ("CPA") and any replacement.

Section 89.5 details the necessary qualifications for a CPA and restrictions upon employment of the same CPA for an extended period.

Section 89.6 provides rules for consolidated or combined audits of groups of companies.

Section 89.7 describes the scope of the audit and report of the CPA.

Section 89.8 requires both the company and its CPA to notify the superintendent upon the occurrence of a material misstatement or adverse financial condition.

Section 89.9 imposes a duty upon each company to report unremediated material weaknesses in its internal control over financial reporting.

Section 89.10 specifies terms to be included in the contract between a company and its CPA.

Section 89.11 requires each company to ensure that work papers of the CPA will be retained for review.

Section 89.12 contains rules for the appointment and duties of each company's audit committee.

Section 89.13 specifies the rules of conduct to be followed by the company with respect to the preparation of reports and documents.

Section 89.14 describes the requirements for management's report of internal control over financial reporting and incorporates the reports prepared by some of the companies to comply with the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq.

Section 89.15 sets forth special rules needed for Canadian and British insurers.

Section 89.16 contains the effective dates and special rules.

The full text of the regulation may be found at the Department's website (<http://www.ins.state.ny.us/>).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 16, 2011.

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b) of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing audited financial statements for authorized insurers as defined by section 107 of the Insurance Law and for fraternal benefit societies and managed care organizations.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe forms and regulations interpreting the Insurance Law, and to effectuate any power granted to the superintendent under the Insurance Law.

Insurance Law Section 307(b) requires insurers to file annual financial statements on forms prescribed by the superintendent.

Insurance Law Section 1109 provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Section 4710(a)(2) requires municipal cooperative health benefit plans to file annual financial statements on forms prescribed by the superintendent.

Insurance Law Section 5904(b) requires risk retention groups not chartered and licensed as property/casualty insurers to file a copy of the annual financial statement submitted to the state in which the risk retention group is chartered and licensed.

2. Legislative objectives: 11 NYCRR 89 (Regulation 118) was originally promulgated in 1984 to implement the provisions of Section 307(b) of the Insurance Law. The proposed repeal of the current regulation and promulgation of the new regulation continues to implement the provisions of section 307(b), and add provisions required pursuant to the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX").

3. Needs and benefits: SOX imposes a comprehensive regime of audits and internal management controls and reports designed to ensure greater transparency and accountability.

The proposed regulation is closely patterned upon a National Association of Insurance Commissioners model regulation ("NAIC model") that reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The NAIC model is similar to current Regulation 118 but imposes additional rules patterned on SOX. For example, the NAIC model and proposed regulation both require the regulated insurer to forbid its CPA from entering into an agreement of indemnity or release from liability. The proposed regulation will apply not only to companies already subject to SOX, but also to other companies, such as mutual companies, fraternal benefits societies and managed care organizations, that are presently governed by Regulation 118.

The proposed regulation, once adopted, will ensure that regulated companies engage in best practices related to auditor independence, corporate governance and internal controls over financial reporting.

4. Costs: This regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. Costs to be incurred by the parties affected differ depending upon the size of the company and whether that company is publicly held and thus already required to comply with SOX. Companies regulated by SOX will incur few additional costs. Compliance cost estimates received from a cross-section of affected companies that are not subject to SOX are most often estimated to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts range from \$25,000 a year to in excess of \$2 million (for one large mutual insurance company).

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Paperwork associated with filings to the superintendent should be minimal. The paperwork associated with the audit and controls regime required by the proposed regulation should also be minimal.

7. Duplication: None.

8. Alternatives: In developing this regulation, the Department obtained industry input and hued to the model regulation developed by the National Association of Insurance Commissioners (the "NAIC model") to implement SOX to the extent possible. However, the model has been modified as necessary to comply with New York statutes and regulations. The proposed regulation also restricts its application only to those entities over which the Department has jurisdiction unlike the NAIC model, which also contains rules that apply to CPAs.

Several comments received by the Department noted the compliance difficulties faced by foreign companies and United States branches of alien insurers, specifically with respect to the roles to be performed by persons not residing in the United States and for the reporting require-

ments to be imposed upon an integrated enterprise containing insurers in New York as well as entities with no nexus to New York. In response, the Department modified the regulation to provide detailed rules as to whether members of management may attest to filings, and to establish limited exceptions available only to these entities, in addition to the provision that permits a waiver of any provision of the regulation upon evidence of financial or organizational hardship.

One commenter requested that the definition of a managed care organization ("MCO"), entities that are included within the companies subject to this regulation, be restricted to exclude those entities that operate only in New York and that only serve public programs, i.e., Medicaid, Family Health Plus and Child Health Plus. After consideration and consultation with the Department of Health, the Department narrowed the definition of an MCO to exclude all MCOs that are primarily subject to the oversight of the Department of Health, and that also do not file financial documents with the Department other than for escrow accounts. Other MCOs that do file financial documents with the Insurance Department will still be governed by this regulation.

Another commenter objected to restrictions on using the same CPA for SOX audit work and tax return preparation for more than a five-year period for small companies. The exemption from any provision of the proposed regulation available upon proof of financial or organization hardship now addresses this comment.

Several comments noted that a company may be required to file both SOX reports and the reports required by the NAIC model as adopted by the various states. Companies want to avoid making duplicative filings to those required by the state of domicile. The proposed regulation contemplates accepting the domiciliary state filings as New York filings to the extent that they are substantially similar to those required by the proposed regulation.

Several comments noted differences between the NAIC model and the proposed regulation on filing deadlines, exceptions and the rules governing confidentiality of work papers. Different dates or deadlines are due to restrictions in New York law that require modification to the NAIC model. Certain automatic exclusions from the NAIC model could not be included in the proposed regulation to the extent that they conflict with New York law. Finally, the confidentiality of commercial information, including work papers, obtained by state and local government is already subject in New York to a comprehensive regime of rules, exceptions and requirements, and thus did not need to be addressed in the proposed regulation.

9. Federal standards: The federal rules under SOX are extensive. The provisions in the proposed regulation are similar to the comparable federal provisions. The regulation does not conflict with any federal rules.

10. Compliance schedule: The regulation applies to companies for reporting periods beginning on or after January 1, 2010. Provisions of the regulation allow the company time to bring audit systems and controls into compliance without the need to ask for an extension or waiver. This timetable is contemplated by the NAIC model and has been adopted by many, but not all, states. The Department believes it is highly desirable to conform the application date of this proposed regulation to the effective date in other states.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation would not impose reporting, recordkeeping or other requirements on small businesses since the provisions contained therein apply only to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business in New York State. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act.

This regulation specifically considers the impact of the requirements contained therein on small businesses by exempting assessment co-operative property/casualty insurance companies having direct premiums written in New York State of less than \$250,000 in any calendar year and having fewer than 500 policyholders at the end of such calendar year from the requirement to file an annual statement. Further, the proposed regulation allows any company, including a small business, to request an exemption from any and all of its requirements upon written application to the superintendent based upon a financial or organizational hardship upon the company.

This regulation contains, as does current Regulation No. 118, minimum requirements that must be included in the contract between a regulated company and the independent certified public accountant ("CPA") retained by the company. Accordingly, CPAs, regardless of whether they are small businesses or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of the continuation of these rules to be minimal, especially since if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that

are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

If the pool of available CPAs in a particular rural area who are qualified to perform the services required by this regulation does not allow for periodic substitution of staff, the company may apply for an exception to the usual requirements requiring such replacements. The Insurance Department will view this circumstance as one of financial or organizational hardship.

The regulation does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirement on any local government.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Companies affected by the proposed regulation include regulated insurers, fraternal benefit societies, and managed care organizations authorized to do business in New York State. For this purpose, a managed care organization means the term as defined in 10 NYCRR 98-1.2(x), except for: (1) A prepaid health services plan, as defined in 10 NYCRR 98-1.2(ff); (2) A primary care partial capitation provider, as defined in 10 NYCRR 98-1.2(gg); and (3) A comprehensive HIV special needs plan, as defined in 10 NYCRR 98-1.2(i). The companies affected by this regulation do business in every county in this state, including "rural areas" as defined under section 102(1) of the State Administrative Procedure Act. Some of the home offices of these companies lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

2. Reporting, recordkeeping and other compliance requirements: Many of the compliance requirements (such as filing due date and record retention period) are consistent with the requirements presently contained in Regulation 118 and should not impose upon any regulated party, regardless of whether they are located in a rural area or not, any additional paperwork, recordkeeping or compliance requirements. The obligations imposed by the proposed regulation with regard to establishment and maintenance of audit controls and standards are either consistent with or less than those required by current Regulation 118 and a federal statute, the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX"), that imposes similar rules. If there are failures in the audit and controls process, a company is required to notify the superintendent. The regulation contains automatic exclusions from compliance for certain small companies. Further, any company that faces organizational or financial hardship can seek an exemption from any requirement imposed by the regulation.

The proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a certified independent public accountant ("CPA"). The terms of the employment of the CPA and the period for which work papers and communications are to be retained (contained in 11 NYCRR 243 ["Standards of Record Retention by Insurance Companies"]) are both specified in the proposed regulation. Accordingly, CPAs, regardless of whether they are located in rural areas or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of these rules on CPAs, regardless of whether they are located in rural areas or not, should be negligible, if any at all. Indeed, if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

If the pool of available CPAs in a particular rural area who are qualified to perform the services required by this regulation does not allow for periodic substitution of staff, the company may apply for an exception to the usual requirements requiring such replacements. The Insurance Department will view this circumstance as one of financial or organizational hardship.

3. Costs: The proposed regulation implements requirements largely based on the rules imposed by current Regulation 118 and SOX. The cost of complying with the new requirements will depend on the size of the company and whether the company is already subject to SOX because it is publicly held. Companies regulated by SOX will incur few additional costs beyond those imposed by current Regulation 118 and the federal statute. Compliance cost estimates with respect to the proposed regulation were received from a cross-section of companies that are not subject to SOX. If the company is already required to comply with similar regulations in other states, the additional expense of the New York proposed regulation is estimated to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts range from \$25,000 a year to in excess of \$2 million (for one very large domestic mutual insurance company).

However, the proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a cer-

tified independent public accountant (“CPA”). The terms of the employment of a CPA is specified in the proposed regulation in a manner that is consistent with the current Regulation 118. Further, a CPA can obtain compensation for additional costs as part of the contract entered into with the regulated company. Accordingly, CPAs, regardless of whether they are located in rural areas or not, should not have to incur uncompensated additional costs to comply with the proposed regulation.

4. Minimizing adverse impact: The proposed regulation applies to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

5. Rural area participation: In developing this regulation, the Department conducted extensive outreach to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

The Insurance Department finds that this regulation will have no adverse impact on jobs and employment opportunities since, for publicly held companies, its requirements largely reflect obligations already contained in the present Regulation 118 and those imposed by the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. (“SOX”). For insurers, fraternal benefit societies or managed care organizations not already subject to SOX, the regulation contain minor refinements of those companies’ current obligations under Regulation 118 to establish, maintain and report internal audit and oversight. Compliance may require the employment of additional personnel or outside contractors.

No region in New York should experience an adverse impact on jobs and employment opportunities. This regulation should not have a negative impact on self-employment opportunities.

EMERGENCY RULE MAKING

Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act

I.D. No. INS-01-11-00012-E

Filing No. 1307

Filing Date: 2010-12-20

Effective Date: 2011-01-26

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

Action taken: Amendment of Subparts 65-1 (Regulation 68-A) and 65-2 (Regulation 68-B) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2307, 5103 and 5221

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

Specific reasons underlying the finding of necessity: Chapter 303 of the Laws of 2010 amended Insurance Law § 5103(b)(2) to prohibit an insurer from excluding from coverage any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person’s ability to operate the vehicle is impaired by the use of a drug within the meaning of Vehicle and Traffic Law § 1192, and who receives necessary emergency health services rendered in a general hospital, including ambulance services attendant thereto and related medical screening. The amendment permits an insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated Vehicle and Traffic Law § 1192.

Chapter 303 of the Laws of 2010 becomes effective on January 26, 2011 and it is essential that this amendment be promulgated on an emergency basis in order to have the proper endorsements in place to inform the insurance industry and the public of the new provisions in the law. The amendment revises two endorsements to comply with Chapter 303.

Chapter 303 of the Laws of 2010 becomes effective on January 26, 2011 and it is essential that this amendment be promulgated on an emergency basis in order to inform self-insurers of the new provisions in the law.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act.

Purpose: To revise the regulations to comply with Chapter 303 of the Laws of 2010.

Text of emergency rule: Subdivision (b) of Section 65-1.1 is amended to read as follows:

(b) *An insurer shall provide the appropriate endorsement to be used with a policy.* The Mandatory Personal Injury Protection Endorsement (New York) and the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) set out below are approved and promulgated for use by an insurer [and, except]. *Except as provided in subdivision (c) of this section and section 65-1.7 of this Subpart, [must be:*

(1) furnished to all new insureds with policies effective on and after September 1, 2001; and

(2) enclosed with the first renewal policies renewed on and after September 1, 2001.] *an insurer shall provide:*

(1) *the Mandatory Personal Injury Protection Endorsement (New York) to every insured with respect to a policy issued, renewed, modified, altered or amended on or after January 26, 2011; or*

(2) *the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) to every insured with respect to a motorcycle policy issued or renewed.*

The “Exclusions” provision set forth in Subdivision (d) of Section 65-1.1 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*² or

(h) any person while:

(1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;²

(2) operating a motor vehicle in a race or speed test;²

(3) operating or occupying a motor vehicle known to that person to be stolen;² or

(4) repairing, servicing or otherwise maintaining a motor vehicle if [such] the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;¹³²

Footnote 3 of Section 65-1.1 is amended to read as follows:

³ [These exclusions] *This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated [circumstances] circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The “Exclusions” provision set forth in Subdivision (c) of Section 65-1.3 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;*¹³¹⁴ or

Footnotes 14 through 18 of Sections 65-1.3 and 65-1.4 are renumbered to be Footnotes 15 through 19, respectively. A new Footnote 14 is added to read as follows:

¹⁴ *This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.*

The “Exclusions” provision set forth in Subdivision (j) of Section 65-2.3 is amended to read as follows:

Exclusions

This requirement for payment by a self-insurer of first-party benefits does not apply to personal injury sustained by:

(j) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) *except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the self-insurer has a cause of action against such person for the amount of first party benefits that are paid or payable; or*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 19, 2011.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5585, email: amais@ins.state.ny.us

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

Chapter 303 of the Laws of 2010 amended Insurance Law § 5103(b)(2) to prohibit a no-fault insurer from excluding from coverage necessary emergency health services rendered in a general hospital (as defined in Public Health Law § 2801(10)), including ambulance services attendant thereto and related medical screening, for any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of Vehicle and Traffic Law § 1192. Chapter 303 also permits a no-fault insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated Vehicle and Traffic Law § 1192.

These regulatory actions are technical amendments, required to comply with Chapter 303 of the Laws of 2010. No Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or Rural Area Flexibility Analysis are necessary.

Job Impact Statement

The proposed rules are required in order to comply with Chapter 303 of the Laws of 2010. The proposed rules should have no adverse impact on jobs or economic opportunities in New York State as the rules merely revise The Mandatory Personal Injury Protection Endorsement (New York), the Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers in order to comply with Chapter 303.

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

Variable Life Insurance

I.D. No. INS-01-11-00011-P

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

Proposed Action: This is a consensus rule making to amend Part 54 (Regulation 77) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 3201 and 4240

Subject: Variable life insurance.

Purpose: To amend 11 NYCRR Part 54 to authorize, and provide exceptional treatment for, private placement variable life insurance.

Text of proposed rule: A new subdivision (y) is added to section 54.1 to read as follows:

(y) *Private placement variable life insurance policy means any variable life insurance policy that:*

(i) *is exempt from registration under the Federal Securities Act of 1933;*

(ii) *includes one or more separate accounts that are exempt from registration as an investment company under the Investment Company Act of 1940; and*

(iii) *is only available to an accredited investor, as defined in 17 CFR § 230.501(a)(2010),* or to a qualified purchaser, as defined in 15 U.S.C. § 80a-2(a)(51)(2010).***

* 17 Code of Federal Regulations § 230.501(a) (2010), published by U.S. Government Printing Office, Washington, D.C. 20401.

** 15 United States Code Sec. 80a-2(a)(51) (2010), published by Office of the Law Revision Counsel, U.S. House of Representatives, Washington, DC 20515.

Subdivision (b) of section 54.3 is amended to read as follows:

(b) [The] *Except as set forth in subdivision (g) of this section, the assets of such separate accounts shall be valued at least as often as variable benefits are determined, but in any event at least monthly.*

New subdivision (g) is added to section 54.3 to read as follows:

(g) *The assets of a separate account established to provide life insurance under private placement variable life insurance policies shall be valued at least as often as variable benefits are determined, but no less frequently than annually. The determination of the value of the assets of a separate account, to the extent necessary, may be based upon reasonable approximations.*

Paragraph (6) of subdivision (b) of section 54.6 is amended to read as follows:

(6) A provision designating the separate account to be used and stating that the assets of such separate account shall be valued at least as often as any policy benefits vary, but [at least] *no less frequently than annually for a private placement variable life insurance policy and monthly for any other variable life insurance policy.*

The opening clause of paragraph (7) of subdivision (b) of section 54.6 is amended to read as follows:

(7) [A] *Except in the case of a private placement variable life insurance policy, a provision that at any time during the first 18 policy months, so long as the policy is in force on a premium-paying basis, the owner may exchange the policy without evidence of insurability for a policy of general account life insurance on the life of the insured for the same amount of insurance as the initial face amount of the variable life insurance policy, and on a plan of insurance specified in the policy, subject to the following requirements:*

New paragraphs (15) and (16) of subdivision (b) are added to section 54.6 to read as follows:

(15) *For a private placement variable life insurance policy, a provision stating that the payment of variable death benefits shall be made no later than 30 days from the date the request for payment and all necessary documentation are received.*

(16) *For a private placement variable life insurance policy, a provision stating that the payment of cash surrender values, policy loans, partial withdrawals or partial surrenders shall be made as expeditiously as possible but in no event later than 15 months from the date the request for payment is received.*

The opening paragraph of section 54.7 is amended to read as follows:

The policy value and cash surrender value [of each variable life insurance policy] shall be determined [at least] *no less frequently than annually for a private placement variable life insurance policy and at least monthly for any other variable life insurance policy.* A summary of the method of computation of cash surrender values and other non-forfeiture benefits shall be described in the policy; a complete statement of the method of computation shall be filed with the superintendent. Such method shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that it complies with subdivision (a) or (b) of this section:

Section 54.7(b)(2)(i)(c) is amended to read as follows:

(c) A deferred acquisition and other charge may be charged against the policy value in any policy year 2 through [15] 20, such that the total of all such charges imposed to date plus the surrender charge for that year does not exceed the maximum initial surrender charge. The deferred acquisition and other charge in any one year may not exceed the maximum allowable surrender charge for that year. Similar deferred acquisition and other charges may be imposed with respect to an increase in face amount.

Paragraph (3) of subdivision (b) of section 54.7 is amended to read as follows:

(3) Any surrender charge in paragraph (2) of this subdivision must be such that [at the end of] *during* any policy year it does not

exceed the maximum initial surrender charge that would be allowed multiplied by the ratio of $[a_x + ;15-t]$ to $a_x;15]$ a life annuity due for age $x+t$ for 20-t years to a life annuity due for age x for 20 years based on the mortality table and interest rate used in calculating the net level whole life annual premiums. Furthermore, any such surrender charge may not exceed the maximum initial surrender charge less the sum of all deferred acquisition and other charges made to date against the policy value. For these annuity values, x is the age at [which] the effective date of the surrender charge [is created] and t is the [duration] number of years completed since [of] the effective date of the surrender charge.

Section 54.7(b)(5)(iii) is amended to read as follows:

(iii) [At least once each year, the] *The [insured] policyholder [has] shall have the option to transfer all separate account funds to the general account and apply [his] the policy's cash Surrender value to purchase a guaranteed fixed paid-up benefit at least once every five years for a private placement variable life insurance policy and at least once each year for any other variable life insurance policy.*

The opening paragraph of section 54.9 is amended to read as follows:

An insurer delivering or issuing for delivery in this State any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgment of receipt from such applicant coincident with or prior to the execution of the application, a private placement offering memorandum in the case of a private placement variable life insurance policy or a prospectus included in a registration statement relating to the [policies which satisfies] policy in the case of any other variable life insurance policy. The prospectus must satisfy the requirements of the Federal Securities [Act of 1933 and which was] Laws, have been declared effective by the Securities and Exchange Commission, and [which] include[s] the following information:

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

Data, views or arguments may be submitted to: Deborah Kahn, New York State Insurance Department, 25 Beaver Street, Albany, NY 12257, (518) 474-7668, email: dkahn@ins.state.ny.us

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

Consensus Rule Making Determination

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

Insurance Law § 3201 establishes the Superintendent's authority to approve life, accident and health, credit unemployment and annuity policy forms, as that term is defined in that section.

Insurance Law § 4240 establishes requirements for the creation, operation, and maintenance of separate accounts used to fund variable life insurance policies. That section authorizes the Superintendent to promulgate regulations setting forth, among other things, standards to be followed in the approval of forms for use in connection with separate accounts. Insurance Law § 4240 also provides that, notwithstanding any other provision of law, the Superintendent shall have the sole authority to regulate the issuance and sale of separate accounts and the agreements related thereto and, in addition shall have the power to promulgate, from time to time, such regulations, not inconsistent with the Insurance Law, to carry out the provisions of § 4240, and insofar as applicable to Insurance Law § 4240, other provisions of the Insurance Law.

Accordingly, the Superintendent promulgated New York Comp. Codes & Reg. tit. 11 ("11 NYCRR"), Part 54 ("Regulation 77"), which pertains to separate accounts and variable life insurance policies. 11 NYCRR § 54.3(b) requires the assets of separate accounts to be valued at least as often as variable benefits are determined, but in any event at least monthly. 11 NYCRR § 54.6(b)(8) permits payments of death benefits in excess of any minimum death benefits, cash surrender values, policy loan, partial withdrawals (except when used to pay premiums) and partial surrenders to be deferred for any period

during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists, which may make such payment impractical. 11 NYCRR § 54.7(b)(5)(iii) requires an insurer to provide an insured with an annual option to transfer all separate account funds to the general account and apply the insured's cash surrender value to purchase a guaranteed fixed paid-up benefit.

Recently, insurers have proposed to make available private placement investments in variable life insurance policies. Private placement investments have long been available to accredited investors and qualified purchasers through other financial institutions. Private placement investments are exempt from registration under the Federal Securities Act of 1933, and are available to accredited investors, which are defined in 17 CFR § 230.501(a)(2010). Because private placement investments are not traded on a stock exchange, longer timeframes are necessary to value the assets, which may not be as liquid as those that are traded on a stock exchange. Accordingly, this amendment exempts variable life insurance policies that offer private placement investments from the monthly valuation requirement set forth in 11 NYCRR § 54.3(b), and imposes an annual valuation requirement.

In addition, this amendment requires insurers that offer private placement variable life insurance to pay variable death benefits on those policies no later than 30 days from the date of the request for payment and receipt of necessary documentation. It also requires those insurers to pay cash surrender values, policy loans, partial withdrawals, or partial surrenders on those policies no later than 15 months from the date the request for payment is received by the insurer.

Furthermore, this amendment requires insurers that offer private placement variable life insurance policies to give to those policyholders an option at least every five years to transfer all separate account funds to the general account and apply a policyholder's cash surrender value to purchase a guaranteed fixed paid-up benefit.

Finally, several technical revisions are proposed to § 54.7 of Regulation 77. Some changes were made to the calculation of the surrender charge to make the formula more consistent with statutory requirements for the corresponding non-variable products. Another change eliminates ambiguities concerning the surrender charge during the year. These changes are designed to ensure that any existing contracts that comply with the existing regulation will remain in compliance after these revisions become effective.

No person is likely to object to the amendment to Regulation 77 for several reasons. First, the Insurance Department has worked closely with the Life Insurance Council of New York ("LICONY"), the trade association representing the majority of life insurance companies, to draft the amendment to Regulation 77. In addition, this regulation has no effect on existing or new variable life insurance policies that do not offer private placement investment options. Rather, this regulation only exempts private placement variable life insurance policies from certain valuation requirements and imposes a different valuation requirement as necessary in order to allow insurers to offer private placement variable life insurance policies to consumers who qualify as accredited investors. Finally, the Department recently posted the draft amendment to its website for 10 days to elicit public comment. However, the Department received no comments about the regulation.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. This amendment: 1) exempts variable life insurance policies that offer private placement investments from the monthly valuation requirement set forth in 11 NYCRR § 54.3(b), and imposes an annual valuation requirement; 2) requires insurers that offer private placement variable life insurance policies to pay variable death benefits on those policies no later than 30 days from the date of the request for payment and receipt of necessary documentation; 3) requires insurers that offer private placement variable life insurance policies to pay cash surrender values, policy loans, partial withdrawals or partial surrenders no later than 15 months from the date the request for payment is received by the insurer; and 4) requires insurers that offer private placement variable life insurance policies to give to those policyholders an option at least every five years to transfer all

separate account funds to the general account and apply the insured's cash surrender value to purchase a guaranteed fixed paid-up benefit.

The rule is likely to have no measurable impact on jobs and employment opportunities because life insurers' existing personnel should be able to amend policy forms to conform to the requirements of this Part. In addition, no region in New York should experience an adverse impact on jobs and employment opportunities. Finally, this rule would not have a measurable impact on self-employment opportunities.

Division of the Lottery

NOTICE OF ADOPTION

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

I.D. No. LTR-43-10-00008-A

Filing No. 1273

Filing Date: 2010-12-16

Effective Date: 2011-01-05

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

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

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

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

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

Text or summary was published in the October 27, 2010 issue of the Register, I.D. No. LTR-43-10-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Certification of Rehabilitation Work for Compliance with Historic Preservation Standards to Obtain Tax Credits

I.D. No. PKR-01-11-00009-P

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

Proposed Action: Addition of Part 425 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8), 13.15(6) and 14.01(2)

Subject: Certification of rehabilitation work for compliance with historic preservation standards to obtain tax credits.

Purpose: To establish fees for processing, reviewing, approving and certifying historic rehabilitation work for tax credits.

Text of proposed rule: Title 9 NYCRR Chapter III Subchapter A is renumbered Subchapter B and Subchapter B is renumbered Subchapter C.

A new Subchapter A and Part 425 is added as follows:

SUBCHAPTER A

Certifying Rehabilitation of Historic Property

Part 425

Fees for Processing, Reviewing and Certifying Rehabilitation of Historic Properties

Section 425.1 Homeowner Historic Property Rehabilitation.

(a) *The Office of Parks, Recreation and Historic Preservation (Office) shall use the following schedule to assess and collect fees for processing, reviewing and certifying an application from a homeowner for rehabilitation of his or her historic residential property and for approving the homeowner's rehabilitation expenditure under the New York State tax credit program.*

(b) *The application submitted to the Office shall consist of three parts. An initial application fee of \$25 shall be submitted with Part 2 and that amount shall be deducted from the final fee that shall be submitted with Part 3.*

(c) *An applicant with a household adjusted gross income of \$60,000 or less is exempt from paying any fee to the Office.*

(d) *The applicant shall submit any receipts and documents requested by the Office to assist it in determining the amount of the fee or exemption and in issuing the certification.*

(e) *Final Fee*

<i>Rehabilitation Expenditure</i>	<i>Fee</i>
(1) \$5,000 - \$9,999	\$50
(2) \$10,000 - \$49,999	\$100
(3) \$50,000 - \$99,999	\$200
(4) \$100,000 - \$149,999	\$300
(5) \$150,000 - \$199,999	\$400
(6) \$200,000 - \$250,000	\$500

Section 425.2 Commercial, Office, Industrial, Rental Historic Property Rehabilitation.

(a) *The Office shall use the following schedule to assess and collect fees for processing, reviewing and certifying an application from a taxpayer for rehabilitation of a historic commercial, office, industrial or residential rental (income producing) property and for approving the taxpayer's rehabilitation expenditure under the New York State tax credit program.*

(b) *The application submitted to the Office shall consist of three parts. An initial application fee shall be submitted with Part 2 and that amount shall be deducted from the final fee that shall be submitted with Part 3.*

(c) *For projects up to \$100,000 in rehabilitation expenditure, the initial application fee shall be \$50; for projects above \$100,000 in rehabilitation expenditure the initial application fee shall be 10% of the estimated final fee.*

(d) *The applicant also shall submit any receipts and documents requested by the Office to assist in determining the amount of the fee and in issuing the certification.*

(e) *Final Fee*

<i>Rehabilitation Expenditure</i>	<i>Fee</i>
(1) Under \$20,000	\$100
(2) \$20,000 - \$99,999	\$500
(3) \$100,000 - \$499,999	\$1,000
(4) \$500,000 - \$999,999	\$1,500
(5) \$1,000,000 - \$2,499,999	\$2,500
(6) \$2,500,000 - \$4,999,999	\$3,000
(7) \$5,000,000 - \$9,999,999	\$4,000
(8) \$10,000,000 or more	\$5,000

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency Building 1, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.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:** The State Legislature recently expanded the State investment tax credit program first adopted in 2006 to provide an incentive to more businesses that expressed an interest in rehabilitating historic properties in distressed areas. (See, c. 239 of the Laws of 2009 and c. 472 of the Laws of 2010).

The Office of Parks, Recreation and Historic Preservation (OPRHP)

has a central role in the federal and State historic preservation tax credit programs. It reviews applications from all taxpayers and certifies that the construction work complies with the federal Secretary of the Department of the Interior Standards for Rehabilitation of Historic Properties. Recognizing this role, the State Legislature provided OPRHP with statutory authority to charge fees for “processing and review of applications. . .” Parks, Recreation and Historic Preservation Law (PRHPL) § 13.15(6). Anticipating an increase in the number of taxpayers participating in the program, OPRHP is proposing fee schedules in regulation that will allow the State Historic Preservation Office (SHPO) to continue to expeditiously review, process and issue certifications. PRHPL § 3.09(8). Prompt review of these applications also supports the Legislative policy that requires OPRHP:

To promote and encourage the protection, enhancement and perpetuation of such [historic] properties, including any improvements, landmarks, historic districts, objects and sites which have or represent elements of historical, archaeological, architectural or cultural significance. PRHPL § 14.01(2).

2. Legislative objectives: The Legislature granted OPRHP this fee-setting authority so it can recoup staff costs for processing, reviewing, approving and certifying the rehabilitation work. Under the statute “all revenues from these fees shall be deposited by the comptroller in the miscellaneous special revenue fund to be credited to the agency’s patron services account and shall be used to support the office’s historic preservation program.” PRHPL § 13.15(6).

3. Needs and benefits: The State tax credit program has two distinct facets. First, it provides personal income tax credits to homeowners for 20% of expenditures for residential rehabilitation.

Second, it provides personal income and franchise tax credits to other taxpayers (persons, corporations, partnerships, banks, shareholders) for historic rehabilitation expenditures that qualify for the commercial credit. The State tax credit for commercial, office, industrial or income-producing properties (commercial credit) is equal to 100% of the comparable federal tax credit which is currently 20% of qualified expenditures for the rehabilitation project. These taxpayers may enter into business arrangements that take advantage of both the federal and State tax credit programs. The Department of Taxation and Finance (Tax & Finance) administers the New York State tax credit program.

By collecting and allocating the fees back to the program SHPO can issue the certifications more quickly so the federal and State tax agencies may approve the respective credits. Streamlining the review process also implements the tax credit program goal to catalyze economic revitalization at the local level by encouraging investment in distressed areas, providing jobs and keeping historic buildings on the tax rolls.

4. Costs: A. Homeowner Credit. The rule establishes the following fee schedule for homeowners based upon the dollar value of the rehabilitation work performed:

Homeowner Rehabilitation Expenditure	Fee
(a) \$5,000 - \$9,999	\$50
(b) \$10,000 - \$49,999	\$100
(c) \$50,000 - \$99,999	\$200
(d) \$100,000 - \$149,999	\$300
(e) \$150,000 - \$199,999	\$400
(f) \$200,000 - \$250,000	\$500

Projected Costs to Homeowners

Outreach efforts have increased public awareness of the benefits of the State program for homeowners resulting in a drastic increase in homeowner applications for certifications. Only fifteen were submitted during the 3-year period from 2007-2009. In contrast, 50 are expected to be submitted in 2010. In future years the number of homeowner applications is projected to increase to from 80 to 100. The average homeowner rehabilitation expenditure to date is about \$55,000 so the average final fee would be about \$200.

The maximum annual homeowner tax credit is limited to \$50,000. If the credit exceeds the tax due in a given year and the homeowner’s adjusted gross income does not exceed \$60,000, then the excess is treated as overpayment and credited or refunded to the taxpayer. For this reason, the rule exempts a homeowner with a household adjusted gross income of \$60,000 or less from paying the fee.

B. Commercial Credit. The rule establishes the following fee schedule for taxpayers based upon the dollar value of the rehabilitation work performed:

Taxpayer Rehabilitation Expenditure	Fee
(a) Under \$20,000	\$100
(b) \$20,000 - \$99,999	\$500
(c) \$100,000 - \$499,999	\$1,000
(d) \$500,000 - \$999,999	\$1,500
(e) \$1,000,000 - \$2,499,999	\$2,500
(f) \$2,500,000 - \$4,999,999	\$3,000
(g) \$5,000,000 - \$9,999,999	\$4,000
(h) \$10,000,000 or more	\$5,000

Projected Costs to Taxpayers

The National Park Service (NPS) has provided a list of estimated rehabilitation expenditures for applications pending before SHPO for the federal commercial credit. Based on these expenditures, OPRHP projects the median fee under the rule to be \$2,500 and the range to be as follows:

\$100	(2%)
\$500	(8%)
\$1,000	(20%)
\$1,500	(6%)
\$2,500	(22%)
\$3,000	(11%)
\$4,000	(4%)
\$5,000	(17%)

C. Cost Variables. The actual rehabilitation expenditures, however, may vary by as much as 50% higher or lower than the estimated costs given at the beginning of a project. This rule, therefore, requires submission of a nominal fee with Part 2 of the application and submission of the final fee with Part 3 when receipts for actual expenditures will be available. This provision was included in response to comments OPRHP received from the public when it posted a preliminary draft of the rule on its website for review.

Other variables affecting the projected fees for applicants are the total amount of money that is available in the annual State Budget for the State tax credit, the cost of rehabilitation expenditures (whether they become more or less expensive to undertake) and the health of the economy. If there is a large amount of money available for the credit then the number of applications submitted to SHPO could increase. Given the recession, however, more applications may be submitted for lower cost projects. Under the latter scenario, the estimated rehabilitation costs and the estimated fees could decrease since more taxpayers would be undertaking smaller projects.

Also, the State commercial credit is slated to expire in 2015. After that the credit reverts back to 30% instead of the current 100% of the federal tax credit. This could encourage more taxpayers to take advantage of the more generous credit during the next five years before the expanded benefits expire. Public comments on the preliminary draft rule that was posted on OPRHP’s website found the fee schedule to be reasonable.

D. Costs to the Office. If the fee rule is not adopted, the Agency will lack funds to handle the projected increase in workload – a total of at least \$150,000 annually for staff costs.

5. Local government mandates: The proposed amendment would not impose any program service, duty or other responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork: OPRHP has been continually reviewing applications submitted for the existing federal tax credit program, for the State homeowner tax credit program and for the previously limited State commercial credit program. This rule, therefore, would create additional paperwork related to the new fee. Applicants would continue to submit paper or electronic applications on forms supplied by OPRHP and would continue to submit required supplemental documents.

7. Duplication: The rule does not duplicate, overlap or conflict with State and federal requirements. The National Park Service assesses a separate fee for reviewing projects under the federal tax credit. OPRHP’s fee authority derives from the State tax credit bill. The SHPO certification, however, is required for both the federal and State tax credits. The National Park Service (NPS) accepts SHPO’s certification as a recommendation in determining whether to issue its certification to the Internal Revenue Service for the federal credit.

8. Alternatives: A fee structure based on a percentage of the credit or a percentage of the rehabilitation expenditure was considered and rejected because the percentage calculations would have to decrease as the size of the tax credit or rehabilitation increases. Otherwise, the fees would be exorbitant and more difficult to calculate for the more expensive projects. Also, those alternatives would be more difficult to administer and more complicated for applicants to understand.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The rule would take effect upon publication of the notice of adoption in the State Register and would apply to new and pending applications that OPRHP had not yet certified.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed rule assesses a fee for an application that may be submitted to OPRHP for certification of rehabilitation work done on historic properties. The certification allows a taxpayer to seek available State tax credits for the work. This voluntary program is open to small and large businesses that pay taxes.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed rule assesses a fee for an application that may be submitted to OPRHP for certification of rehabilitation work done on historic properties. The certification allows a taxpayer to seek available State tax credits for the work. This voluntary tax credit program is open to small and large businesses that pay taxes.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule assesses a fee for processing an application voluntarily submitted to OPRHP for certification of work performed on a historic property. The certification enables the taxpayer to seek State tax credits for the work performed. The rule, therefore, will not have an impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Orange and Rockland's EEPS "Fast Track" Residential Electric HVAC Program

I.D. No. PSC-11-10-00013-A

Filing Date: 2010-12-21

Effective Date: 2010-12-21

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

Action taken: On 12/16/10, the PSC adopted an order approving Orange and Rockland Utilities Inc.'s (O&R) request for clarification, and determined that O&R's target will not include any MWh's for the discontinued program.

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

Subject: Orange and Rockland's EEPS "Fast Track" Residential Electric HVAC Program.

Purpose: To approve the request for clarification and determined that O&R's target will not include any MWh's for the discontinued program.

Substance of final rule: The Commission, on December 16, 2010 adopted an order approving Orange and Rockland Utilities Inc.'s (O&R) request for clarification, and determined that O&R's target will not include any MWh's for the discontinued program, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-1003SA3)

NOTICE OF ADOPTION

Major Water Rate Filing

I.D. No. PSC-17-10-00013-A

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Action taken: On 12/16/10, the PSC, adopted an order approving United Water Westchester Inc.'s Joint Proposal as revised and establishing a multi-year rate plan.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Major water rate filing.

Purpose: To approve United Water Westchester Inc.'s Joint Proposal as revised and establishing a multi-year rate plan.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving United Water Westchester Inc.'s terms of a Joint Proposal as revised and establishing a multi-year rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-W-0828SA1)

NOTICE OF ADOPTION

Notification Concerning Tax Refunds

I.D. No. PSC-26-10-00005-A

Filing Date: 2010-12-16

Effective Date: 2010-12-16

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

Action taken: On 12/16/10, the PSC adopted an order approving Verizon New York Inc.'s petition to retain \$4.1 million, the intrastate portion of a \$6.7 million property tax refund received from the City of New York, for the 2009-2010 tax year.

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

Subject: Notification concerning tax refunds.

Purpose: To approve Verizon New York Inc.'s petition to retain a portion of a property tax refund.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Verizon New York Inc.'s petition to retain \$4.1 million, the intrastate portion of a \$6.7 million property tax refund received from the City of New York, for the 2009-2010 tax year, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-C-0274SA1)

NOTICE OF ADOPTION

Central Hudson's Amendments to PSC No. 15—Electricity, Effective 10/1/10 and Postponed to 1/1/11**I.D. No.** PSC-28-10-00014-A**Filing Date:** 2010-12-16**Effective Date:** 2010-12-16

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

Action taken: On 12/16/10, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) amendments to PSC No. 15—Electricity, effective October 1, 2010 and postponed to January 1, 2011.

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

Subject: Central Hudson's amendments to PSC No. 15—Electricity, effective 10/1/10 and postponed to 1/1/11.

Purpose: To approve Central Hudson's tariff amendments to PSC No. 15—Electricity, effective 10/1/10 and postponed to 1/1/11.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective October 1, 2010 and postponed to January 1, 2011, to implement a metering fee for customers taking service under Service Classification (SC) No. 2—General Service, SC No. 3—Large Power Primary Service and SC No. 13—Large Power Substation and Transmission Service.

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

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

Assessment of Public Comment

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

(10-E-0304SA1)

NOTICE OF ADOPTION

Massena Electric Department's Amendments to PSC No. 2—Electricity, Effective 10/1/10 and Postponed to 1/1/11**I.D. No.** PSC-29-10-00009-A**Filing Date:** 2010-12-16**Effective Date:** 2010-12-16

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

Action taken: On 12/16/10, the PSC adopted an order approving Massena Electric Department's amendments to PSC No. 2—Electricity, effective October 1, 2010 and postponed to January 1, 2011.

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

Subject: Massena Electric Department's amendments to PSC No. 2—Electricity, effective 10/1/10 and postponed to 1/1/11.

Purpose: To approve Massena Electric Department's tariff amendments to PSC No. 2—Electricity, eff. 10/1/10 and postponed to 1/1/11.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Massena Electric Department's amendments to PSC No. 2—Electricity, effective October 1, 2010 and postponed to January 1, 2011, to establish Service Classification No. 9—Purchase of Renewable Energy from New Distributed Generators.

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

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

Assessment of Public Comment

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

(10-E-0316SA1)

NOTICE OF ADOPTION

Revised Service Quality Improvement Plan**I.D. No.** PSC-30-10-00006-A**Filing Date:** 2010-12-17**Effective Date:** 2010-12-17

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

Action taken: On 12/16/10, the PSC adopted an order approving, with modifications, Verizon New York Inc.'s revised Service Quality Improvement Plan.

Statutory authority: Public Service Law, sections 91(1), 94(2) and 98

Subject: Revised Service Quality Improvement Plan.

Purpose: To approve Verizon New York Inc.'s revised Service Quality Improvement Plan with modifications.

Substance of final rule: The Commission, on December 16, 2010 adopted an order approving, with modifications, Verizon New York Inc.'s revised Service Quality Improvement Plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-C-0202SA1)

NOTICE OF ADOPTION

Revenue Decoupling Mechanism Reconciliation**I.D. No.** PSC-34-10-00002-A**Filing Date:** 2010-12-21**Effective Date:** 2010-12-21

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

Action taken: On 12/16/10, the PSC adopted an order approving in part and denying in part the Petition of Niagara Mohawk Power Corporation and a related tariff amendment to modify the Joint Proposal relative to the Revenue Decoupling Mechanism (RDM) reconciliation.

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

Subject: Revenue Decoupling Mechanism reconciliation.

Purpose: To approve in part and deny in part a related tariff amendment and Revenue Decoupling Mechanism reconciliation.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving in part and denying in part the Petition of Niagara Mohawk Power Corporation and a related tariff amendment to modify the Joint Proposal relative to the revenue decoupling mechanism (RDM) reconciliation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-G-0609SA5)

NOTICE OF ADOPTION

EEPS Programs and the Associated Utility Financial Incentive Mechanism**I.D. No.** PSC-36-10-00012-A**Filing Date:** 2010-12-21**Effective Date:** 2010-12-21

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

Action taken: On 12/16/10, the PSC adopted an order combining incentive targets, clarifying incentive mechanism details and establishing an implementation advisory group.

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

Subject: EEPS programs and the associated utility financial incentive mechanism.

Purpose: To combine incentive targets, clarify incentive mechanism details and establish an implementation advisory group.

Substance of final rule: The Commission, on December 16, 2010, adopted an order combining incentive targets, clarifying incentive mechanism details and establishing an implementation advisory group, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA27)

NOTICE OF ADOPTION

Modifications to the Verizon Inter-Carrier Service Quality Guidelines**I.D. No.** PSC-39-10-00015-A**Filing Date:** 2010-12-21**Effective Date:** 2010-12-21

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

Action taken: On 12/16/10, the PSC adopted an order approving modifications to the Verizon Inter-Carrier Service Quality Guidelines consisting of two administrative changes and two process changes.

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

Subject: Modifications to the Verizon Inter-Carrier Service Quality Guidelines.

Purpose: To approve modifications to the Verizon Inter-Carrier Service Quality Guidelines.

Substance of final rule: The Commission, on December 16, 2010 adopted an order approving modifications to the Verizon Inter-Carrier Service Quality Guidelines consisting of two administrative changes and two process changes that remove MR-1 sub-metrics related to the Electronic Bonded Trouble Administration Interface and revise the performance standard for MR-2-01-3200 Network Trouble Report Rate Unbundled Network Element Specials, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(97-C-0139SA32)

NOTICE OF ADOPTION

Implementation of GBL Section 349-d**I.D. No.** PSC-39-10-00019-A**Filing Date:** 2010-12-17**Effective Date:** 2010-12-17

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

Action taken: On 12/16/10, the PSC adopted an order implementing Chapter 416 of the laws of 2010, adding Section 349-d which specifies requirements for energy services companies.

Statutory authority: Public Service Law, sections 66(1) and 349-d

Subject: Implementation of GBL Section 349-d.

Purpose: To approve the implementation of GBL Section 349-d.

Substance of final rule: The Commission, on December 16, 2010 adopted an order implementing Chapter 416 of the laws of 2010, adding Section 349-d which specifies requirements for Energy Service Companies (ESCOs) and directed ESCOs to comply with the revised Uniform Business Practices, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(98-M-1343SA20)

NOTICE OF ADOPTION

Consolidated Edison Company of New York Inc.'s Tariff Amendments to PSC No. 9—Electricity**I.D. No.** PSC-40-10-00012-A**Filing Date:** 2010-12-20**Effective Date:** 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Electricity, effective December 28, 2010.

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

Subject: Consolidated Edison Company of New York Inc.'s tariff amendments to PSC No. 9—Electricity, effective 12/28/10.

Purpose: To approve Consolidated Edison Company of New York Inc.'s tariff amendments to PSC No. 9—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0407SA1)

NOTICE OF ADOPTION

Central Hudson's Tariff Amendments to PSC No. 15—Electricity**I.D. No.** PSC-40-10-00013-A**Filing Date:** 2010-12-20**Effective Date:** 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 28, 2010.

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

Subject: Central Hudson's tariff amendments to PSC No. 15—Electricity, effective 12/28/10.

Purpose: To approve Central Hudson's tariff amendments to PSC No. 15—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0406SA1)

NOTICE OF ADOPTION

Consolidated Edison Company of New York Inc.'s Tariff Amendments to PSC No. 9—Electricity**I.D. No.** PSC-40-10-00015-A**Filing Date:** 2010-12-20**Effective Date:** 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Electricity, effective December 28, 2010.

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

Subject: Consolidated Edison Company of New York Inc.'s tariff amendments to PSC No. 9—Electricity, effective 12/28/10.

Purpose: To approve Consolidated Edison Company of New York Inc.'s tariff amendments to PSC No. 9—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 120—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0408SA1)

NOTICE OF ADOPTION

National Grid's Tariff Amendments to PSC No. 220—Electricity**I.D. No.** PSC-40-10-00016-A**Filing Date:** 2010-12-20**Effective Date:** 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) amendments to PSC No. 220—Electricity, effective December 28, 2010.

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

Subject: National Grid's tariff amendments to PSC No. 220—Electricity, effective 12/28/10.

Purpose: To approve National Grid's tariff amendments to PSC No. 220—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0409SA1)

NOTICE OF ADOPTION

Rochester Gas and Electric Corporation's Amendments to PSC No. 19—Electricity**I.D. No.** PSC-40-10-00017-A**Filing Date:** 2010-12-20**Effective Date:** 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective December 28, 2010.

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

Subject: Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective 12/28/10.

Purpose: To approve Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0410SA1)

NOTICE OF ADOPTION**Orange and Rockland Utilities, Inc.'s Amendments to PSC No. 2—Electricity**

I.D. No. PSC-40-10-00018-A
Filing Date: 2010-12-20
Effective Date: 2010-12-20

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

Action taken: On 12/16/10, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2—Electricity, effective December 28, 2010.

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

Subject: Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2—Electricity, effective 12/28/10.

Purpose: To approve Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2—Electricity, effective 12/28/10.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2—Electricity, effective December 28, 2010 to effectuate amendments to Public Service Law § 66-j Net Energy Metering for Farm Waste Electric Generating Systems and conform to changes to the Standardized Interconnection Requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0411SA1)

NOTICE OF ADOPTION**Cost Recovery of Wireless Access to Central Hudson's Hourly Pricing Meters**

I.D. No. PSC-41-10-00016-A
Filing Date: 2010-12-16
Effective Date: 2010-12-16

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

Action taken: On 12/16/10, the PSC adopted an order approving Central Hudson's petition to modify its Expansion Plan for Hourly Pricing Provision to allow recovery of wireless communications charges, implement a fee for manual meter readings, & reduce data.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Cost recovery of wireless access to Central Hudson's hourly pricing meters.

Purpose: To approve cost recovery of wireless access to Central Hudson's hourly pricing meters.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving Central Hudson Gas & Electric Corporation's petition to modify its Expansion Plan of its Hourly Pricing Provision to allow recovery of wireless communications charges, implement a fee for manual meter readings, and reduce data requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(08-E-0887SA4)

NOTICE OF ADOPTION**Annual Reconciliation of Gas Costs**

I.D. No. PSC-41-10-00020-A
Filing Date: 2010-12-21
Effective Date: 2010-12-21

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

Action taken: On 12/16/10, the PSC adopted an order instituting a proceeding for Consolidated Edison Company of New York, Inc. and New York State Electric and Gas Company for the annual reconciliation of gas costs.

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

Subject: Annual reconciliation of gas costs.

Purpose: To institute a proceeding for the annual reconciliation of gas costs.

Substance of final rule: The Commission, on December 16, 2010, adopted an order instituting a proceeding for Consolidated Edison Company of New York, Inc. to review its accounting and reporting practices related to lost and unaccounted for gas. The Commission also instituted a proceeding for New York State Electric and Gas Company to review its overall stranded capacity costs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-G-0467SA1)

NOTICE OF ADOPTION**National Grid's Rule 16.6—Letter of Credit by Non-Residing Applicants**

I.D. No. PSC-42-10-00012-A
Filing Date: 2010-12-16
Effective Date: 2010-12-16

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

Action taken: On 12/16/10, the PSC adopted an order denying Mr Dan E. Bargabos' request for a refund from Niagara Mohawk Power Corporation d/b/a National Grid and granting a limited waiver of the tariff permitting extended letters of credit to the end of 2011.

Statutory authority: Public Service Law, Section 66(12).

Subject: National Grid's Rule 16.6—Letter of Credit by Non-Residing Applicants.

Purpose: To deny the request for a refund of \$10,774.51 and granting a limited waiver.

Substance of final rule: The Commission, on December 16, 2010, adopted an order denying Mr Dan E. Bargabos' request for a refund from Niagara Mohawk Power Corporation d/b/a National Grid for a refund of \$10,774.51 and granted letters of credit that come due within one year of the effective date of this order, a limited waiver of the tariff permitting an extension of the letters of credit to the end of the 2011 calendar year, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-

2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-E-0486SA1)

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

Staff Recommendations Relative to Electric Utility Transmission Right-of-Way Management Practices

I.D. No. PSC-01-11-00013-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 Department of Public Service Staff (Staff) recommendations relative to electric utility transmission right-of-way management practices.

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

Subject: Staff recommendations relative to electric utility transmission right-of-way management practices.

Purpose: To consider Staff recommendations relative to electric utility transmission right-of-way management practices.

Substance of proposed rule: The Public Service Commission is considering Department of Public Service Staff (Staff) recommendations relative to electric utility transmission right-of-way (ROW) management practices. In connection with its consideration of whether existing ROW management practices adequately balance the need for safety and reliability of the State's electric transmission system, the Commission instituted Case 10-E-0155 to receive and consider public comments regarding whether changes to utilities' implementation of transmission ROW management policies may be warranted to protect or enhance the continued provision of safe and reliable electric service and, at the same time, be cost-effective and sensitive to environmental and aesthetic values. The Commission will consider Staff recommendations which resulted from the comments and recommendations which were received and are part of the record in this proceeding and may accept, reject or adopt, in whole or in part, any or all such recommendations.

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

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

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

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

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

(10-E-0155SP2)

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

Whether a Proposed Agreement for the Provision of Water Service by Saratoga Water Services, Inc. is in the Public Interest

I.D. No. PSC-01-11-00015-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny, or modify, in whole or in part, the petition of Saratoga Water Services, Inc. for a waiver of the company's tariff and approval of the terms of a service agreement.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

Purpose: Whether the Commission should issue an order approving the proposed provision of water service.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part a Petition in which Saratoga Water Services, Inc. (Saratoga) seeks issuance of an Order (a) approving the terms and conditions of a certain "Agreement For The Provision of Water Service", dated January 11, 2007 (Agreement) between Saratoga and Albany Partners, LLC as being in the public interest; (b) determining that the provision of water service by Saratoga in accordance with the terms set forth in the Agreement is in the public interest; (c) waiving Saratoga's tariff provisions to the extent they are inconsistent with the Agreement, and (d) waiving the applicability of the provisions of 16 N.Y.C.R.R. Parts 501 and 502 to the extent they are inconsistent with the Agreement.

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

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

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

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

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

(07-W-0169SP1)

Department of Transportation

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

2010 Edition of the New York State Supplement to the Manual on Uniform Traffic Control Devices (MUTCD)

I.D. No. TRN-01-11-00003-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 repeal Chapter V and add a new Chapter V to Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1680(a); and Transportation Law, section 14(18)

Subject: The 2010 Edition of the New York State Supplement to The Manual on Uniform Traffic Control Devices (MUTCD).

Purpose: Repeal the current NYS Supplement to the MUTCD and replace it with the NYS Supplement to the MUTCD - 2010 Edition.

Substance of proposed rule (Full text is posted at the following State website: <https://www.nysdot.gov>): This rulemaking makes 441 changes to sections of 17 NYCRR Chapter V ("New York State Supplement"), hereafter referred to as the "Supplement." These changes are being made to make the Supplement match the MUTCD in word use and format, clarify information in the MUTCD that has proven confusing to users and provide additional information in instances where the MUTCD guidance is deficient for the needs of New York State.

The majority of changes in this rulemaking essentially allow for the continuance of traffic control practices already used in New York State. The only changes representing new information are:

- Support to clarify meaning of Standard statements
- Guidance for use of STOP or YIELD signs
- Guidance for use of Intersection Lane Control signs
- Requirement for use of fish-hook arrows on signs and markings at roundabouts
- Disallowing use of new permissive parking signs

- Addition of 6 STATE LAW signs that have been in use but were not in the Supplement
 - Guidance for placement of certain warning signs that do not necessarily require deceleration
 - Guidance for use of Stop Ahead and Signal Ahead signs
 - Guidance and Figure for use and placement of Lane Ends signs
 - Guidance and Figure for use of Intersection Warning signs
 - Allow use of Intermediate Reference Location signs with Enhanced Reference Location signs
 - Disallow use of Supplemental Arrow plaques with W20 series construction warning signs
 - Disallow use of yellow on brown signs in the Catskill Park
 - Revised list of signs allowed to be yellow on brown in the Adirondack Park
 - Guidance for use of Changeable Message signs
 - Disallow use of certain alternate sign designs in favor of one preferred style for each type
 - Eliminate option for having beacons mounted within School Speed limit signs
 - Requirement for use of Regulatory signs with bike lanes
- The changes are grouped by their main purpose as follows:
- A. 10 changes add information to the Supplement that existed in the previous 17 NYCRR or Authorizations.
 - B. 34 changes to graphics/tables that were necessitated by changes to text or to clarify usage
 - C. 51 changes add information to address deficiencies in the National MUTCD guidance.
 - D. 92 changes deleting NY specific signs and adopting MUTCD signs
 - E. 138 changes editing text to match word usage and formatting changes in the MUTCD or to correct typographic errors in Supplement text
 - F. 70 changes that moved text from one section to another to match organizational changes in MUTCD
 - G. 12 changes to disallow new signs that are in conflict with or not supported by NY law
 - H. 34 changes to disallow optional sign texts in favor of one preferred style

Text of proposed rule and any required statements and analyses may be obtained from: Mr. David Woodin, Office of Traffic Safety and Mobility, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-7436, email: dwoodin@dot.state.ny.us

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

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

Consensus Rule Making Determination

Pursuant to Chapter 722 of the Laws of 2006, New York State adopted the National Manual on Uniform Traffic Control Devices for Streets and Highways – 2009 Edition (MUTCD) as the primary standard governing the use of traffic control devices on streets, highways and bicycle paths open to public travel within the State, effective January 15, 2010.

Section 1680 of the Vehicle and Traffic Law allows the Commissioner of Transportation to modify the provisions of the MUTCD by the adoption of a New York State Supplement (Supplement) as such Commissioner determines warranted.

Two facets of this proposed rulemaking result from, and are necessitated by, the amendments to subdivision (a) of Section 1680 of the Vehicle and Traffic Law enacted by Chapter 722 of the Laws of 2006. First, adoption of the current version of the MUTCD as New York State's primary standard governing the use of traffic control devices requires modifications to the current Supplement, which resides in existing regulation as Title 17 NYCRR Chapter V, in order to resynchronize the format of the Supplement with the new format of the MUTCD. Second, as was done during the initial creation of the Supplement, guidance must be added to the revised Supplement to address new issues raised in the MUTCD which either conflict with New York State law or for which deficient guidance was provided.

The actual text of mailings and the proposed regulation can be retrieved directly from the following web address: www.nysdot.gov/portal/page/portal/divisions/operating/oom/transportation-systems/traffic-operations-section/mutcd.

As this proposed rulemaking does not contain any substantive changes to current standards or practices, no impact is expected to any State or local government and industry. Accordingly, the Department is treating this proposed change as a consensus rulemaking.

Job Impact Statement

1. Nature of impact:

These revisions to the Supplement will generally maintain the same or a greater level of employment related to the manufacture, distribution, installation and upkeep of traffic control devices.

2. Categories and numbers affected:

This revision will affect all governments that install traffic control devices, all highway users, all businesses that depend on transportation and all businesses that make, distribute or install traffic control devices.

3. Regions of adverse impact:

These regulations will not have a disproportionate adverse impact on jobs or employment in any regions of the state.

4. Minimizing adverse impact:

The Department has minimized the adverse impact of this rulemaking by providing advance notice to businesses and local governments of changes to traffic control devices and by incorporating previous public comments into the Supplement wherever possible.

Essentially, the rulemaking serves to minimize the adverse effects of portions of the National MUTCD that would have otherwise been a burden on the public.

Office of Victim Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Practices and Procedures Before the Office of Victim Services

I.D. No. OVS-01-11-00007-EP

Filing No. 1276

Filing Date: 2010-12-17

Effective Date: 2010-12-17

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

Proposed Action: Repeal of Part 525; and addition of a new Part 525 to Title 9 NYCRR.

Statutory authority: L. 2010, ch. 56; Executive Law, art. 22; section 623, subdivision (3)

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

Specific reasons underlying the finding of necessity: Part A-1 of Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) eliminates the New York State Crime Victims Board and creates the Office of Victim Services as a new Executive Agency. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists pursuant to Chapter 56, the previous Part 525 of Title 9 NYCRR shall be repealed and a new Part 525 of Title 9 NYCRR shall be added to outline the Practice and Procedure Before the Office of Victim Services. This new Part shall retain much of the former Board's regulatory structure, but is altered to reflect the elimination of the Board and any new requirements created by Chapter 56. This new Part also reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22.

These changes have been determined to be necessary for the general welfare of not only the residents of the State of New York but any person who may be the innocent victim of a crime within the State regardless of their residency or citizenship. These changes are necessary in order to ensure the continued, uninterrupted provision of assistance, as required by both State and federal law, to innocent victims of crime in New York State.

Subject: Practices and procedures before the Office of Victim Services.

Purpose: To implement regulations necessary for the proper implementation of Chapter 56 of the Laws of 2010.

Substance of emergency/proposed rule (Full text is posted at the following State website: <http://www.ovs.ny.gov>): Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) eliminates the New York State Crime Victims Board (the Board) and creates the Office of Victim Services (the Office) as a new Executive Agency. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists pursuant to Chapter 56, the previous Part 525 of Title 9 NYCRR shall be repealed and a new Part 525 of Title 9 NYCRR shall be added to outline the Practice and Procedure Before the Office of Victim Services. This new Part shall retain much of the former Board's regulatory structure, but is altered to reflect the elimination of the Board and any new requirements created by Chapter 56. This new Part also reorganizes certain provisions of the former Board's

regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. A summary of the changes between the previous Part and the new Part are as follows:

A new section 525.1 is created to describe the policy and regulatory intent of the new Part. The new Part is meant to supplement the provisions of Article 22 of the Executive Law.

A new section 525.2 is created to describe the transitional provisions. This section contains the language of section 54 of part A-I of Chapter 56 of the Laws of 2010 which describes the transition from the former Crime Victims Board to the newly created Office of Victim Services, effective June 22, 2010.

Subdivisions (a) through (j) of the previous section 525.1 are deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. Subdivision (o) of the previous section 525.1 is relocated to be included under the definition of medical services or medical expenses [new section 525.3(d)(2)]. The last two sentences of subdivision (q) of the previous section 525.1 are relocated to be included under manner of payments; awards [new section 525.12(g)(6)]. The new 525.3 contains subdivisions (a) through (g) to define/further clarify: child victim [pursuant to Executive Law, sections 621(11) and 627(1)(d)], conduct contributing, representative, medical services or medical expenses, transportation expenses incurred for necessary court appearances, hospitalization, and financial counseling.

Subdivisions (a) through (d) of the previous section 525.2 are deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.4 contains: a new subdivision (a) related to the electronic filing of claims [pursuant to Executive Law, section 625(3)], the previous subdivision (e) re-lettered as subdivision (b), and a new subdivision (c) related to the initial processing of claims [pursuant to Executive Law, section 627(1)(b)].

Subdivision (d) of the previous section 525.3 is relocated to be included under decision on a claim [new section 525.6(a)]. The new 525.5 contains: in subdivision (a) a time frame during which a claim must be assigned, in subdivision (b) a time frame during which a claim must be investigated [both pursuant to Executive Law, section 627(1)(b)] and a new subdivision (d) related to all claims being investigated regardless of subsequent arrest or conviction [pursuant to Executive Law, section 627(1)(c)].

Subdivision (a) of the previous 525.4 is altered to reflect the elimination of the Board and is relocated to subdivision (b). Subdivision (b) of the previous 525.4 is altered to reflect the elimination of the Board Members and is relocated to subdivision (e). The new 525.6 also contains: a new subdivision (a) containing the language from the previous 525.3 (mentioned above), a new subdivision (c) related to the federal VOCA requirement that a claimant cooperate with the reasonable requests of law enforcement, a new subdivision (d) related to all claims receiving a decision regardless of subsequent arrest or conviction [pursuant to Executive Law, section 627(1)(c)], and in subdivisions (e) and (f) language to explain when anticipated payment may be made and the decision is the written report the claimant is entitled to [pursuant to Executive Law, section 627(1)(e)].

There are no substantive changes between the previous 525.5, renumbered as the new 525.7.

The new 525.8 retains much of the previous 525.6 with the following exceptions: the new subdivision (d) makes the claimant financially responsible for previously scheduled medical exams which were not attended without justification, the new subdivision (f) states that hearings may be adjourned by the office only, not upon the request of any interested party, the new subdivision (g) is rewritten to comply with the confidentiality provisions of the Executive Law, claimant hearings shall not be open to the public, and the new subdivision (i) the hearings shall simply take place at a time and place designated by the office.

The new 525.9, renumbered from the previous 525.7, includes language in subdivision (a) that the office shall provide certain written notice about attorney representation to applying claimants [pursuant to Executive Law, section 627(1)(a)].

There are no substantive changes between the previous 525.8, renumbered as the new 525.10.

The previous 525.9 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.11 includes the language of the previous 525.10 related to emergency awards and further describes the process followed by the office.

The previous 525.10 is renumbered to the new 525.11 (above). The new 525.12 includes the language of the previous 525.12 related to manner of payment; awards. The new 525.12 retains much of the previous 525.12 language with the following exceptions: the previous 525.12(g)(2)(i) to (iv) is updated to reflect the current provisions of Article 22 of the Executive Law and moved to the new 525.12(g)(7), the new subdivision (g)(5) contains the language of the previous 525.26 related to court transportation expenses with clarification that such expenses are

available to any eligible claimant, the new subdivision (i)(3)(i) related to determining period of disability for loss of earnings (a regulation previously submitted to the State Register, CVB-52-09-00002-P though never adopted), the new subdivision (j) related to awards for livery cab operator victims [pursuant to Executive Law, section 627(1)(f)], the new subdivision (k) related to awards for loss of earnings or loss of support in excess of that which was initially awarded [pursuant to Executive Law, section 627(1)(g)], and the new subdivision (l) which contains the statutory references and requirements of the previous 525.11 related to reduction of awards for collateral payments.

The previous 525.11 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, but references to the reduction of awards for collateral payments are included in the new 525.12(l) (above). The new 525.13 includes the language of the previous 525.13 related to review of a decision on a claim. The new 525.13 retains much of the previous 525.13 language with the following exceptions: the previous 525.13(b) and (c) are altered to reflect the elimination of the Board Members and the remaining language relocated to the new subdivision (b), the new subdivision (b) eliminates certain language contained in the previous 525.13(c) related to hearings being mandatory unless waived by the claimant, the new subdivision (b) also provides that if the request for a review of a decision is based wholly upon the law under which the office operates, a decision may be issued without a hearing, the new subdivision (c) relates to the notice to be included on a final determination [pursuant to Executive Law, section 627(1)(e)].

The new 525.14 contains the language of the previous 525.14 related to judicial review.

The new 525.15 is related to the confidentiality of and access to claimant records. The provisions of the previous 525.15 combined both public and claimant records in one section which was unworkable. The previous 525.15 is deleted and two new, separate sections related to claimant records (525.15) and the access of public records (FOIL) (525.23) are included in its place.

The new 525.16 contains the language of the previous 525.16 related to the availability of rules.

The new 525.17 contains updated language similar to that of the previous 525.25 related to requests for reduction of a lien to reflect the elimination of the Board Members.

The new 525.18 contains the language of the previous 525.30 related to battered spouses shelter cost guidelines.

The previous 525.17 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.19 contains the language of the previous 525.31 related to crimes committed by family members.

The previous 525.18 was renumbered to the new 525.29. The new 525.20 contains the language of the previous 525.32 related to victims of human trafficking, presumption of physical injury.

The previous 525.19 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22. The new 525.21 contains the language of the previous 525.33 related to the prohibited use of personal identifying information.

The previous 525.20 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board. The new 525.22 relates to victim assistance programs and their role in preparing and assisting in the processing of claims to the office [pursuant to Executive Law, sections 623(3) and 627(1)(b)], requests for emergency awards and clarification of the office's confidentiality responsibilities.

The previous 525.21 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board. The new 525.23 relates to the access of public records, containing the model FOIL regulations as developed by the DOS Committee on Open Government and reflecting the elimination of the Board Members. See also, the explanation for the new 525.15 (above).

Sections 525.24 through 525.28 are intentionally blank and reserved for future use.

The previous 525.22 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22, to reflect the elimination of the Board.

The previous 525.23 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22.

The previous 525.24 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22.

The provisions of the previous 525.25 were generally included in the new 525.17 related to requests for further reduction of lien.

The provisions of the previous 525.26 are generally included in the new 525.12(g)(5).

The previous 525.27 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22.

The previous 525.28 is deleted as either redundant or contrary to the new and unchanged provisions of Executive Law, Article 22.

There was not a previous 525.29. The new 525.29 contains the language of the previous 525.18 related to the construction of rules.

The previous 525.30 was renumbered as the new 525.18. The new 525.30 provides for a severability clause.

The previous 525.31 is renumbered as the new 525.19. The previous 525.32 is renumbered as the new 525.20. The previous 525.33 is renumbered as the new 525.21.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 16, 2011.

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Office of Victim Services, One Columbia Circle, Suite 200, Albany, New York 12203, (518) 457-8066, email: john.watson@ovs.ny.gov

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: The New York State Executive Law, Article 22 which created the Crime Victims Board (the Board) was originally enacted by Chapter 894 of the Laws of 1966. During its existence for over four decades the Board had the authority to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law. The rules and regulations which evolved during that time are found in Part 525 of Title 9 of the New York Codes Rules and Regulations (NYCRR). Recently, Part A-1 of Chapter 56 of the Laws of 2010 (enacting portions of the FY 2010-2011 State Budget) amended Article 22 of the Executive Law to eliminate the Board and create the Office of Victim Services (the Office) as a new Executive Agency. Subdivision 3 of section 623 of the Executive Law provides that the Office shall have the power and duty to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Article 22 of the Executive Law.

2. Legislative objectives: The FY 2010-2011 State Budget implemented several measures to address the difficult financial climate in the State. One measure identified to reduce costs to the State was the elimination of the five-member Crime Victims Board. By enacting Part A-1 of Chapter 56 of the Laws of 2010, the Legislature sought to ensure that, although the Board itself would be eliminated, the provisions and purpose of Article 22 of the Executive Law would continue under a reorganized Executive Agency to be known as the Office of Victim Services.

3. Needs and benefits: Part A-1 of Chapter 56 of the Laws of 2010 eliminates the New York State Crime Victims Board and creates the Office of Victim Services as a new Executive Agency. The elimination of the five-member Crime Victims Board itself was required under the FY 2010-2011 State Budget in order to reduce the operational costs; the Office of Victim Services creates a more efficient structure for processing claims from crime victims. Previous regulations, Part 525 of Title 9 NYCRR, outlined the Practice and Procedure Before the Board. As the Board no longer exists, the previous Part 525 of Title 9 NYCRR must be repealed and a new Part 525 added to outline the Practice and Procedure Before the Office of Victim Services. Part A-1 of Chapter 56 did not significantly change the process or requirements for crime victims, so this new Part retains much of the former Board's regulatory structure. This new Part is, however, altered to appropriately reflect the elimination of the Board and any new requirements created by Part A-1 of Chapter 56 upon the agency, including: the transitional provisions from the Board to the Office; the electronic filing of claims; clearer timeframes for the internal assignment and investigation of claims, as well as protocols in response to missed medical appointments and hearing dates; resolution of claims regardless of underlying criminal case; and information to be included on written claim determinations. Proposed section 525.8(d), for example, makes a claimant financially responsible for previously scheduled medical exams, where missed without justification. This shift in Office protocol will preserve finite Victim Services resources, while providing the claimant with ample notice of the change, opportunity to provide a justification for missing the appointment, and administrative review of any adverse determination. Upon scheduling of such appointments, the claimant will be notified of such potential liabilities. Should the claimant disagree with a decision resulting from such a missed appointment, they will continue to have the opportunity for both administrative and judicial reviews of such decisions.

This new Part also reorganizes certain provisions of the former Board's regulatory structure and eliminates language that is either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22 in order to avoid any confusion on the part of the Office or the public. These changes are necessary in order to ensure the continued, uninterrupted provision of assistance, as required by State and federal law, to innocent victims of crime in New York State.

4. Costs: a. Costs to regulated parties. These proposed regulations would codify much of the former Board's regulatory structure and any new regulatory requirements created by Part A-1 of Chapter 56, therefore it is not expected that the proposed regulations would impose any additional costs to the agency or State. The proposed regulatory changes may, in fact, result in saving the agency and State money when the volume of otherwise ineligible claims filed with the Board decreases because claimants or potential claimants would now have access to a more concise and clear regulatory structure and internal protocols. The changes implemented by Part A-1 of Chapter 56 and proposed by these regulations have no impact on the State's current eligibility for related federal funding. The overall purpose in enacting Part A-1 of Chapter 56 was to reduce costs (estimated at \$300,000 per year in salaries and pensions) to the State through the elimination of the five-member Crime Victims Board.

b. Costs to local governments. These proposed regulations do not apply to local governments and would not impose any additional costs on local governments.

c. Costs to private regulated parties. The proposed regulations do not apply to private regulated parties and would not impose any additional costs on private regulated parties.

5. Local government mandates: These proposed regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: These proposed regulations do not require any additional paperwork requirements. This proposal will allow claims to also be submitted electronically.

7. Duplication: These proposed regulations do not duplicate any other existing State or federal requirements.

8. Alternatives: Besides those regulatory changes necessary as a result of the enactment of Part A-1 of Chapter 56 (listed in item 3, above), the one identifiable, substantive change is contained in section 525.13 as it related to the review of a decision on a claim (also known as "appeals"). Previous regulations stated that an appeal hearing must be held unless waived by the claimant. This resulted in the agency having certain appeals "in limbo" if the claimant requested an appeal but never followed-up or cooperated with the scheduling of such hearings. The new provision eliminates this possibility. With this specific regulatory authority, the Office will make several attempts to contact a claimant about scheduling their appeal hearing prior to issuing a final determination based on the review of the record alone. In addition, the Office determined that if such appeals were based wholly upon the law under which the agency operates, a decision could be issued without an appeal hearing. The Office, based on the Board's 40 years of experience, eliminates these unnecessary appeal hearings in proposed section 525.13. The Office anticipates greater efficiency in processing appeal hearings, while maintaining claimants' interests in providing ample notice of this regulatory change and notifying them of the victims' right to appeal a final determination of the Office via Civil Practice Law and Rules, Article 78. Any appeal determinations arrived at without a hearing, either because of lack of cooperation during the scheduling or because such original determination was based on non-discretionary provisions of law, will include such an explanation in the written, final decision. All final determinations of the Office have been and will continue to be issued with specific reference to the right for a judicial review of such determination via Civil Practice Law and Rules, Article 78.

9. Federal standards: This rule is consistent with the requirements of the federal Victims of Crime Act (VOCA), 42 USC Chapter 112, section 10601, et seq. Section 525.6(c) was added to specifically refer to VOCA requirements that programs encourage victim cooperation with law enforcement.

10. Compliance schedule: The regulations will be effective immediately upon publication of a notice of adoption in the State Register. Since the enactment of Part A-1 of Chapter 56 of the Laws of 2010, the Office has continued to provide services and benefits identical to those provided by the former Board under the new provisions of Article 22 of the Executive Law and Emergency Rulemaking (similar to the provisions proposed in this rule) first filed on June 23, 2010, published in State Register, Volume XXXII, Issue 28, and thereafter.

Regulatory Flexibility Analysis

The Office of Victim Services projects there will be no adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Part A-1 of Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Exec-

utive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on any small businesses or local governments in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

The Office of Victim Services projects there will be no adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Part A-1 of Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on any public or private entities in rural areas in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

The Office of Victim Services projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. This proposed rule change simply codifies much of the former New York State Crime Victims Board's (the Board) regulatory structure, reflects the elimination of the Board and any new regulatory requirements created by Part A-1 of Chapter 56 of the Laws of 2010, reorganizes certain provisions of the former Board's regulatory structure and eliminates confusing language or provisions that were either redundant or contrary to both the new and unchanged provisions of Executive Law, Article 22. Since nothing in this proposed rule change will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As apparent from the nature and purpose of this proposed rule change, a full Job Impact Statement is not required and therefore one has not been prepared.