RULE MAKING
ACTIVITIES

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

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

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

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Education Department

EMERGENCY
RULE MAKING

Advisory Committee on Long-Term Clinical Clerkships

I.D. No. EDU-17-11-00013-E
Filing No. 586
Filing Date: 2011-06-28
Effective Date: 2011-06-28

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

Action taken: Amendment of sections 3.2 and 60.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6506(4), 6507(2), (4) and 6508(1)

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education and the Rules of the Board of Regents govern the process for approving international medical schools that seek authorization to place students in long-term clinical clerkships in New York State. Section 60.2 of the Regulations of the Commissioner provides that an unaccredited/unregistered medical school to place its students in long-term clinical clerkships in New York State. Section 60.2 of the Regulations of the Commissioner is amended, effective June 28, 2011, to read as follows:

1. Paragraph (5) of subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective June 28, 2011, to read as follows:

(a) Committee on Professional Practice:

(i) …
(ii) …
(iii) …
(iv) …
(v) …
(vi) …
(vii) …
(viii) …
(ix) …

(x) reviews and approves appointments to the State [Board] Boards for the Professions; and

(xi) reviews and makes recommendations to the full board on incorporation and chartering of professional organizations and non-degree granting institutions or organizations related to the professions; and

(xii) reviews recommendations of the Department relating to applications from international medical schools to place their students in long-term clinical clerkships in New York State.

2. Section 60.2 of the Regulations of the Commissioner of Education is amended, effective June 28, 2011, to read as follows:

§ 60.2 Clinical clerkships.

(a) Definitions: As used in this Part:

(1) Clinical clerkship [as used in this Part] shall mean a supervised educational experience which is part of the clinical component of a program of undergraduate medical education, which takes place in a general hospital or in an equivalent health organization acceptable to the department and which is performed in accordance with all requirements of the jurisdiction in which such facility is located:

(2) Long-term clinical clerkship shall mean a clinical clerkship which, in the aggregate of all clerkship experience received during two academic years, exceeds 12 weeks.

(b) …
(c) …
(d) …
(e) …

(f) Establishment of Advisory Committee on Long-Term Clinical Clerkships.

(1) Upon consultation with the Board of Regents, the Chancellor shall appoint an Advisory Committee on Long-Term Clinical Clerkships. The Committee shall serve in a consultative and advisory capacity on matters pertaining to the standards and process for approving international medical schools to place their students in long-term clinical clerkships in New York State and shall perform such specific tasks as are assigned by the Department or the Board of Regents.

(2) Composition of the committee. The committee shall consist of:
(i) one member of the Board of Regents, who will serve as co-chair of the committee along with the chairperson of the State Board for Medicine;

(ii) the chairperson of the State Board for Medicine or another member of the such board designated by the chairperson, who will serve as co-chair of the committee along with the member of the Board of Regents;

(iii) the Executive Secretary of the State Board for Medicine, who shall be a non-voting member of the committee;

(iv) one representative of the Department of Health;

(v) two physicians who are experienced in the evaluation of medical education programs;

(vi) two representatives of international medical schools approved by the Department or Board of Regents to place their students in long-term clinical clerkships in New York State;

(vii) two representatives of medical schools registered in New York State; and

(viii) two representatives from hospitals that serve as sites for clinical clerkships in New York State.

(3) Terms of members. The terms of the members of the first committee appointed pursuant to subparagraphs (v) through (viii) of paragraph (1) of this subdivision shall be so arranged that the terms of two members shall expire on June 30, 2015, the terms of two on June 30, 2014, and the terms of two on June 30, 2015, and the terms of two on June 30, 2016. Thereafter, all members appointed pursuant to subparagraphs (v) through (viii) of paragraph (1) of this subdivision shall be appointed to serve a term of four years each, beginning with the first day of July next following the ending of the term to which each, respectively, is to succeed, except that an appointment to fill a vacancy created other than by the expiration of a term shall be for the unexpired term. Members shall serve no more than two terms in succession, except that a member may serve a succeeding term if at least one of the preceding two terms was less than two years in duration. Members may again serve two terms in succession after a gap in service of at least four years.

(4) Duties of the Advisory Committee on Long-Term Clinical Clerkships. The committee shall gather and study existing research on relevant issues, such as health workforce demands and trends, health workforce diversity and Board of Regents policy determinations. Based on such research and policy determinations, the committee shall:

(i) make recommendations regarding the standards to be applied in assessing applications for approval for placement of students in long-term clinical clerkships in New York State;

(ii) make recommendations regarding the process to be followed in assessing such applications for approval to place their students in long-term clinical clerkships; and

(iii) appoint an appropriate site review team from a roster of individuals approved by the committee; and

(iv) after consideration of the site review report, issue a report and recommendation, with minority opinions reflected, as to whether an application for placement of students in a long-term clinical clerkship should be approved.

(5) After consideration of the committee’s recommendations, the Department shall make a recommendation to the Board of Regents as to whether an application for authorization to place students in a long-term clinical clerkship should be approved. Upon approval by the Board of Regents, the medical school shall be authorized to place students in long-term clinical clerkships in New York State pursuant to standards and/or limitations prescribed by the Board of Regents.

(6) Until the Board of Regents approves the new standards and processes for approval for the placement of students in international medical schools to place their students in long-term clinical clerkships, schools currently approved for such purpose will continue to be subject to the current standards and processes prescribed in subdivision (c) of 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-17-11-00013-EP, Issue of April 27, 2011. The emergency rule will expire August 26, 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, NY 12234, (518) 473-8296, email: cmooore@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 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

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 relating to the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in promulgating rules and regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to section 3.2 of the Rules of the Board of Regents expands the duties of the Board’s Professional Practice Committee (PPC) to authorize the PPC to review the recommendations of the Department relating to applications from dual-campus international medical schools to place students in long-term clinical clerkships in New York.

The proposed amendment of section 60.2 of the Regulations of the Commissioner of Education describes the composition of the Advisory Committee on Long-Term Clinical Clerkships, and specifies the terms of the members of the Committee. The Board of Regents, the chairperson of the State Board for Medicine, the Executive Secretary of the State Board of Medicine, one representative from the Department of Health, two representatives of medical schools registered in New York State, two representatives from international medical schools seeking authorization to operate in New York State would be evaluated. The Advisory Committee would be responsible for appointing a site review team for each school seeking such authorization and, after consideration of the site review report, would issue a report with recommendations to the Department, with minority opinions reflected, as to whether an application should be approved. The Department would then make recommendations to the Board as to whether an application should be approved. Until the Board of Regents approves the new standards and processes, schools currently approved for such purpose would continue to be subject to the current standards and processes.

3. NEEDS AND BENEFITS:

Between November 2010 and January 2011, the PPC engaged in discussions with Department staff and the Chair of the New York State Board for Higher Education regarding the oversight of dual-campus international medical schools. Between November 2010 and January 2011, the Board engaged in discussions with Department staff and the Chair of the New York State Board for Higher Education regarding the oversight of dual-campus international medical schools. The discussions with the PPC incorporated input from the Study Group on International Medical Schools which included representation from a broad spectrum of the medical education and health care provider community, including representatives from the affected schools. The Study Group considered the following assertions/information in making its recommendations:

- The number of dual-campus international medical schools operating in NYS has increased dramatically since rules governing their activities in NYS were first promulgated.
- The schools established extensive affiliation agreements with NYS hospitals to place their students in clinical clerkships.
- Hospitals derive substantial income from fees paid by dual campus medical schools to hospitals that provide opportunities for their students to engage in clinical training.
- Accredited and registered medical schools in New York State (NYS) expressed concern that the continued accommodation of students from the international medical schools limits their ability to find suitable clinical clerkship placements for their students.
- Admission standards for students attending the dual-campus international medical schools and the implementation of the didactic and clinical parts of the medical programs have not been reviewed in decades, even as medical practice has become more demanding and complex.
- There is a physician shortage in NYS that is expected to grow.
- Approximately 35% of active patient care physicians in New York State are international medical graduates (not necessarily from schools placing students in clinical clerkships in NYS).
- Many of the students attending the dual-campus international medical schools are United States citizens.
- Graduates of the dual-campus international medical schools will eventually return to the United States to compete for placement in postgraduate training programs. (residencies).
- Postgraduate training opportunities have not grown to match the increased demand by domestic and international medical graduates.

After consideration of the various preliminary findings and the changes
that had taken place in the provision of medical education, the Board of Regents concluded that it was time to review the applicable regulations and policies. Accordingly, the Board of Regents agreed to establish an Advisory Committee that would provide advice on matters related to the evaluation and approval of dual-campus international medical schools seeking authorization to place students in long-term clinical clerkships in New York State. The plan approved by the PCC at its meeting in February 2011 specifically provided for the Advisory Committee to examine the standards and processes for such evaluations and approvals.

4. COSTS:
(a) Costs to State government: The estimated cost to State government is as follows. These costs will be recovered through fees charged to the schools applying for approval to place students in long-term clinical clerkships in New York State.

First Year Costs
1. Interview of candidates (travel, lodging):
   24 Candidates - avg travel per candidate $200 $4,800
2. Organizational Meetings (3 meetings)
   Travel - avg per member $200 $7,200
   Per diem - $100/member (if not waived) $3,600
   Organizational meetings total cost $10,800
3. Meetings (2 meetings)
   12 members - avg travel per member $200 $4,800
   Avg lodging cost $200 (4 members) $1,600
   Per diem - $100/member (if not waived) $2,400
   Post organizational meetings total cost $8,800
Total First Year Cost $24,400

Annual Costs After First Year
Meetings (2 annually after first year)
12 members - avg travel per member $200 $4,800
Avg lodging cost $200 (4 members) $1,600
Meetings after first year total cost $6,400

(b) Cost to local government: The proposed amendment establishes the committee that will recommend standards and processes for the evaluation of international medical schools that seek authorization to place students in long-term clinical clerkships. Local governments play no role in the process of evaluating international medical schools. As such, there will be no cost to local government.

(c) Cost to private regulated parties: The proposed regulation will not impose any new costs on applicants for approval to place students in long-term clinical clerkships.

(d) Cost to the regulatory agency: See Cost to State Government above.

5. LOCAL GOVERNMENT MANDATES:
The proposed amendments to the Rules and the Regulations are applicable to international medical schools only and do not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:
The proposed amendments to the Rules and the Regulations do not impose any additional reporting or recordkeeping requirements beyond those already required to be submitted by international medical schools seeking approval to place students in long-term clinical clerkships in New York State.

7. DUPLICATION:
The proposed amendments to the Rules and the Regulations do not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:
The proposed amendments to the Rules and the Regulations are necessary to update the standards and process for the approval of international medical schools to place students in long-term clinical clerkships in New York State. Because changes in foreign medical education and the availability of limited resources make continuation of the existing process applicable to international medical schools only and do not impose any additional costs or record keeping requirements to international medical schools who apply for approval.

3. COSTS:
The proposed amendment does not impose any costs on individuals or entities located in rural areas.

4. MINIMIZING ADVERSE IMPACT:
The proposed amendments are intended to ensure competent medical education for international medical students undertaking clinical training in New York State and thereby protect the health of the public. Due to the nature of the proposed amendment, there is no reason to establish different requirements for institutions located in rural areas.

5. RURAL AREA PARTICIPATION:
Comments on the proposed amendment were solicited from the State Board for Medicine and from statewide professional associations, hospital organizations and medical schools, who collectively represent or include individuals and entities located in rural areas.

Job Impact Statement
The purpose of the proposed amendments are to establish an Advisory Committee on Long-Term Clinical Clerkships to establish academic standards applicable to international medical schools seeking to place students in long-term clinical clerkships in New York State and the process by which such standards are evaluated. The amendments also authorize the Board for Regents to review recommendations of the Department, after a recommendation form the Advisory Committee, relating to applications from international medical schools to place their students in long-term clinical clerkships in New York State.

Because it is evident from the nature of the proposed amendments that there will be 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 a Notice of Proposed Rule Making in the State Register on April 27, 2011, the State Education Department received the following comments.

COMMENT: One comment requested that section 60.2(f)(2)(viii) of the proposed regulations be amended to specifically state that at least one hospital representative be from a hospital that is affiliated with an approved international medical school. The comment suggests that the proposed regulation be revised to read as follows:

(viii) two representatives of hospitals that serve as sites for clinical clerkships in New York State, at least one of which is a hospital affiliated with an approved international medical school that trains students from international medical schools in such clerkships.

The comment states that it is essential for at least one of the hospital representatives on the Committee to be an institution that actually works with approved international medical students in such clerkships, and that including at least one hospital with first-hand experience would allow for
direct input and informed discussion regarding pertinent medical education, training and certification issues.

RESPONSE: The proposed regulation provides for two representatives from “approved” international medical schools and two representatives of hospitals that serve as sites for clinical clerkships. Such representation will ensure that the advisory committee will have input from persons who are engaged in providing clinical clerkship programs and are familiar with pertinent aspects of the implementation of a clinical clerkship program. Moreover, the selection of representatives for each category mentioned in the regulation will be guided by the recognition that the advisory committee must reflect a broad range of perspectives and experiences, including experience with the implementation of a long-term clinical clerkship program.

EMERGENCY RULE MAKING

Due Process Procedures for Criminal History Checks of Prospective School Employees and Certification Applicants

I.D. No. EDU-27-11-00002-E
Filing No. 575
Filing Date: 2011-06-24
Effective Date: 2011-06-24

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

Action taken: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (3) and 3035(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the current Commissioner’s Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The proposed amendment will replace references to the specific staff titles with the terms “designee of the Commissioner” or “Commissioner’s designee.” The amendment will thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur. It is anticipated that, as a result of the retirement of the current Assistant Commissioner, effective June 23, 2011, the responsibility for determining such appeals will be assumed by a designee of the Commissioner of Education for such purposes.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted, pursuant to the requirements of the State Administrative Procedure Act, is the September 12-13, 2011 Regents meeting, and the earliest an adoption at such meeting could be made effective would be October 5, 2011. However, it is anticipated that a Commissioner’s designee will need to be appointed earlier in order to render decisions in Part 87 appeals currently pending or filed prior to October 5, 2011 and, specifically, to hear three Part 87 appeals that are scheduled for oral argument on July 13, 2011.

The recommended action is being proposed as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to ensure that the Commissioner’s Regulations, relating to determinations of appeals of employment clearance denials brought by prospective school employees and certification applicants, are immediately brought into conformance with changes in the Department’s internal organization, so as to ensure that an appropriate Department staff member may be delegated by the Commissioner to assume, in a timely and efficient manner, the duties and responsibilities relating to such appeals that were formerly exercised by the Assistant Commissioner of the Office of Teaching Initiatives.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 12-13, 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: Due process procedures for criminal history checks of prospective school employees and certification applicants.

Purpose: To conform to recent change in Department’s Office of Teaching Initiatives.

Text of emergency rule: 1. Subparagraph (vii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective June 24, 2011, as follows:

(vii) Where the prospective school employee does not submit a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall make a determination denying clearance for employment and notification of such denial, along with the basis for such determination, shall be transmitted to the prospective school employee by certified mail, return receipt requested. In the case of a prospective school employee requesting conditional clearance for employment, such determination shall also deny the conditional clearance for employment. In the case of a prospective school employee who has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. Such notification shall state that the prospective school employee may appeal the determination to [the executive director of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education, at the address specified in the notice. In addition, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. Notification of the denial of clearance for employment and denial or termination of conditional clearance for employment shall also be given to the covered school.

2. Subparagraph (viii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective June 24, 2011, as follows:

(viii) Where the prospective school employee submits a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall, upon review of the prospective school employee’s criminal history record, related information obtained by the department pursuant to the review of such criminal history record, and information and written argument provided by the prospective school employee in his or her response, make a determination on whether clearance for employment shall be granted or denied. In such review, the department shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the department’s determination is that clearance for employment is denied, the decision shall include the basis for such determination, and shall state that the prospective employee may appeal the department’s determination to [the Assistant Commissioner of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education, at the address specified in the determination, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee. Where clearance for employment is denied, such determination shall be sent to the prospective school employee by certified mail, return receipt requested. Where clearance for employment is granted, such determination shall be sent to the prospective school employee by regular first class mail. Where clearance for employment is denied and the prospective school employee also requested conditional clearance for employment, such determination shall also deny the conditional clearance for employment. Where clearance for employment is denied and the prospective school employee has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. In addition, the covered school shall be notified of the denial or granting of clearance.

3. Paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective June 24, 2011, as follows:

(5) Appeal of department’s determination.

(i) A prospective school employee who was denied clearance...
for employment by a determination of the department pursuant to paragraph (4) of this subdivision, may appeal that determination to [the assistant commissioner of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education who did not participate in the department’s determination, provided that such appeal is mailed by regular first class mail or certified mail or is hand delivered to the address specified in the department’s determination within 25 calendar days of the mailing of such determination denying clearance. [Such appeal shall be heard by the assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department’s determination].

(ii) . . .

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the [assistant commissioner, or a State review officer designated by the assistant commissioner.] Commissioner’s designee to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.

(iv) A prospective school employee may request oral argument as part of the appeal of the department’s determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the [assistant commissioner, or a State review officer designated by the assistant commissioner] Commissioner’s designee. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the prospective school employee wishes [the assistant commissioner, or the State review officer designated by the assistant commissioner] Commissioner’s designee to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the [assistant commissioner or a State review officer designated by the assistant commissioner] Commissioner’s designee makes the determination on whether clearance for employment shall be granted or denied.

(v) Where a timely request for an appeal is received, upon review of the prospective school employee’s criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, and written information provided at oral argument if requested by the prospective school employee, the [assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department’s determination.] Commissioner’s designee shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the [assistant commissioner or his or her designee] Commissioner’s designee shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the determination of the [assistant commissioner, or his or her designee.] Commissioner’s designee is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.

4. Subdivision (b) of section 87.5 of the Regulations of the Commissioner is amended, effective June 24, 2011, as follows:

(b) Procedures for clearance for certification. Where the criminal history record reveals conviction of a crime, or an arrest for a crime, the department shall transmit the criminal history record and related information to the department’s [assistant commissioner of the] Office of Teaching Initiatives for a determination of good moral character pursuant to Part 83 of this Title, which procedure shall determine the clearance for certification.

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-27-11-00423-F, issue of July 6, 2011. The emergency rule will expire September 21, 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:

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.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or her criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements and procedures necessary to implement the statutory requirements prescribed in Chapter 630 of the Laws of 2006. That statute authorizes nonpublic and private schools to require their prospective school employees to be fingerprinted, to undergo a criminal history check, and be cleared for employment by the State Education Department.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the current Commissioner’s Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The proposed amendment will replace references to the specific staff titles with the terms “designee of the Commissioner” or “Commissioner’s designee.” The amendment will thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur. It is anticipated that, as a result of the retirement of the current Assistant Commissioner, effective June 23, 2011, the responsibility for determining such appeals will be assumed by a designee of the Commissioner of Education for such purpose.

4. COSTS:

(a) Costs to State government: none.
(b) Costs to local government: none.
(c) Costs to private regulated parties: none.
(d) Costs to the regulatory agency: none.

The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of the State and Federal government.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment, and none were considered. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendment relates to appeals brought by prospective school employees of Department determinations denying clearance for employment on the basis of criminal record checks, and does not impose any adverse economic impact, reporting, recordkeeping or any 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 affirmative steps are 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:

The proposed amendment applies to each public school district in the State.

1. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

2. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

5. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

6. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all public and nonpublic schools in the State and their prospective employees, 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 does not impose any additional compliance requirements, or professional services requirements, on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

3. COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.
responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department’s Rural Education Advisory Committee, which includes representatives of schools in rural areas.

Job Impact Statement

The proposed amendment relates to due process procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees, in order to implement the requirements set forth in sections 305 and 3035 of the Education Law. Because the proposed amendment simply implements the statutory requirements, it will not have any impact on jobs and employment opportunities beyond the impact of the statute.

The proposed amendment merely replaces references in section 87.5(a)(5) to “assistant commissioner” and “executive director” of the Office of Teaching Initiatives with the terms “designee of the Commissioner” or “Commissioner’s designee,” in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

NOTICE OF ADOPTION

Online Coursework

I.D. No. EDU-09-11-00008-A
Filing No. 585
Filing Date: 2011-06-28
Effective Date: 2011-07-13

Pursuant to the provisions of the State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action Taken: Addition of section 100.5(d)(10) to Title 8 N.Y.C.R.R.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 306(not subdivided), 309(not subdivided) and 3204(3)

Subject: Online coursework.

Purpose: Establishing criteria for awarding credit towards a Regents diploma for online and online/classroom coursework.

Text of final rule: Paragraph (10) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is added, effective July 15, 2011, as follows:

(10) Credit for Online and Blended Courses.

(a) Online course means instruction in a specific subject consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur solely through digital and/or Internet-connected media.

(b) Blended course means instruction in a specific subject consisting of teacher-to-student, student-to-student and/or student-to-content interactions that occur through a combination of classroom-based and digital and/or Internet-connected media.

(c) Certified teacher means a teacher who holds a New York State teaching certificate in the subject area in which instruction is provided.

(ii) A school district, a charter school or a registered nonpublic school may provide its students with an opportunity to earn units of credit towards a Regents diploma through online and/or blended course study, pursuant to the following:

(a) To receive credit, the student shall successfully complete an online or blended course and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma.

(b) The school district, registered nonpublic school or charter school shall ensure that:

(1) courses are aligned with the applicable New York State Learning Standards for the subject area;
(2) courses provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma;
(3) instruction is provided by or under the direction and/or supervision of:
   (i) a certified teacher from the school district in which the student is enrolled;
   (ii) a certified teacher from a board of cooperative educational services (BOCES) that contracts with the school district to provide instruction in the subject area where authorized pursuant to Education Law §1903; or
   (iii) a certified teacher from a school district who provides instruction in the subject area under a shared service agreement; or
   (iv) in the case of a registered nonpublic school, a teacher of the subject area from a registered nonpublic school; or
   (v) in the case of a charter school, a teacher of the subject area from a charter school.

(4) courses include regular and substantive interaction between the student and the teacher providing direction and/or supervision pursuant to subclause (3) of this clause; and
(5) instruction satisfies the unit of study and unit of credit requirements in section 100.1(a) and (b) of this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 100.5(d)(10).

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, nonsubstantial revisions to the proposed rule were made for purposes of clarification as follows:

In the definitions of “online course” and “blended course” in 100.5(d)(10)(i)(a) and (b), respectively, the term “unit of study” was replaced with “subject” as a more appropriate descriptive term. In addition, the phrase “any combination of classroom-based and digital and/or Internet-connected media” was replaced by the phrase “a combination of classroom-based and digital and/or Internet-connected media.”

In section 100.5(d)(10)(ii)(a), the term “unit of study” was replaced with the more appropriate descriptive term “an online or blended course” and the phrase “including passing the Regents examination in the subject or other assessment required for graduation, if applicable” was replaced with the more appropriate descriptive phrase “including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma.”

Similarly, in section 100.5(d)(10)(ii)(b)(2), the phrase “including passing the Regents examination in the subject or other assessment required for graduation, if applicable” was replaced with the more appropriate descriptive phrase “including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma.”

In section 100.5(d)(10)(ii)(b)(3)(ii), the phrase “a certified teacher from the school district” was replaced with the more appropriately descriptive phrase “a certified teacher from the school district in which the student is enrolled.”

These revisions do not require any changes 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 March 2, 2011, nonsubstantial revisions to the proposed rule were made as described in the Statement Concerning the Regulatory Impact Statement filed herewith.

These revisions do not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, nonsubstantial revisions to the proposed rule were made as described in the Statement Concerning the Regulatory Impact Statement filed herewith.

These revisions do not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, nonsubstantial revisions to the proposed rule were made as described in the Statement Concerning the Regulatory Impact Statement filed herewith.
Rule Making Activities

The proposed rule, as so revised, establishes standards relating to earning Regents diploma credit by means of online or a combination of online and classroom-based (blended) coursework that is provided by school districts, registered nonpublic schools and charter schools. The proposed revised rule will not have an adverse impact on jobs or employment opportunities because it is evident from the nature of the revised rule 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.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 2, 2011, the State Education Department received the following comments:

1. COMMENT:
   The rule’s requirement that online courses be monitored by a content area teacher will restrict the ability to offer online coursework for purposes of earning Regents diploma credit, because small schools cannot spare content areas teachers for this purpose. Instead, a district should be able to hire one teacher to monitor and coach a small group of students taking online courses.

   DEPARTMENT RESPONSE:
   The rule allows flexibility for certified teachers to use Internet and other computer-based resources to meet the individual instructional needs of their students. While the rule clearly requires that online content be provided by or the direction and/or supervision of a State or local certified teachers in the subject area, if the teacher delivering the instruction via online or digital means is certified in the subject area then the school may provide for student supervision in any manner it deems appropriate. Appropriate and consistent with applicable laws and regulations. If, however, the online interaction does not include a teacher certified in the subject area, then there must be a certified teacher assigned to direct and/or supervise the study. In order to ensure an appropriate and effective educational experience for students, the provision of any online/blended coursework must be predicated on the essential instructional role of a teacher who is employed by the school district, BOCES, non-public or charter school, and is highly qualified in the specific subject area, where applicable.

2. COMMENT:
   For purposes of offering credit recovery in the summer, a student who has taken a traditional course during the school year should be allowed to take an online course monitored by school district staff, not necessarily a content area teacher.

   DEPARTMENT RESPONSE:
   The rule does not address credit recovery. However, the provisions in Commissioner’s Regulation section 100.5(d)(8) are applicable to programs for making up incomplete or failed course credit, which may occur as part of a summer school program (§ 8 NYCRR § 100.5(d)(8)[iv][b]) and may include online study (§ 8 NYCRR § 100.5(d)(8)[iv][d]). Section § 8 NYCRR § 100.5(d)(8)[v][c] requires that a make-up credit program ensure that equivalent, intensive instruction in the subject area is provided under the direction and/or supervision of a certified teacher.

3. COMMENT:
   The rule limits the ability to offer the best resources and coursework to students, which reduces flexibility regarding supervision of on-line learning. The delivery system in the rule is not cost effective. To require courses be provided or supervised by a State-certified teacher severely limits the ability of students to take Advanced Placement (AP®) courses.

   DEPARTMENT RESPONSE:
   Students would be able to take the AP® courses consistent with the rule insofar as instruction is provided by or under the direction or supervision of a certified teacher in the subject area, and from the school district, provided there is regular and substantive interaction between the student and the teacher. The rule allows the direction and/or supervision to be provided in a variety of formats. If the teacher delivering the online content is not certified in the subject area, then the school district must provide the student with a supervising teacher who does hold such certification. This is necessary to ensure that the student has adequate support to be successful in the online course.

4. COMMENT:
   Education Law § 1950 should be amended to permit BOCES to work with State agencies so that they may take advantage of online/blended courses offered through BOCES.

   DEPARTMENT RESPONSE:
   The rule addresses the need for increased flexibility to provide online/blended coursework in the context of registered public and nonpublic high schools and charter schools. Amendments to Education Law § 1950 are beyond the scope of the rule.

5. COMMENT:
   The rule is unclear as to whether traditional seat time requirements apply.

DEPARTMENT RESPONSE:
Section 100.5(d)(10)(d)(b)(5) requires that online instruction satisfy the unit of study and unit of credit requirements in Commissioner’s Regulation section 100.1(a) and (b), respectively. According to section 100.1(a), a unit of study “means at least 180 minutes of instruction per week throughout the school year or the equivalent.” To determine whether an online/blended course provides students with instruction that is equivalent to that received through 180 minutes of traditional classroom instruction, the principal must evaluate all course components related, but not limited to, alignment to relevant State learning standards, instructional strategies and requirements, formative and summative assessments, professional development for teachers, and general delivery and revision processes.

While Commissioner’s regulations for completing a unit of study and earning unit of credit related to the amount of instruction and supervision of State-certified teachers, but it was recommended language be added to provide for collaborative engagement of teachers in planning, development and implementation of online/blended programs, and to provide that coursework be implemented consistent with any collective bargaining obligation required by Civil Service Law Article 14.

DEPARTMENT RESPONSE:
The Department does not believe these changes are necessary. The rule provides for the essential role of the certified teacher in the specific subject area, employed by a school district or BOCES, and of the teacher of the subject area in a registered nonpublic or charter school. Provision of online/blended learning opportunities must be consistent with all applicable provisions of the Education Law, Commissioner’s regulations and Civil Service Law Article 14.

6. COMMENT:
   New York should provide for free Cyber schools similar to other states.

   DEPARTMENT RESPONSE:
   The creation of fully online schools in New York is beyond the scope of the rule, which addresses the need for increased flexibility in online and blended coursework. The minimum requirement is for instruction to be provided by or under the direction and/or supervision of State-certified teachers, but it was recommended language be added to provide for collaborative engagement of teachers in the planning, development and implementation of online/blended programs, and to provide that coursework be implemented consistent with any collective bargaining obligation required by Civil Service Law Article 14.

7. COMMENT:
   Support was expressed for the requirement that online/blended instruction be provided by or under the direction and/or supervision of State-certified teachers, but it was recommended language be added to provide for collaborative engagement of teachers in the planning, development and implementation of online/blended programs, and to provide that coursework be implemented consistent with any collective bargaining obligation required by Civil Service Law Article 14.

   DEPARTMENT RESPONSE:
   The Department does not believe these changes are necessary. The rule provides for the essential role of the certified teacher in the specific subject area, employed by a school district or BOCES, and of the teacher of the subject area in a registered nonpublic or charter school. Provision of online/blended learning opportunities must be consistent with all applicable provisions of the Education Law, Commissioner’s regulations and Civil Service Law Article 14.

8. COMMENT:
   While the rule clearly requires that online content be provided by or under the direction or supervision of a State-certified teacher, it does not provide for free Cyber schools similar to other states.

   DEPARTMENT RESPONSE:
   The rule limits the minimum amount of substantive interaction between the student and the teachers providing direction and/or supervision.” It is suggested that the term “regular” be replaced with “frequent” in order to support more timely and meaningful pedagogical oversight. The rule should be revised to clarify and the intent regarding such “interaction” particularly in meeting the unit of study and unit of credit requirements.

   DEPARTMENT RESPONSE:
   The Department believes the term “regular” is sufficient to describe the minimum amount of substantive interaction between the student and the teacher in this context. More specific minimum qualifications may detract from the rule’s flexibility to create new learning environments that meet student needs using online/blended coursework.

9. COMMENT:
   Based on the input of an external advisory group of key stakeholders, the Department should develop guidance to provide programmatic standards for online/blended course, ensuring, for example, that curriculum requirements and State learning standards are maintained in online/blended coursework, appropriate measures are used to determine student mastery of learning outcomes, and safeguards are established for verifying completion of coursework by the student receiving the units of credit. The guidance should also provide school districts/BOCES with much needed direction in the use of commercial vendors of online and blended coursework. Concern was expressed that some school districts/BOCES are already using commercially available courses without any consistent State-wide oversight or quality content assurance and that, in some cases, courses extend into the questionable practice of providing core instructional services. In the January 28, 2011 memorandum from the Senior Deputy Commissioner P-12 Education to the Regents P-12 Education Committee, in connection with the Committee’s discussion of the proposed rule at the February 7-8 Regents meeting, it was noted that “[s]chool districts lack the authority to contract...
contractor to provide core instructional services through the employees of
that independent contractor except where specifically authorized by stat-
ute or regulation, or where contracting is necessary to carry out duties
imposed on the school district by State or federal law. Contracting out
cannot be used as a vehicle for avoiding the tenure laws or the require-
ments that teachers be duly certified."

Department guidance should also address the critical need for the
identification and provision of appropriate professional development,
particularly in light of the new teacher evaluation requirements established
in Chapter 103 of the Laws of 2010.

DEPARTMENT RESPONSE:
The Department intends to issue guidance after adoption of the rule, to
be developed in consultation with relevant stakeholders. As part of the
Regents Reform Agenda, and as a component of the State’s Race to the
Top plan, the Department is also developing guidance regarding the use of
vendors for online and blended course models, including guidance and
support to address the critical need for professional development to assist
teachers and principals in developing pedagogical considerations, creating
and developing effective learning environments, and using technology in
the provision of online and blended courses.

Also, a June 2, 2010 Department memorandum provides guidance for
school administrators regarding contracts for instruction and is available at:

11.COMMENT:
While it would be beneficial for students to have the opportunity to earn
credit through online courses, given the current fiscal situation of most
districts it will be virtually impossible to vet all of the possible courses
available to determine if they are aligned with applicable State learning
standards. Additionally, it will require staff to determine if the course
provides documentation of mastery, instruction satisfying credit and regu-
lar and substantive interaction between the student and the teacher. If a
teacher is expected to develop such course, additional funding is necessary.

It was suggested that the Department provide a list of approved online
courses for course credit that meet the Department’s requirements.

DEPARTMENT RESPONSE:
The International Association of K-12 Online Learning (iNACOL)
recommends that “online and blended courses need not be developed
from scratch, but that many already exist that meet State Standards and are
credited by recognized organizations. These resources have been
developed by State, private, business, and independent organizations. At
least in part, collaborating and sharing these options may be more cost-
effective and practical for school systems than developing online instruc-
tion in house.” Additionally, a school district would not need to vet or
appraise all possible courses, but only the ones they choose to use. The Depart-
cent is currently developing a program to disseminate commencement-
level (“high school”) online courses for State-wide use. These courses
would be used by school districts, charter schools, and registered
nonpublic schools for instruction, leading to credit for students who suc-
cessfully complete them, delivered online or through other electronic
means. The Department is also developing a program to implement
sustained, ongoing, systems-building professional development, technical
assistance, and follow-up support around online and blended courses and
instruction (“virtual learning”) State-wide.

12. COMMENT:
Establishing online coursework is an excellent idea and will offer op-
tions for schools and families with circumstances that would require this
educational flexibility. However, it is hoped that this will include
elementary and junior high schools as well.

DEPARTEMENT RESPONSE:
The comment is beyond the scope of the rule making, which is intended
to provide opportunities for students to earn units of credit towards earn-
ing a high school diploma. Accordingly, only students who are in grades
nine through twelve or who are in a grade eight acceleration for diploma
credit program may earn units of credit towards a high school diploma.

Nevertheless, the Department acknowledges the value of online/blended
coursework and, as new research is conducted and published, it may
consider providing online/blended course opportunities to elementary
and middle school students in a future rule making.

NOTICE OF ADOPTION
Cl电信ically Rich Graduate Level Teacher Preparation Program
I.D. No. EDU-13-11-00001-A
Filing No. 587
Filing Date: 2011-06-28
Effective Date: 2011-07-13

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

Action taken: Amendment of section 52.21(b)(5) of Title 8 NYCRR.
Statutory authority: Education Law, sections 207, 208, 210, 214, 216,
224, 305(1), (2), (7), 3004(1) and 3006(1)
Subject: Clinically rich graduate level teacher preparation program.
Purpose: Amend degree conferring requirements of pilot programs to provide
programming and flexibility to confer degrees Master in Arts.
Text or summary was published in the March 30, 2011 issue of the Regis-
ter, I.D. No. EDU-13-11-00001-EP
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 Ave-
nue, Albany, NY 12234, (518) 473-8927, email: cmoore@mail.nysed.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION
Continuing Education for Certified Public Accountants and Public Accountants
I.D. No. EDU-14-11-00005-A
Filing No. 588
Filing Date: 2011-06-28
Effective Date: 2011-07-15

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

Action taken: Amendment of section 70.9 of Title 8 NYCCR.
Statutory authority: Education Law, sections 207(not subdivided),
6501(not subdivided), 6502(not subdivided), 6504(not subdivided),
6507(not subdivided), 6508(not subdivided) and 7409(not subdivided)
Subject: Continuing Education for Certified Public Accountants and Pub-
lic Accountants.
Purpose: Requires the completion of continuing education requirements
in ethics for CPA’s and PA’s be calculated on a calendar year basis.
Text or summary was published in the April 6, 2011 issue of the Register,
I.D. No. EDU-14-11-00005-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 Ave-
nue, Albany, NY 12234, (518) 473-8927, email: cmoore@mail.nysed.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION
Continuing Education of Land Surveyors and Engineers
I.D. No. EDU-14-11-00006-A
Filing No. 589
Filing Date: 2011-06-28
Effective Date: 2011-07-15

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

Action taken: Amendment of sections 68.11 and 68.12 of Title 8 NYCCR.
Statutory authority: Education Law, sections 207(not subdivided),
6504(not subdivided), 6507(2)(a), 7211(4) and 7212(4)
Subject: Continuing Education of Land Surveyors and Engineers.
Purpose: Requires mandatory continuing education in ethics for Engineers and
Land Surveyors.
Text or summary was published in the April 6, 2011 issue of the Register,
I.D. No. EDU-14-11-00006-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 Ave-
nue, Albany, NY 12234, (518) 473-8927, email: cmoore@mail.nysed.gov
Assessment of Public Comment
The agency received no public comment.
NOTICE OF ADOPTION

Local High School Equivalency Diplomas Based Upon Experimental Programs

I.D. No. EDU-14-11-00007-A
Filing No. 583
Filing Date: 2011-06-28
Effective Date: 2011-07-13

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

Action taken: Amendment of section 100.8 of Title 8 XIVCR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 309(not subdivided) and 3204(3)

Purpose: Student eligibility for the Higher Education Opportunity Program.

Text of rule and any required statements and analyses may be obtained from: 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

Filing Date: 2011-06-28
Filing No. 583

Subject: Local high school equivalency diplomas based upon experimental programs.

Text or summary was published in the April 2, 2011 issue of the Register, I.D. No. EDU-14-11-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Public School and School District Accountability - Annual Measurable Objectives (AMO)

I.D. No. EDU-14-11-00008-A
Filing No. 584
Filing Date: 2011-06-28
Effective Date: 2011-07-13

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

Action taken: Amendment of section 100.2(p)(14) of Title 8 XIVCR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 309(not subdivided), 3713(1) and (2)

Purpose: To extend until 6/30/12 the provision for awarding local high school equivalency diplomas based upon experimental programs.

Text or summary was published in the April 6, 2011 issue of the Register, I.D. No. EDU-14-11-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment
The agency received no public comment.

REVISED RULE MAKING

NO HEARING(S) SCHEDULED

Student Eligibility for the Higher Education Opportunity Program

I.D. No. EDU-26-11-00003-RP

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

Proposed Action: Amendment of section 27-1.1 of Title 8 XIVCR.

Statutory authority: Education Law, sections 207 and 6451(1)

Subject: Student eligibility for the Higher Education Opportunity Program.

Purpose: Update current criteria for determining student economic eligibility for Higher Education Opportunity Program.

Text of revised rule: Subdivision (b) of section 27-1.1 of the Rules of the Board of Regents is amended, effective October 5, 2011, as follows:

(b) Economically disadvantaged.

(1) For students first entering college between July 1, 2005 and June 30, 2012. A student is economically disadvantaged if he or she is a member of a household supported by one member thereof with a total annual income which does not exceed the applicable amount set forth in the following tables; or of a household supported solely by one member thereof who is employed by two or more employers at the same time, if the total annual income of such household does not exceed the applicable amount set forth in the following tables for the number of members in the household plus the second job allowance; or of a household supported by more than one worker thereof, or a household in which one worker is the sole support of a one-parent family, if the total annual income of such household does not exceed the applicable amount set forth in the following tables for the number of members in the household plus the employment allowance.

For the purposes of this subdivision, the number of members of a household shall be determined by ascertaining the number of individuals living in the student’s residence who are economically dependent on the income, as defined in subdivision (c) of this section, supporting the student.

Table I
For students first entering college between July 1, 2005 and June 30, 2008

<table>
<thead>
<tr>
<th>Number of members in household (including head of household)</th>
<th>Total annual income in preceding calendar year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$14,100</td>
</tr>
<tr>
<td>2</td>
<td>19,600</td>
</tr>
<tr>
<td>3</td>
<td>22,350</td>
</tr>
<tr>
<td>4</td>
<td>27,800</td>
</tr>
<tr>
<td>5</td>
<td>32,850</td>
</tr>
<tr>
<td>6</td>
<td>38,550</td>
</tr>
<tr>
<td>7 or more</td>
<td>42,900 plus $4,350 for each family member in excess of 7</td>
</tr>
</tbody>
</table>

Second Job Allowance $ 1,800
Employment Allowance $ 4,800

Table II
For students first entering college between July 1, 2008 and June 30, 2009

<table>
<thead>
<tr>
<th>Number of members in household (including head of household)</th>
<th>Total annual income in preceding calendar year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$15,140</td>
</tr>
<tr>
<td>2</td>
<td>20,390</td>
</tr>
<tr>
<td>3</td>
<td>25,650</td>
</tr>
<tr>
<td>4</td>
<td>30,900</td>
</tr>
<tr>
<td>5</td>
<td>36,150</td>
</tr>
<tr>
<td>6</td>
<td>41,410</td>
</tr>
<tr>
<td>7 or more</td>
<td>46,660 plus $5,250 for each family member in excess of 7</td>
</tr>
</tbody>
</table>

Second Job Allowance $ 2,630
Employment Allowance $ 5,250

Table III
For students first entering college between July 1, 2009 and June 30, 2010

<table>
<thead>
<tr>
<th>Number of members in household (including head of household)</th>
<th>Total annual income in preceding calendar year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$15,590</td>
</tr>
<tr>
<td>2</td>
<td>21,000</td>
</tr>
<tr>
<td>3</td>
<td>26,420</td>
</tr>
</tbody>
</table>
Employment Allowance $5,410
Second Job Allowance $2,710
Employment Allowance $5,410

Number of members in household (including head of household) Total annual income in preceding calendar year
1 $16,060
2 21,630
3 27,210
4 32,790
5 38,360
6 43,960
7 or more 49,500 plus $5,570 for each family member in excess of 7
Second Job Allowance $2,790
Employment Allowance $5,570

The income figures in [Tables I, II, III, and IV] Table I of this paragraph apply to the student applicant’s income only when he or she is an independent student. For purposes of this Part, an independent student means a student who:
(i) is 24 years of age or older by December 31st of the program year; or
(ii) is an orphan or ward of the court (A student is considered independent if he or she is a ward of the court or was a ward of the court until the individual reached the age of eighteen); or
(iii) is a veteran of the Armed Forces of the United States who has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard and was released under a condition other than dishonorable; or
(iv) is a married individual; or
(v) has legal dependents other than a spouse; or
(vi) is a student for whom an opportunity program and financial aid administrator has made a satisfactory documented determination of independence by reason of other extraordinary circumstances.
(2) For students first entering college on or after July 1, 2012, a student is economically disadvantaged if he or she is a member of a household where the total annual income of such household is equal to or less than 185 percent of the amount under the annual United States Department of Health and Human Services poverty guidelines for the applicant’s family size. Federal poverty guidelines are published annually by the Department of Health and Human Services in the Federal Register. The income guidelines in this paragraph apply to the student applicant’s income only when he or she is an independent student. For purposes of this Part, an independent student means a student who:
(i) is 24 years of age or older by December 31st of the program year; or
(ii) is an orphan or ward of the court (A student is considered independent if he or she is a ward of the court or was a ward of the court until the individual reached the age of eighteen); or
(iii) is a veteran of the U.S. Armed Forces; or
(iv) is currently an emancipated minor as determined by a court; or
(v) is currently in legal guardianship as determined by a court; or
(vi) is a married individual; or
(vii) has legal dependents other than a spouse; or
(viii) is a student for whom an opportunity program and financial aid administrator has made a satisfactory documented determination of independence by reason of other extraordinary circumstances.
(3) A maximum of 15 percent of the students admitted to a HEOP program by an institution may come from households whose income exceeds the household scale listed in the applicable table in paragraph (1) of this subdivision, provided that such institution has established to the satisfaction of the commissioner that unusual and extenuating circumstances as defined in this paragraph, exist for each such student. Prior to admitting any such student, the institution shall submit to the commissioner such documentation of unusual and extenuating circumstances as the commissioner may require. Such documentation shall be kept on file by the institution at which such students were enrolled, and shall be corroborated by a disinterested, reliable party. For purposes of this paragraph, unusual and extenuating circumstances shall be limited to the following:
(i) . . .
(ii) . . .
(iii) . . .
(iv) families which must maintain two households in order to maintain employment, one for a wage earner and one for dependents; or
(v) families which the family contribution as computed from base year financial data by a United States Education Department approved needs analysis system indicates no contribution other than the minimum expectation from student income for independent students or a zero parental contribution for dependent students.
(4) The following shall be acceptable documentation of paragraphs (1) through (3) of this subdivision:
(i) . . .
(ii) . . .
(iii) . . .
(iv) . . .
(v) . . .
(vi) . . .
(vii) . . .
(viii) Documentation of zero household contribution: the needs analysis output form from one of the United States Education Department’s approved needs analysis systems.

Revised rule compared with proposed rule: Substantial revisions were made in section 27-1.1(b)(3) and (6).

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 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@mail.nysed.gov

Public comment will be received until: 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 June 29, 2011, the following substantial revisions were made to the proposed rule:
Subparagraph (v) of renumbered paragraph (3) of section 27-1.1 of the Commissioner’s regulations has been deleted because this provision is no longer necessary due to the changes in the economic eligibility guidelines, which are based on 185% of the federal poverty level.
Subparagraph (viii) of renumbered paragraph (3) of section 27-1.1 of the Commissioner’s regulations has been deleted because documentation of zero household contribution is no longer necessary because the proposed amendment requires that economic eligibility be based on 185% of the federal poverty level.
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 June 29, 2011, 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 June 29, 2011, 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 do not require any revisions to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement
Since publication of the Notice of Proposed Rule Making in the State Register on June 29, 2011, 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 economic eligibility guidelines for the Higher Education Opportunity Program. The revised rule will not have a substantial and significant 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
The agency received no public comment.

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**Department of Health**

**NOTICE OF ADOPTION**

January 2011 Ambulatory Patient Groups (APGs) Payment Methodology

<table>
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<th>I.D. No.</th>
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<tr>
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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:** January 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

**Purpose:** To refine the APG payment methodology.

**Text or summary was published** in the March 23, 2011 issue of the Register, I.D. No. HLT-12-11-00003-P.

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

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

**Assessment of Public Comment**
The agency received no public comment.

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**Insurance Department**

**EMERGENCY RULE MAKING**

Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities

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

**Action taken:** Addition of Part 225 (Regulation No. 199) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2103, 2104, 2110, 2403 and 4525

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

**Specific reasons underlying the finding of necessity:** This Part sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance policy or annuity contract. The Part prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into thinking that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

Seniors are often misled and harmed by the use of senior-specific certifications and designations by insurance producers that imply the existence of a level of expertise and knowledge in senior matters that in fact does not exist. Misleading certifications and professional designations such as ‘‘certified elder planning specialist’’ and ‘‘certified senior advisor’’ are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients, resulting in the loss of seniors’ savings, by insurance producers utilizing misleading senior-specific certifications or designations. Legislators and regulators, both federal and state, responding to such reports, have proposed and/or adopted prohibitions on the use of senior-specific designations in a misleading manner. In 2008, the National Association of Insurance Commissioners adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (‘‘the NAIC Model’’). The standards and procedures in this rule are substantially the same as those already adopted by the NAIC Model. While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides this consumer protection by prohibiting the use of misleading senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities.

The recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ‘‘Act’’) places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. In an effort to provide incentives to states to adopt such regulations, the Act offers state agencies that promulgate such regulations federal grants of between $100,000 and $600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products. In order for the Department to be considered for the grants for 2011, and the subsequent two years, a rule governing the use of senior-specific certifications and designations in the sale of life insurance and annuities, and another governing suitability had to be promulgated by December 31, 2010 and must be maintained in effect.

Given the state’s fiscal crisis and the constraints on the Department’s budget, the federal grant money would fund critical efforts to protect consumers.

For the reasons stated above, emergency action is necessary for the general welfare.

**Subject:** Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

**Purpose:** To protect consumers from misleading use of senior-specific certifications and designations in the sale of life insurance or annuities.

**Text of emergency rule:** Section 225.0 Purpose.

The purpose of this Part is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract.

Section 225.1 Applicability.

This Part shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract by an insurance producer.

Section 225.2 Prohibited uses of senior-specific certifications and professional designations.

(a)(1) No insurance producer shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

(b)(2) The prohibited use of senior-specific certifications or professional designations includes use of:

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NYS Register/July 13, 2011
This notice is intended to serve only as a notice of emergency adoption.

The 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 September 19, 2011.

Rule Making Activities

Text of rule and any required statements and analyses may be obtained from: David Neustad, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: dneustad@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for promulgation of this rule derives from sections 201, 301, 2103, 2104, 2403, 2110, and 4525 the Insurance Law.

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

Sections 2103 and 2104 provide the Superintendent with licensing authority over insurance agents and brokers.

Section 2110 authorizes the Superintendent to investigate and discipline those licensees.

Section 2403 prohibits any person from engaging in this state in any trade practice constituting a defined violation or a determined violation as defined in Article 24.

Section 4525 specifically subjects fraternal benefit societies to certain provisions of Article 21, as well as to any other section that specifically applies to fraternal benefit societies.

2. Legislative objectives: Various sections of the Insurance Law address advertising, statements and representations of licensees used in the solicitation of insurance. These sections seek to protect consumers and insurers in New York by establishing prohibitions and uniform standards governing the dissemination of such information to the public. Although this regulation is directed to certain practices involving the sale of life insurance and annuity contracts, many of the provisions of the law pursuant to which this regulation is promulgated apply equally to other kinds of insurers. In addition, certain other Insurance Law provisions and regulations promulgated thereunder may have corresponding applicability to other kinds of insurance. In any case, the focus of this regulation to life insurance and annuity contracts should not be construed to imply that similar prohibitions do not apply to, or that corrective action should not be implemented for, other types of insurers or other kinds of insurance.

Further, the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Act”) places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. To encourage state regulation, the Act offers those state agencies with such regulations in effect federal grants to fund specified regulatory activities that provide enhanced protection of seniors in connection with the sale and marketing of financial products.

This rule sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract. It prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into believing that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

3. Needs and benefits: Seniors are often misled and harmed by insurance producers’ use of senior-specific certifications and designations, which wrongly imply the existence of expertise and knowledge of senior matters. Misleading certifications and professional designations such as “certified elder planning specialist” and “certified senior advisor” are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization or other entity; or

(ii) specifies an individual’s area of specialization within the organization or other entity.

(2) For purposes of this subdivision, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

Section 225.3 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law and shall be a violation of section 2403 of the Insurance Law.

This notice is intended to serve only as a notice of emergency adoption.
a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (“the NAIC Model”). While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides a consumer protection that prohibits the misleading use of senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities. In recognition of the need to provide such consumer protection, the Insurance Department is adopting the NAIC Model, with minimal modifications, as Part 225 to Title 11 NYCRR (Regulation 199).

4. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

The rule does not impose additional costs on the Insurance Department or other state government agencies or local governments.

5. Local government mandates: The rule 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 rule does not impose any reporting or recordkeeping requirements on affected insurance producers.

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

8. Alternatives: The Insurance Department considered not implementing the NAIC Model and proceeding under the Department’s more general enforcement authority under Article 24. However, because of the misleading and fraudulent marketing practices reported in recent years, the Department determined that a regulation would be the best way to address the situation.

An outreach draft of the regulation was posted on the Department’s website on October 5, 2010 for a 14-day comment period. Interested parties, such as the Life Insurance Council of New York (LICONY), a life insurance industry trade association, the National Association of Insurance and Financial Advisors - New York State (NAIFA – New York State), an agent trade association, supported the adoption of this Part in written comments and/or discussions with the Insurance Department.

9. Federal standards: There are no minimum standards imposed by the federal government for the same or similar subject area.

10. Compliance schedule: Insurance producers who currently make appropriate use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract should not need to change their sales practices. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

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 or recordkeeping requirements or compliance costs on small businesses.

This rule is substantially the same as the National Association of Insurance Commissioners’ (“NAIC”) Model regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities and is directed to licensed insurance producers within New York State. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations. The rule does not impose any additional compliance requirements on insurance producers.

2. Local governments: The Insurance Department finds that this rule will not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at insurance producers, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurance producers covered by this rule do business in every county in this state, includ-
governing suitability had to be promulgated by December 31, 2010 and must be maintained in effect. Given the state’s fiscal crisis and the constraints on the Department’s budget, the federal grant money would fund critical efforts to protect consumers.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Suitability in Annuity Transactions.

Purpose: Set forth standards and procedures for recommendations to consumers with respect to annuity contracts.

Text of emergency rule: Section 224.0 Purpose.

The purpose of this Part is to require insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These standards and procedures are substantially similar to the National Association of Insurance Commissioners’ Suitability in Annuity Transactions Model Regulation (“NAIC Model”) for annuities, and the Financial Industry Regulatory Authority’s current National Association of Securities Dealers’ (“NASD”) Rule 2310 for securities. To date, more than 30 states have implemented the NAIC Model, while NASD Rule 2310 has applied nationwide for nearly 20 years. Accordingly, this Part intends to bring these national standards for annuity contract sales to New York.

Section 224.1 Applicability. This Part shall apply to any recommendation to purchase or replace an annuity contract made to a consumer on or after June 30, 2011 by an insurance producer or an insurer, where no insurance producer is involved, that results in the purchase or replacement recommended.

Section 224.2 Exemptions.

Unless otherwise specifically included, this Part shall not apply to transactions involving:

(a) a direct response solicitation where there is no recommendation made; or
(b) a contract used to fund:
   (1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
   (2) a plan described by Internal Revenue Code sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;
   (3) a government or church plan defined in Internal Revenue Code section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Internal Revenue Code section 457;
   (4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or
   (5) a settlement or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process.

Section 224.3 Definitions.

For the purposes of this Part:

(a) Consumer means the prospective purchaser of an annuity contract.
(b) Insurer means a life insurance company defined in Insurance Law section 107(a)(28), or a fraternal benefit society as defined in Insurance Law section 4501(a).
(c) Recommendation means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to a consumer that results in a purchase or replacement of an annuity contract in accordance with that advice.
(d) Replace or Replacement means a transaction subject to Part 51 of this Title (Regulation 60) and involving an annuity contract.
(e) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:
   (1) age;
   (2) annual income;
   (3) financial situation and needs, including the financial resources used for the funding of the annuity;
   (4) financial experience;
   (5) financial objectives;
   (6) intended use of the annuity;
   (7) financial time horizon;
   (8) existing assets, including investment and life insurance holdings;
   (9) liquidity needs;
   (10) liquid net worth;
   (11) risk tolerance; and
   (12) tax status.

Section 224.4 Duties of Insurers and Insurance Producers.

(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and other insurance policies or contracts and as to the consumer’s financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:
   (1) the consumer has been reasonably informed of various features of the annuity contract, such as the potential surrender period and surrender charge, availability of cash value, potential tax implications if the consumer sells, surrenders or annuities the annuity contract, death benefit, morality and expense fees, investment advisory fees, potential charges for annuity purchase, surrender charges, fixed interest rates, insurance and investment components, and market risk;
   (2) the consumer would benefit from certain features of the annuity contract, such as tax-deferred growth, annuitization or death or living benefits;
   (3) the particular annuity contract as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replacement of the annuity contract, and riders and similar product enhancements, if any, are suitable (and in the case of a replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer’s suitability information; and
   (4) in the case of a replacement of an annuity contract, the replacement is suitable including taking into consideration whether:
      (i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, morality or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the annuity contract, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;
      (ii) the consumer would benefit from annuity contract enhancements and improvements; or
      (iii) the consumer has had another annuity replacement, in particular, a replacement within the preceding 36 months.

(b) Prior to the recommendation of a purchase or replacement of an annuity contract, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.

(c) Except as provided under subdivision (d) of this section, an insurer shall not issue an annuity contract recommended to a consumer unless there is a reasonable basis to believe the annuity contract is suitable based on the consumer’s suitability information.

(d) (1) Except as provided under paragraph (2) of this subdivision, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subdivision (a) or (c) of this section related to any annuity transaction if:
   (i) no recommendation is made;
   (ii) a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;
   (iii) a consumer refuses to provide relevant suitability information and the annuity purchase or replacement is not recommended; or
   (iv) a consumer decides to enter into an annuity purchase or replacement that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer’s issuance of an annuity contract subject to paragraph (1) of this subdivision shall be reasonable under all the circumstances actually known to the insurer at the time the annuity contract is issued.

(e) An insurance producer or an insurer, where no insurance producer is involved, shall, at the time of purchase or replacement:
   (1) document any recommendation subject to subdivision (a) of this section;
   (2) document the consumer’s refusal to provide suitability information, if any; and
   (3) document that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer’s or insurer’s recommendation.

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer’s and insurance producers’ compliance with Part 224. An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers.

(g) An insurer shall be responsible for ensuring that every insurance producer recommending the insurer’s annuity contracts is adequately trained to make the recommendation.

(h) No insurance producer shall make a recommendation to a consumer to purchase an annuity contract about which the insurance producer has inadequate knowledge.

(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:
   (1) truthfully responding to an insurer’s request for confirmation of suitability information;
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Section 224.5 Insurer Responsibility

The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the insurance producer, or any third party, shall be consistent with the subdivision (f) of section 224.4 of this Part. In determining any penalty or other disciplinary action against the insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

Section 224.6 Recordkeeping

All records required or maintained under this Part, whether by an insurance producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Regulation 152).

Section 224.7 Violations

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, except where such act or practice shall be defined as a violation, as defined in section 2402(b) of the Insurance Law, and in either such case shall be a violation of section 2403 of the Insurance Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and to serve only as a notice of emergency adoption.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, except where such act or practice shall be a defined violation, as defined in section 2402(b) of the Insurance Law, and in either such case shall be a violation of section 2403 of the Insurance Law.

The Superintendent’s authority for promulgation of this rule derives from sections 201, 301 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and Article 24 of the Insurance Law.

This rule is intended to bring these national standards for annuity contract sales to New York. In addition, in light of a low interest rate environment that encourages unsuitable annuity sales, and federal incentives to impose suitability standards, the minimum suitability standards are critical.

2. Legislative objectives: The Legislature has long been concerned with the issue of suitability in sales of life insurance and annuities. Chapter 616 of the Laws of 1997, which, in part, amended Insurance Law § 308, requires the Superintendent to report to the General Assembly, and the majority leader of the Senate on the advisability of adopting a law that would prohibit an agent from recommending the purchase or replacement of any individual life insurance policy, annuity contract or replacement of any individual life insurance policy, annuity contract or funding agreement without reasonable grounds to believe that the recommendation is not unsuitable for the applicant. The Legislature set forth four criteria that an agent would consider in selling products, including: a consumer’s financial position, the consumer’s need for new or additional insurance, the goal of the consumer and the value, benefits and costs of any existing insurance.

In drafting the Report, the Department considered the legislative changes set forth in Chapter 616 of the Laws of 1997, and the Department’s subsequent regulatory requirements that were designed to improve the disclosure requirements to consumers that purchased or replaced life insurance policies and annuity contracts. It was the Department’s determination in the Report that additional time was needed to assess the efficacy of those changes.

Since the Department’s Report, the purchase of annuities have become complex financial transactions resulting in a greater need for consumers to rely on professional advice and assistance in understanding available annuities and making purchase decisions. While the Financial Industry Regulatory Authority (“FINRA”) regulation and standards for the sale of certain variable annuities have existed nationwide, the National Association of Insurance Commissioners (“NAIC”) adopted, in 2003 (and further revised in 2010), the Suitability in Annuity Transactions Model Regulation (the “NAIC Model”) for all annuity transactions. To date, more than 30 states have implemented the NAIC Model. Accordingly, the part is intended to bring these national standards for annuity contracts to New York.

The rule does not impose additional costs to the Insurance Department or other state government agencies or local governments.

5. Local government mandates: The rule 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 rule requires an insurance producer or an insurer to document: any recommendation subject to § 224.4(a) of Regulation 187; in the event of the Superintendent’s refusal to provide suitability information, if any, and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer’s or insurer’s recommendation. Additionally, all records required or maintained in accordance with this rule must be maintained in accordance with Part 243 (Regulation 152).

The documentation required in this rule is substantially similar to the requirements of the aforementioned NAIC Model and NASD Rule 2310. As the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the similar provisions in other jurisdictions. As a result, minimal additional paperwork is expected to be required of most insurers in order to comply with the requirements of this rule.
7. Duplication: Sales of insurance products that are securities under federal law, such as variable annuity contracts, and annuity contracts not subject to the Streamlined Statement of Suitability, are covered by the rule in this state. IRS Model provisions detailing the procedures and standards of the supervision of such sales are included in the rule. NAIC Model provisions detailing procedures and standards and procedures of the supervision system required to be established by an insurer and the insurance producer training requirements were not included in this rule.

8. Alternatives: This rule is a modified version of the NAIC Model. NAIC Model provisions detailing the procedures and standards of the supervision system required to be established by an insurer and the insurance producer training requirements were not included in this rule.

An outreach draft of this regulation was posted on the Department’s website for public comment. In addition to submitted written comments, the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors - New York State (NAIFA- New York State), an agent trade association, met with Department representatives to discuss the draft. Some revisions were made to the draft based on these comments and discussions with NAIFA. The Department held four public hearings throughout the state to gather information about suitability in order to ascertain whether additional oversight and regulation was needed to protect consumers when they are considering the purchase of life insurance and annuities in New York State, and if so the type and form of such regulation. Testimony at the public hearings by the life insurance industry and agent trade associations supported adoption of a regulation setting forth standards and procedures for recommendations to consumers that was consistent with the NAIC Model.

An outreach draft of this regulation was posted on the Department’s website for public comment. In addition to submitted written comments, the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors - New York State (NAIFA- New York State), an agent trade association, met with Department representatives to discuss the draft. Some revisions were made to the draft based on these comments and discussions with NAIFA. The Department held four public hearings throughout the state to gather information about suitability in order to ascertain whether additional oversight and regulation was needed to protect consumers when they are considering the purchase of life insurance and annuities in New York State, and if so the type and form of such regulation. Testimony at the public hearings by the life insurance industry and agent trade associations supported adoption of a regulation setting forth standards and procedures for recommendations to consumers that was consistent with the NAIC Model.

Specific reasons underlying the finding of necessity:

1. Effect of the rule: This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

2. Reporting, recordkeeping and other compliance requirements, and procedures for recommendations to consumers that was consistent with the NAIC Model.

3. Costs: The standards and procedures required by this rule are substantially similar to the National Association of Insurance Commissioners’ “Suitability in Annuity Transactions” Model Regulation (“NAIC Model”) for annuities, and the Financial Industry Regulatory Authority’s current National Association of Securities Dealers (“NASD”) Rule 2310 for securities. Accordingly, insurers that currently sell variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers that sell fixed annuities in states in which the NAIC Model has been implemented will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers will incur minimal additional costs in order to comply with the requirements of this rule.

4. Minimizing adverse impact: This rule applies to insurers and insurance producers that do business throughout New York State. As previously stated, the standards and procedures required by this rule are substantially similar to the NAIC Model for annuities and the NASD Rule 2310 for securities. Since the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the provisions contained in this rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment at suitability public hearings held by the Insurance Department last year and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

Department of Labor

**EMERGENCY RULE MAKING**

Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law

I.D. No. LAB-43-10-00003-E

Filing No. 571

Filing Date: 2011-06-22

Effective Date: 2011-06-22

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

**Action taken:** Addition of Part 177 to Title 12 NYCRR.

**Statutory authority:** Labor Law, section 21

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

**Specific reasons underlying the finding of necessity:** Section 167 of the Labor Law was effective July 1, 2009. However, Section 167 does not provide sufficient details with regard to what is expected of health care
providers so as to avoid mandatory overtime for nurses, except in emerg-
ency situations. Section 167 was enacted to improve the health care
environment for patients and the working environment for nurses.

Subject: Restrictions on the consecutive hours of work for nurses as
enacted in section 167 of the Labor Law.

Purpose: To clarify the emergency circumstances under which an
employer may require mandatory overtime for nurses.

Text of emergency rule: A new Part 177 is added to 12 N.Y.C.R.R. to
read as follows:

PART 177

RESTRICTIONS ON CONSECUTIVE HOURS OF WORK FOR NURSES
(Statutory authority: Labor Law § 167)

§ 177.1 Application.

In accordance with Labor Law, Section 167, this Part shall apply to
health care employers, who shall be prohibited from assigning mandatory
overtime to nurses except in certain circumstances as described in this
regulation.

§ 177.2 Definitions.

(a) ‘Emergency’ shall mean an unforeseen event that could not be
prudently planned for by a health care employer and does not regularly
occur, including an unanticipated staffing emergency.

(b) ‘Health care disaster’ shall mean a natural or other type of disas-
ter that increases the need for health care personnel, unexpectedly affect-
ing the county in which the nurse is employed or in a contiguous county,
as more fully explained in Section 177.3 of this Part.

(c) ‘Health care employer’ shall mean any individual, partnership,
association, corporation, limited liability company or any person or group of
persons acting directly or indirectly on behalf of or in the interest of the
employer, who provides health care services (i) in a facility licensed or
operated pursuant to article twenty-eight of the public health law, includ-
ing any facility operated by the state, a political subdivision or a public
corporation as defined by section sixty-six of the general construction
law, or (ii) in a facility operated by the state, a political subdivision or a
public corporation as defined by section sixty-six of the general construc-
tion law, operated or licensed pursuant to the mental hygiene law, the
education law or the correction law.

Examples of a health care facility include, but are not limited to,
hospitals, nursing homes, outpatient clinics, comprehensive rehabilita-
hion hospitals, residential health care facilities, residential drug and alcohol
facilities, adult day health care programs, and diagnostic centers.

(d) ‘Nurse’ shall mean a registered professional nurse or a licensed
practical nurse as defined by article one hundred thirty-nine of the educa-
tion law who provides direct patient care, regardless of whether such
nurse is employed full-time, part-time, or on a per diem basis. Nurses who
provide services to a health care employer through contracts with third
party staffing providers such as nurse registries, temporary employment
agencies, and the like, or who are engaged to perform services for health
care employers as independent contractors shall also be covered by this
Part.

(e) ‘On call’ shall mean when an employee is required to be ready to
perform work functions and required to remain on the employer’s
premises or within a proximate distance, so close thereto that s/he cannot
use the time effectively for his or her own purposes. An employee who is
not required to remain on the employer’s premises or within a proximate
distance thereto but is merely required to leave information, at his or her
home or with the health care employer, where he or she may be reached is
not on call.

(f) ‘Overtime’ shall mean work hours over and above the nurse’s
regularly scheduled work hours. Determinations as to what constitutes
overtime hours for purposes of this Part shall not limit the nurse’s receipt
of overtime wages to which the nurse is otherwise entitled.

(g) ‘Patient care emergency’ shall mean a situation which is unfore-
seen and could not be prudently planned for, which requires nurse
overtime in order to provide safe patient care as more fully explained in
Section 177.3 of this Part.

(h) ‘Regularly scheduled work hours’ shall mean the predetermined
number of hours a nurse has agreed to work and is normally scheduled


hours shall be determined by some other measure generally used by the
health care employer to determine when an employee is minimally sup-
posed to work.

(3) The term regularly scheduled work hours shall be interpreted in a
manner that is consistent with any relevant collective bargaining agree-
ment and other statutes or regulations governing the hours of work, if any.

(4) For purposes of this Part, for full-time nurses, ‘the budgeted
hours allocated to the nurses position’ shall be the hours reflected in the
employer’s full-time employee (FTE) level for the unit in which the nurse
is employed.

(2) If no such allocation system exists, regularly scheduled work

(5) For a part-time nurse, regularly scheduled work hours mean those
hours a part-time nurse is regularly scheduled to work pursuant to the
employer’s budgeted hours allocated. If advance scheduling is not used
for part-time nurses, the percentage of full-time equivalent, which shall be
established by the health care employer (e.g. a 50% part-time employee),
shall serve as the measure of regularly scheduled work hours for a part-
time nurse.

(6) For per diem, privately contracted, or employment agency nurses,
the employment contract and the hours provided therein shall serve as the
basis for determining the nurse’s regularly scheduled work hours.

§ 177.3 Mandatory Overtime Prohibition

(a) Notwithstanding any other provision of law, a health care employer
shall not require a nurse to work overtime except in the case of a health

(b) The following exceptions shall apply to the prohibition against
mandatory overtime for nurses:

(1) Health Care Disaster. The prohibition against mandatory
overtime shall not apply in the case of a health care disaster, such as a
natural or other type of disaster unexpectedly affecting the county in which
the nurse is employed or in a contiguous county that increases the need
for health care personnel or requires the maintenance of the existing on-
duty personnel to maintain staffing levels necessary to provide adequate
health care coverage. A determination that a health care disaster exists
shall be made by the health care employer or an independent party staffing
provider. The determination shall be made under the circumstances.

(2) Government Declaration of Emergency. The prohibition against
mandatory overtime shall not apply in the case of a federal, state or local
declaration of emergency in effect pursuant to State law or applicable
federal law in the county in which the nurse is employed or in a contigu-
ous county.

(3) Patient Care Emergency. The prohibition against mandatory
overtime shall not apply in the case of a patient care emergency, which
shall mean a situation that is unforeseen and could not be prudently
planned for and, as determined by the health care employer, that requires
the continued presence of the nurse to provide safe patient care, subject to
the following limitations:

(i) Before requiring an on-duty nurse to work beyond his or her
regularly scheduled work hours in connection with a patient care emer-
gency, the health care employer shall make a good faith effort to have
overtime covered on a voluntary basis or to otherwise secure nurse cover-
age by utilizing all methods set forth in its Nurse Coverage Plan. The
health care employer shall document attempts to secure nurse coverage
through use of phone logs or other records appropriate to this purpose.

(ii) A patient care emergency cannot be established in a particular
circumstance if that circumstance is the result of routine nurse staffing
needs due to typical staffing patterns, typical levels of absenteeism, and
time off typically approved by the employer for vacation, holidays, sick
leave, and personal leave, unless a Nurse Coverage Plan which meets the
requirements of Section 177.4 is in place, has been fully implemented and
utilized, and has failed to produce staffing to meet the particular patient
care emergency. Nothing in this provision shall be construed to limit an
employer’s right to deny discretionary time off (e.g., vacation time,
personal time, etc.) so long as the employer is contractually or otherwise
legally permitted to do so.

(iii) A patient care emergency will not qualify for an exception to the
provisions of this Part if it was caused by the health care employer’s

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any other law, regulation, or collective bargaining agreement.

§ 177.4 Nurse Coverage Plans
(a) Every health care employer shall implement a Nurse Coverage Plan, taking into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors. Such plan should also reflect the health care employer’s typical levels and types of patients served by the health care facility.

(b) The Plan shall identify and describe as many alternative staffing methods as are available to the health care employer to ensure adequate staffing through means other than use of mandatory overtime including contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, development and posting of a list or roster of nurses seeking voluntary overtime.

(c) The Plan must identify the Supervisor(s) or Administrator(s) at the health care facility or at another identified location who will make the final determination as to when it is necessary to utilize mandatory overtime. The Plan may not require a nurse to find his or her own shift replacement or to self-mandate overtime.

(d) The Plan shall require documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency and seek alternative staffing through the methods identified in subdivision (b) of this Section. In the event that the health care employer does utilize mandatory overtime, the documentation of such efforts to avoid the use of mandatory overtime shall be made available, upon request, to the nurse who was required to work the mandatory overtime and/or to the nurse’s collective bargaining representative, provided, however, that the names and other personal identifying information about patients shall not be included unless authorized under State and federal law and regulations.

(e) The Plan shall be in writing and upon completion or amendment of such plan, it shall:

(i) be made readily available to all nursing staff through distribution to nursing staff, or conspicuously posting the Plan in a physical location accessible to nursing staff, or through other means that will ensure availability to nursing staff, e.g. posting on the employer’s intranet site or its functional equivalent.

(ii) be provided to any collective bargaining representative representing nurses at the health care facility.

(iii) be provided to the Commissioner of Labor, or his or her designee, upon request.

(f) Nothing herein shall be read to establish the Nurse Coverage Plans required herein as standards to be used in assessing the health care employer’s compliance with any other obligation or requirement, including for accreditation.

(g) All such Plans were to have been prepared by October 13, 2009 in accordance with emergency regulations that were in effect. For health care employers who were not operating covered facilities on October 13, 2009, a Nurse Coverage Plan shall be in place prior to the time they commence operations.

§ 177.5 Report of Violations
Parties who wish to file complaints of violations of this Part shall follow procedures and utilize the forms set forth for this purpose on the Department’s website.

§ 177.6 Conflicts with Law and Regulation; Collective Bargaining Rights Not Diminished
The provisions of this Part shall not be construed to diminish or waive any rights or obligations of any nurse or health care provider pursuant to any other law, regulation, or collective bargaining agreement.

§ 177.7 Waiver of Rights Prohibited
A health care employer covered by this Part may not utilize employee waivers of the protections afforded under Labor Law § 167 or this Part as an alternative to compliance with such law or regulation. A health care employer who seeks such a waiver from a nurse in its employ shall be considered to have violated this Part.

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. LAB-43-00003-EP, Issue of October 27, 2010. The emergency rule will expire August 20, 2011.

Text of rule and any required statements and analyses may be obtained from: Teresa Stoklosa, NYS Department of Labor, State Office Campus, Building 12, Room 508, Albany, NY 12240, (518) 457-4380, email: teresa.stoklosa@dl.nys.gov.

Regulatory Impact Statement
1. Statutory authority: Section 21 of the Labor Law provides the Commissioner with authority to issue regulations governing any provision of the Labor Law as she finds necessary and proper. This rule is proposed pursuant to Section 167 of the Labor Law enacted by chapter 493 of the Laws of 2008. The effective date of the law was July 1, 2009.

2. Legislative objectives: Legislation passed during the 2008 legislative session recognized the physical and emotional toll that mandatory overtime can take on nurses and patient care. In response to these concerns, the legislation required that health care employers take steps to prudently plan for adequate nursing staff coverage in their facilities so as to avoid the need to require mandatory overtime of nurses in most instances.

3. Needs and benefits: Nurses work in a demanding and stressful environment where sound decision-making is a matter of life and death for patients. Limitations on mandatory overtime avoid successive work shifts which take a physical and mental toll on nurse’s performance and can impact the quality of patient care. Labor Law Article 6, section 167 places restrictions on consecutive hours of work for nurses, except in emergency situations, while not prohibiting a nurse from voluntarily working overtime and allows an employer who experiences an unanticipated staffing emergency that does not regularly occur, to require overtime to ensure patient safety.

The enabling legislation also provided sufficient details with regard to what is expected of health care employers so as to avoid mandatory overtime, except in emergency situations. The rule addresses these statutory gaps by requiring that covered employers develop a Nurse Coverage Plan (the Plan), by setting forth the minimum elements to be addressed in the Plan, and by requiring that the Plan be posted and made available to the Commissioner, to nursing staff and their employee representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will allow health care employers to use mandatory overtime to cover nurse staffing needs.

4. Costs: Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses’ registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical center with several special care units requiring specially trained nursing staff may find it more difficult to fill shifts from among their own nursing staff. At the other end of the spectrum, facilities with a very small staff, few resources or in underserved or remote locations may not be able to compete to fill vacancies. At the time this legislation was before the Governor for action in 2008, the Division of Budget estimated compliance would cost approximately $13 million in its first year. However, these projected costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - should have been offset by savings of $5 million, which otherwise would have been paid for such overtime.

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Nurse Coverage Plan, the Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining the written Plan and a log of efforts to obtain coverage using the Plan, these costs may be offset through use of a Plan that may reduce the need for last-minute supplemental staffing.
Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements are added with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

5. Paperwork

The employer will be required to develop and post the Nurse Coverage Plan discussed above, along with all necessary paperwork to log the efforts to obtain staff coverage in compliance with the Plan. Additionally, the Nurse Coverage Plan may require the drafting of contracts with alternative staffing providers such as per diem agencies and the posting of a list of nurses working voluntary overtime during the standard workweek. The paperless options to meet this requirement including posting of the Nurse Coverage Plan on the employer’s intranet or by sending electronic copies of the Plan to staff and their representatives.

6. Local government mandates:

The rule will have an impact on any county, city, town, village, school district, fire district or other special district that employ nurses. The impact will depend on the size of the facility and nursing staff and the degree to which mandatory, unscheduled overtime is currently being used on a routine basis.

7. Duplication:

This rule does not duplicate any state or federal regulations.

8. Alternatives:

One alternative is to draft regulations which allow the employers to have full discretion to make determinations regarding the existence of an emergency on an ad hoc basis. However, the Department decided such a requirement would violate the letter and spirit of the statute. Clearly, certain levels of absenteeism based upon sick leave, bereavement, leaves of absence, and breaks during shifts will always exist in all employment settings, including health care facilities. A health care employer must plan to cover for these expected staff absences, based upon patterns that have emerged from operating a facility and must have staffing options that address the need to provide appropriate nursing care. The Department of Labor circulated draft regulations for comment to State Agencies and other employer groups. In various instances, the Department received comments from one employer group, the Healthcare Association of New York State, that the regulations should provide alternatives to healthcare employers regarding the conspicuous posting of the Nurse Coverage Plans. It was suggested that the regulations authorize employers to utilize other means to make the Nurse Coverage Plans available to nursing staff such as the employer’s intranet. The Department revised the regulations to allow for the use of other means to make the Nurse Coverage Plan available to nursing staff.

The Department also received a comment from employee representatives about requiring the filing of all Nurse Coverage Plans with the Commission. The Department noted that it was unnecessary since the Commissioner will request such Plans once a complaint has been received about an employer. The Department heard from representatives of public sector nurses that the definition of regularity scheduled work hours should include a reference to regulations governing such typical work hours. The language in relevant sections of the rule has been changed in response to this request.

The representatives of public sector nurses had comments about the Nurse Coverage Plans and the requirement for documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency. The representatives were concerned that some health care employers might have a nurse working alone and if that nurse is unable to find relief through alternative staffing methods, he or she might then have to self-mandate overtime. A Nurse Coverage plan that requires a nurse to find her own shift replacement or to self-mandate overtime is inadequate. A Nurse Coverage plan that requires a nurse to find her own shift replacement or to self-mandate overtime is inadequate. A Nurse Coverage Plan discussed above, along with all necessary paperwork to log the efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

The Department added language to Section 177.4(d) to require that such documentation is made available, upon request, to the nurse or the collective bargaining representative. The representatives also noted that the amendments to the Nurse Coverage Plans available to nurses and their collective bargaining representatives. Accordingly, Section 177.4(d) now includes language regarding amendments to the Nurse Coverage Plans.

The representatives of public sector nurses also suggested that Section 177.3(c) be revised to make clear that an individual nurse must volunteer to remain on-call regardless of any contractual provisions which provide for on-call time for nurses. The Department does not have the authority to modify the terms of collective bargaining agreements. If the collective bargaining agreement provides for on-call time for nurses, then such on-call time is presumed to be voluntary.

The representatives of public sector nurses also suggest that the regulations collapse the separate and independent requirements set forth in Labor Law, Section 167(3)(c) to prudently plan for routine staffing shortages and to make good faith efforts to cover staffing on a voluntary basis before mandating overtime when a patient care emergency exists. The regulations Plans to take into account typical patterns of absenteeism and to reflect the employer’s typical levels and types of patients served in the facility. The Nurse Coverage Plan must identify and describe as many alternative staffing methods as are available to the employer to ensure adequate staffing other than by use of mandatory overtime during a patient care emergency. This provision requires employers to have a Nurse Coverage Plan that provides sufficient staffing to account for typical patterns of absenteeism and, at the same time, have alternative staffing methods to cover patient care emergencies.

A health care employer must plan to cover for these expected staff absences, based upon patterns that have emerged from operating a facility and must have staffing options that address the need to provide appropriate nursing care. The Department of Labor circulated draft regulations for comment to State Agencies and other employer groups. In various instances, the Department received comments from one employer group, the Healthcare Association of New York State, that the regulations should provide alternatives to healthcare employers regarding the conspicuous posting of the Nurse Coverage Plans. It was suggested that the regulations authorize employers to utilize other means to make the Nurse Coverage Plans available to nursing staff such as the employer’s intranet. The Department revised the regulations to allow for the use of other means to make the Nurse Coverage Plan available to nursing staff.

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The representatives of public sector nurses had comments about the Nurse Coverage Plans and the requirement for documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency. The representatives were concerned that some health care employers might have a nurse working alone and if that nurse is unable to find relief through alternative staffing methods, he or she might then have to self-mandate overtime. A Nurse Coverage plan that requires a nurse to find her own shift replacement or to self-mandate such discretion is inconsistent. The Department added language to Section 177.4 (c) (Nurse Coverage Plans) to require the Plan to identify the Supervisor at the health care facility who will make the final determination as to when it is necessary to use mandatory overtime.

The Department also received a comment from employee representatives about requiring the filing of all Nurse Coverage Plans with the Commission. The Department noted that it was unnecessary since the Commissioner will request such Plans once a complaint has been received about an employer. The Department heard from representatives of public sector nurses that the definition of regularity scheduled work hours should include a reference to regulations governing such typical work hours. The language in relevant sections of the rule has been changed in response to this request.

The representatives of public sector nurses had comments about the Nurse Coverage Plans and the requirement for documentation of all attempts to avoid the use of mandatory overtime during a patient care emergency. The representatives were concerned that some health care employers might have a nurse working alone and if that nurse is unable to find relief through alternative staffing methods, he or she might then have to self-mandate overtime. A Nurse Coverage plan that requires a nurse to find her own shift replacement or to self-mandate such discretion is inconsistent. The Department added language to Section 177.4 (c) (Nurse Coverage Plans) to require the Plan to identify the Supervisor at the health care facility who will make the final determination as to when it is necessary to utilize mandatory overtime.

Parties commenting on behalf of nurses in the public sector also asked that the regulations outline a system of record keeping regarding the documentation of all attempts to avoid the use of mandatory overtime. It was suggested that such documentation include information that would already be available in the employer’s payroll records. The information provided in a nurse’s complaint, the employer payroll records, and the documentation regarding all attempts to avoid mandatory overtime through the use of the Nurse Coverage Plan, should be sufficient for the Department to complete an investigation regarding a violation of Section 167 if the employer mandates them to provide direct patient care. Such a requirement is clearly contrary to the statutory provisions of Section 167. Specifically, Section 167(3)(c) to prudently plan for routine staffing shortages and to make good faith efforts to cover staffing on a voluntary basis before mandating overtime when a patient care emergency exists. The regulations Plans to take into account typical patterns of absenteeism and to reflect the employer’s typical levels and types of patients served in the facility. The Nurse Coverage Plan must identify and describe as many alternative staffing methods as are available to the employer to ensure adequate staffing other than by use of mandatory overtime during a patient care emergency. This provision requires employers to have a Nurse Coverage Plan that provides sufficient staffing to account for typical patterns of absenteeism and, at the same time, have alternative staffing methods to cover patient care emergencies.

The representatives of public sector nurses also suggest that the regulations provide for enforcement action against a health care employer who fails to develop and implement the required policies and procedures and maintain the required recordkeeping. While the Department does find penalties to be an effective means of encouraging employer compliance with regulations providing for on-site inspections of works, the implementing legislation does not provide for such penalties.

The representatives of public sector nurses also suggest that the regulations should clearly set forth protections against reprisals for filing a complaint. Such protections already exist under Section 215 of the Labor Law for nurses in private facilities. Civil Service Law, Section 75-b prohibits retaliatory actions by public employers against public employees. The representatives of public sector nurses also suggest that the regulations set forth that the investigatory process be completed within 90 days and include an informal conference or means by which a Department Investigator can hear the collective bargaining representative, the employer and the employer’s collective bargaining representative, and the employer meet to discuss issues arising from the investigation. The representatives also suggest a closing conference and a clearly defined appeal process or mechanism to dispute the Department’s issuance of an order in a situation where the complainant employee or collective bargaining representative contest the Department’s determination. The representatives of public sector nurses are requesting a procedural investigatory process similar to that for public employee safety and health complaints pursuant to Labor Law, Section 27-a. However, that investigatory process is clearly detailed in Section 27-a and includes site inspections, where representatives of the employer and an authorized employee representative are given an opportunity to accompany the Department Investigator during an inspection. This type of on-site inspection is needed to view whether safety and health hazards exist.

The representatives of public sector nurses suggest that nurse administrators or employees that have a nursing license, but do not provide direct patient care in their positions be covered under the provisions of Section 167 if the employer mandates them to provide direct patient care. Such a requirement is clearly contrary to the statutory provisions of Section 167. Specifically, Section 167(3)(c) to prudently plan for routine staffing shortages and to make good faith efforts to cover staffing on a voluntary basis before mandating overtime when a patient care emergency exists. The Department does not have the statutory authority to expand the coverage of Section 167 to nurse administrators or other employees that have a nursing license but do not have regularly scheduled work hours where they provide direct patient care.

During rule development, several parties presented diverse comments on many issues, some of which resulted in modification of this proposal. The Department looks forward to the public comment period, which will provide the opportunity for additional regulated parties and interested parties to explain their different perspectives and share expertise in this area that would help clarify, balance and generally improve the final regulation.
Effect of rule

This rule will apply to all health care employers which include any individual, partnership, association, corporation, limited liability company or any person or group of persons acting directly or indirectly on behalf of or in the interest of the employer, which provides health care services in a facility licensed or approved pursuant to the Public Health Law, including any facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction Law or in a facility operated by the State, a political subdivision or a public corporation as defined by Section 66 of the General Construction law, operated or licensed pursuant to the Mental Hygiene Law, the Education Law, or the Correction Law. Accordingly, small businesses and local governments may be impacted if they provide health care services in a facility noted above. The Department’s Division of Research and Statistics estimates that there are 4,175 health care facilities in the State with fewer than 100 employees. Of these 4,175 employers, 4,143 are private employers and 32 are public employers.

Compliance requirements:

The record and reporting requirements contained in the proposed rule are minimal. Healthcare employers must prepare a Nurse Coverage Plan which takes into account the typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer’s facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. Additionally, the health care employer must make the Nurse Coverage Plan available to nursing staff by posting the Plan or making it available to nursing staff by the intranet, employee representatives and to the Commissioner upon request. The health care employer must also maintain a log of efforts to obtain staff coverage in compliance with the Plan.

Professional services:

Legal services may be required to negotiate, draft and review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

The rule will require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employer will be seeking professional nursing services which would otherwise been performed by their current nursing staff on a mandatory basis.

Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses’ registries, per diem nursing services, and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. The cost for individual health care employers will depend upon the extent which the nurse staffing plan relies on these contract workers and the degree of coverage that the health care facility will need. For example, a major medical center with several special care units requiring specially trained staff to work mandatory overtime shifts. In this respect, the health care employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written plan and log, these costs may be offset through the use of a Plan that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

Economic feasibility:

The proposed rule does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

Small business and local government participation:

The Department solicited input on these regulations from various employer representatives. These employer representatives have members from small businesses and local governments.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

Any rural area where nurses are employed will be affected. The type of affect will depend on the degree to which those areas are currently relying on unscheduled, mandatory overtime to fill staffing requirements.

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

The reporting, recordkeeping and compliance requirements contained in the proposed rule are minimal. The employer will be required to develop a Nurse Coverage Plan which identifies and describes as many alternative staffing methods as are available to the health care employer to ensure adequate staffing coverage than use of overtime nursing, but not limited to, contracts with per diem nurses, contracts with nurse registries and employment agencies for nursing services, arrangements for assignment of nursing floats, requesting an additional day of work from off-duty employees, and development and posting of a list of nurses seeking voluntary overtime. The healthcare employer must log all good faith attempts to seek alternative staffing through the methods identified in the health care employer’s Nurse Coverage Plan. The Plan must be in writing, and be provided to the nursing staff, to any collective bargaining representative nurses at the health care facility and to the Commissioner of Labor upon request.

The rule will also require health care employers to seek alternative sources to obtain the services of nurses other than forcing their current nursing staff to work mandatory overtime shifts. In this respect, the health care employer will be seeking professional nursing services which would otherwise been performed by their current nursing staff on a mandatory basis. This may necessitate the drafting of contracts with alternative staffing providers such as per diem agencies.

Costs:

Employers in both the public and private sectors covered by this rule may have to enter into contracts with nursing staff providers such as nurses’ registries, per diem nursing services, and temporary agencies to have a viable source of additional nursing staff to use in lieu of mandating overtime of current staff. The cost for individual health care employers will depend upon the extent to which the Plan relies on these contract workers and the degree of coverage that the health care employer will need. In the current environment of nursing shortages, a major medical
The agency received no public comment.

Assessment of Public Comment

Other than staffing needs, costs associated with the rule will be administrative. Health care employers must prepare a Plan which takes into account typical patterns of staff absenteeism due to illness, leave, bereavement and other similar factors as well as the number and types of patients typically served in the health care employer’s facility. The Plan must also identify and describe the alternative staffing methods the employer will use to avoid mandatory overtime. It is not anticipated that any health care employer would have to retain outside professional services to prepare the Nurse Coverage Plan. Although there are administrative costs and time associated with developing and maintaining a written Plan and log, these costs may be offset through the use of a Plan in place that may reduce the need for last-minute supplemental staffing.

Legal services may be required to negotiate, draft or review contracts with alternative staffing providers such as per diem agencies. It is anticipated that a vast majority of health care providers in the state already have such agreements in place or have procurement or legal staff who regularly work on such contracts.

Requirements with regard to the posting of such Plan and the logging of efforts to obtain staff coverage in compliance with the Plan will result in minimal or no additional cost.

4. Minimizing adverse impact:

This rule is necessary to implement Labor Law, Section 167, as enacted by chapter 493 of the Laws of 2008. Although this enabling legislation does not require the promulgation of regulations, it does not provide sufficient details with regard to what is expected of health care employers so as to avoid, to the greatest extent possible, unnecessary mandatory overtime. The rule addresses these statutory gaps by requiring that covered employers develop a staffing plan, by setting forth the minimum elements to be addressed in this plan, and by requiring that the plan be made available to the Commissioner and to nursing staff and their representatives. At the same time, the rule clarifies circumstances under which various types of emergencies will exempt health care employers from the prohibition against mandatory overtime to cover nursing staffing needs that would otherwise apply.

This rule fulfills the legislative objective of chapter 493 by improving the health care environment for patients and the working environments for nurses and their families, while at the same time minimizes the potential impact on the health care employers by allowing them to develop a Nurse Coverage Plan which addresses their specific needs and takes into account all of their specific circumstances.

5. Rural area participation:

The Department sought input on these regulations from various employee representative groups which represent rural area employees. Additionally, the Department received input from various employer representative groups which also represent rural area employers.

Job Impact Statement

Health care employers covered by this rule may have to enter into contracts with nursing staff providers such as nurses’ registries, per diem nursing services and temporary agencies to have a viable source of nursing staff to use in lieu of mandatory overtime. At the time Section 167 of the Labor Law (the statutory authority for this rule) was before the Governor for signature, the Division of the Budget estimated compliance would cost approximately $13 million in its first year. However, these costs - attributable to the hiring of per diem nurses necessary to ensure that sufficient nursing care is available for patients in the absence of the availability of mandatory overtime - should have been offset by savings of $5 million, which otherwise would have been paid for such overtime. Also, it is likely that in the approximately one and a half year period from when Section 167 was enacted into law, employers have been preparing for implementation of the statute and have taken steps to mitigate costs associated with this new law.

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

Action taken: Amendment of section 3.7 of Title 15 NYCRR. Municipal law: Vehicle and Traffic Law, sections 215(a), 501(1)(c) and 1198

Subject: Motorcycle Drivers Licenses.

Purpose: Eliminates the reference of a specific named motorcycle safety program.

Text of final rule: Paragraph (5)(iii) of subdivision (a) of Section 3.7 of Part 3 is amended to read as follows:

(iii) that he or she is the holder of a valid “New York driver’s license” and has successfully completed the 15-hour “Motorcycle Rider Course: Riding and Street Skills” developed by a motorcycle rider training course with standards comparable to the Motorcycle Safety Foundation’s (MSF) motorcycle rider safety program.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 3.7(a)(5)(iii).

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Revised Job Impact Statement

A Revised Job Impact Statement is not submitted because the revisions to the text of the rule do not affect the job impact statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Approval of Applications for Inspection Station License

L.D. No. MTV-19-11-00002-A

Filing No. 590

Filing Date: 2011-06-29

Effective Date: 2011-07-13

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

Action taken: Amendment of Part 79 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (d)(1), 302(a), (e), 303(a)(1) and (d)(1)

Subject: Approval of applications for inspection station license.

Purpose: Regulates the approval process relating to inspection stations in New York State.

Text of rule: The text of final rule is 591 pages.

Text or summary was published in the May 11, 2011 issue of the Register, L.D. No. MTV-19-11-00002-P.

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

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

Assessment of Public Comment

On May 10, 2011, the Department of Motor Vehicles notified the trade associations listed below that the regulation was being formally published in the New York State Register. On May 23, 2011, the Department of Motor Vehicles held a briefing session to provide any needed clarifications so that these parties could formally comment. This session was attended by some of these associations.

New York State Automobile Dealers Association
The Department understands NYSASSRS' concern about the phrase "materially and substantially." This phrase gives the Department the needed flexibility to revise the criteria to establish the cap on the number of inspection stations permitted in each county, and it does not relate to criteria the Department would use in relation to a specific application (original, renewal or amendment) for a license.

Comment: The Department appreciates NYSASSRS' endorsement of the limitation of stations per county. The Department understands NYSASSRS' concern about the phrase "materially and substantially." This phrase gives the Department the needed flexibility to revise the criteria to establish the cap on the number of inspection stations permitted in each county, and it does not relate to criteria the Department would use in relation to a specific application (original, renewal or amendment) for a license. A contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

Comment: The Department appreciates NYSASSRS' endorsement of the limitation of stations per county. The Department understands NYSASSRS' concern about the phrase "materially and substantially." This phrase gives the Department the needed flexibility to revise the criteria to establish the cap on the number of inspection stations permitted in each county, and it does not relate to criteria the Department would use in relation to a specific application (original, renewal or amendment) for a license.

Comment: The Department appreciates NYSASSRS' endorsement of the limitation of stations per county. The Department understands NYSASSRS' concern about the phrase "materially and substantially." This phrase gives the Department the needed flexibility to revise the criteria to establish the cap on the number of inspection stations permitted in each county, and it does not relate to criteria the Department would use in relation to a specific application (original, renewal or amendment) for a license.

Response: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

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Response: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

Comment: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

Response: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

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Response: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.

Response: There is no contradiction between these two provisions in the proposed rule. Section 79.7(f)(4) contains an exception to 79.7(f). If an existing licensee wants to move an existing business, the amendment application would be accepted for review if the new location is within the same county, or within five (5) miles of the current location. The Department recognizes NYSASSRS' concern. This language, however, provides a necessary public protection tool. As noted in the Regulatory Impact Statement, for example, SASSRS states that it would be unfair, for example, to penalize a licensee who is suing the Department regarding an inspection fee increase.
The advisory scan will provide a tool to address these problems for the dealer. The consumer currently needs to remedy the problem via the dealer or manufacturer. To avoid this significant inconvenience to the consumer and the additional workload to the dealer network, the advisory scan will allow the Department to address such communication issues with our emissions inspection vendor as we become aware of them. When the consumer has the vehicle emissions tested two years later, the issue will have already been addressed and will be transparent to the consumer and dealer/inspection station network.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Navigation of Vessels, Conduct of Regattas and Placement of Navigation Aids and Floating Objects on Navigable Waters

I.D. No. PKR-18-11-00008-A
Filing No. 573
Filing Date: 2011-06-23
Effective Date: 2011-07-13

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

Action taken: Repeal of Parts 380, 445, section 448.7 and Appendix I-1; addition of new Part 445 and sections 447.1(f), 447.2(i), 448.1(h), 448.4(d), 448.8(b)(2); and amendment of sections 377.1, 447.1(b), 447.2, 447.3(b)(4)-(6) and Part 448 of Title 9 NYCRR.


Purpose: To update obsolete State navigation rules or conform to them the U.S. Coast Guard Inland Navigation Rules.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. PKR-18-11-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, ESP, Agency Bldg, 1, 19th floor, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprh.park.state.ny.us

Additional matter required by statute: The rule incorporates by reference the U.S. Coast Guard Inland Navigation Rules at 33 CFR 83-88 and 90.

Assessment of Public Comments:

The Office of Parks, Recreation and Historic Preservation (State Parks) received a comment from Assemblymen Englebright and Lavine on an earlier version of the proposed rule. They noted the “Good Samaritan” regulatory provision at 9 NYCRR § 445.3 implemented Navigation Law Section 41(3) that requires pilots to render assistance to vessels in distress when possible. The statute and prior regulatory provision have no direct counterpart in the U.S. Coast Guard rules being incorporated by reference. State Parks corrected this technical oversight and re-inserted the “Good Samaritan” provision in the final adopted rule at 9 NYCRR § 445.2.

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-07-10-00010-A
Filing Date: 2011-06-23
Effective Date: 2011-06-23

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: On 6/16/11, the PSC adopted an order approving the petition of 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 60(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the petition of 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 468-2655, 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 section 102(2)(a)(iii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-43-10-00014-A
Filing Date: 2011-06-23
Effective Date: 2011-06-23

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

Action taken: On 6/16/11, the PSC adopted an order approving the petition of Union Grove Associates, LLC to submeter electricity at 1468 Hoe Avenue, a/k/a Rev. Fletcher C. Crawford Housing, Bronx, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Union Grove Associates, LLC to submeter electricity at 1468 Hoe Avenue, Bronx, New York

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the petition of Union Grove Associates, LLC to submeter electricity at 1468 Hoe Avenue, a/k/a Rev. Fletcher C. Crawford Housing, Bronx, New York.

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) 468-2655, 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 section 102(2)(a)(iii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-49-10-00010-A
Filing Date: 2011-06-22
Effective Date: 2011-06-22

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

Action taken: On 6/16/11, the PSC adopted an order approving, with modifications, the Village of Endicott’s amendments to PSC No. 1—Electricity, effective May 1, 2011 and postponed to July 1, 2011 to increase its annual revenues by $300,000 or 10.3%.

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

Subject: Minor Rate Filing.

Purpose: To approve amendments to PSC No. 1—Electricity, effective July 1, 2011 to increase annual revenues by $300,000 or 10.3%.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving, with modifications, the Village of Endicott’s amendments to PSC No. 1—Electricity, effective May 1, 2011 and postponed to July 1, 2011 to increase its annual revenues by $300,000 or 10.3%, 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 section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Initial Tariff Schedule

I.D. No. PSC-04-11-00003-A
Filing Date: 2011-06-23
Effective Date: 2011-06-23

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

Action taken: On 6/16/11, the PSC adopted an order approving, with modifications, the initial rate filing of Westfall Village Water Co., Inc., PSC No. 1—Water, effective April 1, 2011, and postponed to July 1, 2011.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial Tariff Schedule.

Purpose: To approve an Initial Tariff Schedule.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving, with modifications, the initial rate filing of Westfall Village Water Co., Inc., PSC No. 1—Water, effective April 1, 2011, and postponed to July 1, 2011, 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 section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Exemption of Reliability Reporting Statistics for the Purposes of the 2010 Service Reliability Performance

I.D. No. PSC-15-11-00012-A
Filing Date: 2011-06-23
Effective Date: 2011-06-23

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

Action taken: On 6/16/11, the PSC adopted an order denying Orange and Rockland Utilities’ (O&R) request for an exclusion relating to its failure to meet its 2010 Reliability Performance Mechanism duration target due to a July 19, 2010 storm event.
Rule Making Activities

**Mobile Stray Voltage Testing**

**I.D. No.** PSC-15-11-00013-A  
**Filing Date:** 2011-06-23  
**Effective Date:** 2011-06-23

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

**Action taken:** On 6/16/11, the PSC adopted an order requiring affected utilities to complete two mobile stray voltage scans in Buffalo and one each in Yonkers, White Plains, Albany, Niagara Falls, Rochester, and New Rochelle, New York for 2011.

**Statutory authority:** Public Service Law, sections 2, 5, 65 and 66

**Purpose:** To deny O&R’s request for an exclusion relating to its failure to meet its 2010 Reliability Performance Mechanism.

**Substance of final rule:** The Commission, on June 16, 2011, adopted an order denying Orange and Rockland Utilities’ request for an exclusion relating to its failure to meet its 2010 Reliability Performance Mechanism duration target due to a July 19, 2010 storm event and, therefore, be subject to a revenue adjustment of approximately $800,000, 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-E-0949SA5)

### NOTICE OF ADOPTION

**Subject:** Petition to Transfer Property

**I.D. No.** PSC-15-11-00008-P  
**Filing Date:** 2011-06-22  
**Effective Date:** 2011-06-22

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

**Action taken:** On 6/16/11, the PSC adopted an order requiring affected utilities to complete two mobile stray voltage scans in Buffalo and one each in Yonkers, White Plains, Albany, Niagara Falls, Rochester, and New Rochelle, New York for 2011, 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.

(11-E-0112SA1)

**PROPOSED RULE MAKING**

**HEARING(S) SCHEDULED**

**Subject:** Water Rates and Service

**I.D. No.** PSC-28-11-00008-P  
**Filing Date:** 2011-06-22

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

**Proposed Action:** PSC is considering a proposal by Long Island Water Company d/b/a Long Island American Water to change its rates, charges, rules and regulations for water service. The effective date of the filing is subject to suspension through March 27, 2012.
Economic Development

Subject: Economic Development.

Proposed Action: To consider Long Island Water Corporation’s request for approval to increase annual water revenues by approximately $9.6 million or 19.5%.

Public hearing(s) will be held at: 1:00 p.m., October 20, 2011 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

There could be requests to reschedule the hearings. Notification of any subsequent scheduling changes will be available at the DPS Website (www.dps.state.ny.us) and in Case No. 11-W-0200.

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

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

Substance of proposed rule: The Public Service Commission is considering a request by Long Island Water Corporation d/b/a Long Island American Water (the company) to increase its rates for water service. In an April 29, 2011 filing, the company proposed changes in the rates, charges, rules and regulations contained in its Schedule No. 1 for water service, so as to increase its annual revenues by $9.6 million (19.5%). The effective date of the filing has been suspended through September 27, 2011, and is subject to further suspension through March 27, 2012, in Case 11-W-0200. The Commission will evaluate the filing and may approve or reject it in whole or part or may otherwise alter rates. The Commission also may take other actions related to the filing, including actions that may alter the company’s service or management and/or establish a multi-year rate plan. Parties may propose negotiated terms to be considered by the Commission.

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 12233-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12233-1350, (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.

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 12233-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12233-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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

PROPOSED RULE MAKING

Economic Development

I.D. No. PSC-28-11-00004-P

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

Proposed Action: Due to inadequate service and absence of a system operator, the PSC is considering whether to approve, modify, or reject, in whole or in part, appointment of a temporary system operator and other remedies against Orchard Hill and Scott Acres.

Purpose: Assuring the provision of safe, adequate, and reliable service to the customers of Orchard Hill and Scott Acres.

Substance of proposed rule: Due to inadequate service and absence of a system operator, the Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, the appointment of a temporary system operator and other remedies against Orchard Hill W. Co., Inc. and Scott Acres Water Co., Inc.

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 12233-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12233-1350, (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.

PROPOSED RULE MAKING

Implementing Delivery Discounts for Recharge New York Power Program Allocations

I.D. No. PSC-28-11-00006-P

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

Proposed Action: The Commission is considering proposals to implement the Recharge New York Power Program delivery discounts of Economic Development Law Section 188-a(d).
**Statutory authority:** Public Service Law, sections 4(1), 65, 66; Public Authorities Law, section 1005; Economic Development Law, section 188-a(d)

**Subject:** Implementing discount revenues for Recharge New York Power Program allocations.

**Purpose:** Consideration of mechanisms for providing reduced delivery rates for power allocated to Recharge New York customers.

**Substance of proposed rule:** By filing dated June 27, 2011, the New York Power Authority (NYPA) petitioned the Commission seeking to implement reduced delivery service rates, as well as terms and conditions, for allocations of Recharge New York Power Program (RNY) electricity to RNY program participants. NYPA’s petition was filed pursuant to Economic Development Law section 188-a(d) requiring NYPA, after consultation with Public Service Department Staff, to recommend to the Commission reduced rates for RNY power allocations. In its June 27, 2011 filing, NYPA proposed a discounted delivery rate consisting of exemptions to RNY customers of certain surcharges, as well as terms and conditions related to the respective roles of NYPA and New York’s electric utilities as related to RNY program participants. The Commission is considering whether to grant or deny, in whole or in part, approval of the NYPA’s proposals.

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

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

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

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

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

(11-E-0176SP2)

**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-28-11-00007-P

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

**Proposed Action:** The Commission is considering whether to approve, deny, or modify the petition of the Village of Briarcliff Manor to transfer the billing responsibility for 39 United Water New Rochelle Inc. customers to the Village of Briarcliff Manor.

**Purpose:** To transfer of billing responsibility for 39 United Water New Rochelle Inc. customers to the Village of Briarcliff Manor.

**Proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.**

Subject: Whether a proposed agreement for the provision of water service by Saratoga Water Services, Inc. is in the public interest.

**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.

(11-E-0176SP2)

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

The Transfer of Billing Responsibility for 39 United Water New Rochelle, Inc. customers to the Village of Briarcliff Manor

I.D. No. PSC-28-11-00009-P

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

**Proposed Action:** The Commission is considering whether to grant, deny or modify the petition of the Village of Briarcliff Manor to transfer the billing responsibility for 39 customers from United Water New Rochelle, Inc. to the Village of Briarcliff Manor.

**Statutory authority:** Public Service Law, section 89(h)

**Subject:** The transfer of billing responsibility for 39 United Water New Rochelle, Inc. customers to the Village of Briarcliff Manor.

**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.

(11-W-0308SP1)
PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Mercury Instruments IP Cellular Modem for use in Commercial Gas Meter Applications

I.D. No.  PSC-28-11-00010-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, a petition filed by Corning Natural Gas Corporation for the approval to use the Mercury Instruments IP Cellular Modem.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of the Mercury Instruments IP Cellular modem for use in commercial gas meter applications.

Purpose: To permit gas utilities in New York State to use the Mercury Instruments IP Cellular Modem.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Corning Natural Gas Corporation to use the Mercury Instruments IP Cellular Modem in commercial natural gas meter applications.

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/96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 10007, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (518) 474-6530, email: Secretary@dps.state.ny.us

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102 (11)(c), it makes technical changes and is otherwise non-controversial.

Subdivision 3 of section 625 of the Executive Law permits a claim to be filed by a person eligible to receive an award in person, by mail or electronically, in such manner as the Office may prescribe. Current statutory language is silent on how a claimant may go about notifying the Office of any change in contact information.

Subdivision (a) of section 525.4 of the current OVS regulations mirror the statutory language of subdivision 3 of section 625 of the Executive Law, with no further information about the address to where claim applications may be mailed or how and where to claim applications may be sent to the Office electronically. Subdivision (b) of section 525.15 of the current OVS regulations requires that a claimant notify the Office of any change of contact information by letter, which is to include an original signature of the claimant.

The proposed rule simply adds information in subdivision (a) of section 525.4 of the OVS regulations for the benefit of potential claimants. This new information will specify where claim applications may be mailed and how and to where claim applications may be sent to the Office electronically. In addition, the proposed rule changes the manner in which an existing claimant may convey to the Office a change of contact information, in a similar fashion as the proposed changes to filing a claim. These provisions are implemented for the benefit of potential claimants and existing claimants, so the use of current technology is available under certain circumstances. No person is likely to object to the rule as written.

Job Impact Statement

The Office of Victim Services (the Office) 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 how claim applications and changes to claimant contact information may be delivered to the Office. 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.

Office of Victim Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Submission of Claim Applications and Changes of Contact Information to the Office of Victim Services

I.D. No.  OVS-28-11-00003-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 add section 525.4(a)(1) and (2); and amend section 525.15(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3), 625(3), 633(1); and Public Officers Law, art. 6, sections 94(1)(c), (d), 94(2), (3), (6), 95 and 96(1)

Subject: Submission of claim applications and changes of contact information to the Office of Victim Services.

Purpose: To specify where and how claim applications and changes in contact information may be delivered to the Office.

Text of proposed rule: New paragraphs (1) and (2) are added to subdivision (a) of section 525.4 of Title 9 of the New York Codes Rules and Regulations to read as follows:

525.4 Filing of claims. In addition to the provisions contained in section 625 of the Executive Law: (a) Claim applications shall be filed with the office in person, by mail, or electronically via facsimile, electronic mail or any other manner the office may make available for the filing of claims pursuant to subdivision one of section 305 of the New York State Technology Law. (1) If mailed, such application shall be directed to:

Office of Victim Services
One Columbia Circle, Suite 200
Albany, New York 12203

(2) Emergency award claim applications may be sent via facsimile, to a number the office may make available.

Subdivision (b) of section 525.15 of Title 9 of the New York Codes Rules and Regulations is amended to read as follows:

(b) A claimant shall notify the office of any change of contact information [by letter. Such notification shall include the new contact information, the claim number and an original signature of the claimant] in person, by mail, or electronically via facsimile, electronic mail or any other manner the office may make available for the change of contact information pursuant to subdivision one of section 305 of the New York State Technology Law. [Such] (1) If mailed, such notification shall be directed to:

Office of Victim Services
One Columbia Circle, Suite 200
Albany, New York 12203

(2) Change of contact information may be sent via facsimile, to a number the office may make available.

Text of proposed 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 12203-8727, (518) 457-8066, email: john.watson@ovs.ny.gov

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act § 102(11)(c), it makes technical changes and is otherwise non-controversial.

Subdivision 3 of section 625 of the Executive Law permits a claim to be filed by a person eligible to receive an award in person, by mail or electronically, in such manner as the Office may prescribe. Current statutory language is silent on how a claimant may go about notifying the Office of any change in contact information.

Subdivision (a) of section 525.4 of the current OVS regulations mirror the statutory language of subdivision 3 of section 625 of the Executive Law, with no further information about the address to where claim applications may be mailed or how and where to claim applications may be sent to the Office electronically. Subdivision (b) of section 525.15 of the current OVS regulations requires that a claimant notify the Office of any change of contact information by letter, which is to include an original signature of the claimant.

The proposed rule simply adds information in subdivision (a) of section 525.4 of the OVS regulations for the benefit of potential claimants. This new information will specify where claim applications may be mailed and how and to where claim applications may be sent to the Office electronically. In addition, the proposed rule changes the manner in which an existing claimant may convey to the Office a change of contact information, in a similar fashion as the proposed changes to filing a claim. These provisions are implemented for the benefit of potential claimants and existing claimants, so the use of current technology is available under certain circumstances. No person is likely to object to the rule as written.

Job Impact Statement

The Office of Victim Services (the Office) 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 how claim applications and changes to claimant contact information may be delivered to the Office. 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.