

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.

Discounted tolls may be offered for fares paid through the E-ZPass electronic toll system provided that such discounted tolls shall expire December 31st of each year, except and to the extent extended annually by the Authority. Discounts for fares paid through the E-ZPass electronic toll system are subject to the requirements of § 201.6.

Vehicle class	Vehicle description	Axles	Standard Toll	E-ZPass Discounted Toll
1	All vehicles with two or fewer axles and four or fewer tires	2	[\$1.00] <i>\$1.50</i>	<i>\$1.25</i>
2	Two-axle vehicles with more than four tires	2	[\$2.50] <i>\$5.00</i>	<i>\$4.50</i>
3	Three-axle vehicles	3	[\$4.50] <i>\$7.50</i>	<i>\$6.75</i>
4	Four-axle vehicles	4	[\$6.00] <i>\$10.00</i>	<i>\$9.00</i>
5	Five-axle vehicles	5	[\$7.50] <i>\$12.50</i>	<i>\$11.25</i>
6	Six-axle vehicles	6	[\$9.00] <i>\$15.00</i>	<i>\$13.50</i>
7	Each additional axle attached to vehicles in class 1	1	[\$ 0.50] <i>\$1.00</i>	<i>\$0.90</i>
8	Each additional axle on or attached to vehicles in classes 2 through 6	1	[\$1.50] <i>\$2.50</i>	<i>\$2.25</i>
9	[Regular] C[c]ommuter discount	2	[As described in section 201.5 of this Part]	<i>As described in section 201.5 of this Part</i>
10	[Car pool discount] <i>Reserved</i>	[2]	[As described in section 201.4 of this Part]	
11	Vehicles owned and operated by the authority, by authority employees or contractors, and emergency service vehicles or other vehicles which by law or authority resolution are treated as Class 11 vehicles	2	No charge	
12	Each additional axle on or attached to vehicles in class 11	1	No charge	

New York State Bridge Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposal to Amend the NYSBA Toll Schedule

I.D. No. SBA-43-11-00002-P

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

Proposed Action: Amendment of sections 201.2, 201.4 and 201.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 538 and 528(8)

Subject: Proposal to amend the NYSBA Toll Schedule.

Purpose: To amend tolls for vehicular bridges controlled by the New York State Bridge Authority in order to provide additional revenue.

Public hearing(s) will be held at: 7:00 p.m., Dec. 15, 2011 at Poughkeepsie Grand Hotel, Palm Court Rm.-Lobby Fl., 40 Civic Center Plaza, Poughkeepsie, NY.

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

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

Text of proposed rule: Amend Title 21 NYCRR Section 201.2 entitled “Bridge tolls” to read as follows:

(a) [The following] T[t]olls shall be charged for each vehicle as classified below for each eastbound passage over each of the *vehicular* bridges controlled by the authority[:] *in accordance with the following schedule.*

(b) Pedestrians and self-propelled bicycles shall not be subject to tolls on bridges and facilities where such access and/or operation is permitted.

Amend Title 21 NYCRR Section 201.4 entitled “Car Pool Discount” to read as follows and rename the section heading to read “Vehicular Bridges”:

[Notwithstanding the above toll schedule, the authority shall have the right to issue car pool discount books for class 1 vehicles, as described above, subject to the following conditions.

(a) Car pool books shall contain 30 tickets, each good for one eastbound passage of a class 1 vehicle carrying three or more persons, shall be good for passage Monday through Friday only within 90 days of the date of purchase, and shall be sold at a price of \$9.

(b) Car pool books must be presented at the time of each passage and

each ticket removed by a member of the authority staff. If not so presented, the full single trip toll shall be charged. Loose and/or detached tickets shall be invalid.

(c) Car pool tickets shall not be valid for passage by any vehicle carrying fewer than three persons.

(d) Car pool tickets shall be valid only for privately registered vehicles and individually owned or leased pick-up trucks.

(e) If a car pool book is presented after the expiration date, or if the book, or any ticket, is erased, defaced or altered, it will be invalid and will be confiscated, and the full single trip toll will be charged.

(f) No refund will be made if any car pool book is lost, stolen, expired, confiscated or for tolls collected upon failure to present the book, or for unused tickets.

(g) Car pool books are not transferable within one mile of the authority facilities.

(h) In addition to or in lieu of the issuance of regular commutation books for class 1 vehicles, the authority may offer discounted commuter tolls through its E-ZPass electronic toll system in accordance with procedures and under terms and conditions as from time to time may be prescribed by the authority. Such procedures, terms and conditions may include minimum deposits, administrative service fees on accounts or equipment, limits on transferability, and E-ZPass account requirements. The E-ZPass discount for regular commutation shall provide for a discounted toll of \$0.40, provided that the E-ZPass account holder agrees to allow their account to be charged for a minimum of 17 tolls per monthly period established by the authority.]

The vehicular bridges subject to toll shall be the Mid-Hudson Bridge, the Rip Van Winkle Bridge, the Bear Mountain Bridge, the Kingston-Rhinecliff Bridge, and both spans of the Hamilton Fish Newburgh-Beacon Bridge.

Subdivision (c) of 201.5 is renumbered to subdivision (a) and Section 201.5 entitled, "Commuter discount", is amended to read as follows:

[(a) Notwithstanding the above toll schedule, the authority may offer discounted commuter tolls for class 1 vehicles through its E-ZPass electronic toll system in accordance with procedures and under terms and conditions as from time to time may be prescribed by the authority. Such procedures, terms and conditions may include minimum deposits, administrative service fees on accounts or equipment, limits on transferability, and E-ZPass account requirements.]

[(c)] (a) The E-ZPass [regular] commuter discount shall provide for a maximum discounted toll of [\$.50] \$1.00, provided that the E-ZPass account holder agrees to allow their account to be charged for a minimum of 17 tolls per monthly period established by the authority.

(b)[Such] The commuter discount shall be available only for privately-registered vehicles and individually owned or leased pick-up trucks through the E-ZPass System.

Text of proposed rule and any required statements and analyses may be obtained from: John Bellucci, Chief of Staff, New York State Bridge Authority, Mid-Hudson Bridge Toll Plaza, 475 Rt. 44/55, Highland, NY 12528, (845) 691-7245, email: info@nysba.state.ny.us

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

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

Regulatory Impact Statement, 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.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Multi-Year Contracts

I.D. No. CFS-43-11-00005-P

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

Proposed Action: Amendment of sections 405.3(e), 405.4(b)(2) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(2)(b), (3)(d), 34(3)(f) and 20-c

Subject: Multi-year Contracts.

Purpose: Provide greater flexibility in multi-year contracts.

Text of proposed rule: Paragraph (e) of section 405.3 of Title 18 NYCRR is amended to read as follows:

(e) Contract period.

(1) [A contract may not remain in effect for a period exceeding 12 months. Contracts may be negotiated for a period of less than 12 months if the nature of the service provision is clearly expected to be for a shorter period or if a shorter trial period is justified.] *The social services district may enter a multi-year purchase of services contract, provided that the contract is reviewed on at least an annual basis for verification of conformance by the contracting parties and is continued for subsequent periods only if the social services district determines that the contract continues to be in the best interest of the district.*

(2) [Contracts shall be reviewed by the social services district at least every six months for verification of conformance by the contracting parties. Any contract which is not being properly fulfilled shall be immediately terminated in accordance with the terms of the contract.] All contracts shall be renegotiated as required to [ensure] *promote* timely renewal.

Subdivision 2 of paragraph (b) and paragraph (c) of section 405.4 of title 18 NYCRR are amended to read as follows:

(2) developing an effective system for evaluation and review of contracts [at the specified six-month intervals] *on at least an annual basis* and the quality of services being provided under contracts in force.

(c) The social services district shall compile and maintain a master index of all existing or newly executed contracts. [Such index shall include, but need not be limited to, the following records:

- (1) name of provider;
- (2) status of provider, i.e., public, private, etc.;
- (3) status of license or approval of the provider, if required, and notations of any exceptions granted by the department;
- (4) services purchased;
- (5) number of individuals to be served pursuant to such contracts;
- (6) estimated contract dollar amount;
- (7) date of execution of contract; and
- (8) date of termination of contract.]

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

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

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

Regulatory Impact Statement

1. Statutory Authority

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules, regulations and policies to carry out OCFS' powers and duties under the SSL. Section 20(2)(b) of the SSL authorizes OCFS to supervise local social services officials in the performance of their official duties and regulate the financial assistance granted to social services districts (districts) by the State to perform these duties. Section 34(3)(f) authorizes the Commissioner of OCFS to establish regulations for the administration of public care by local social services districts.

Section 20-c of the SSL authorizes districts to enter contracts for the performance of their duties under the SSL. Section 20-c also requires that contracts for social services contain specific information, including a description of the quality of service expected, as measured by specific performance measures, and detailed information about the qualifications and remuneration of employees who will be performing the work.

2. Legislative Objectives

The proposed regulatory changes provide mandate relief to local social services districts (LSSDs) by providing greater flexibility in contracting by permitting multi-year purchase of services contracts that are reviewed on an annual basis and by eliminating specific contracting documentation. These changes allow local districts to enter more efficient contracts for services, as permitted by SSL § 20-c.

3. Needs and Benefits

By adding flexibility to the social services district contracting process, the proposed regulatory amendments are intended to satisfy the need identified by districts for administrative workload relief and cost savings measures.

4. Costs

The increased flexibility in contracting procedures is intended to save administrative and other costs associated with contracts for services, and

ultimately, with the provision of social services by districts and service providers. There is no adverse fiscal impact to OCFS or the State related to the proposed regulatory amendments.

5. Local Government Mandates

The proposed regulatory amendments do not impose any local government mandates. Rather, they provide affected local governments with additional flexibility in carrying out their statutory duties.

6. Paperwork

The proposed regulatory changes decrease existing reporting requirements by providing local flexibility in the form that may be used to report authorized services.

7. Duplication

The proposed regulatory amendments do not duplicate other state or federal requirements.

8. Alternate Approaches

The proposed regulatory changes were suggested by local social services districts and service providers in an effort to decrease their administrative workload. The feasibility of various alternatives for workload relief was discussed by district and OCFS staff.

9. Federal Standards

These proposed regulatory amendments meet but do not exceed any applicable federal standards.

10. Compliance Schedule

The proposed regulatory amendments do not establish any compliance requirements.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments

The proposed regulatory changes provide local social services districts (LSSDs) with greater flexibility when contracting to purchase social services paid with state or federal funds. LSSDs are no longer limited to a maximum 12-month contract term and are permitted to enter multi-year contracts. In order to provide additional administrative flexibility, LSSDs are permitted to use an equivalent local form in lieu of the formerly required state form and are no longer required to maintain a master index of all contracts. The public, not-for-profit, voluntary, and other agencies that social services districts may contract with for these services will also benefit from the increased contracting flexibility. LSSDs will be able to negotiate contracts more competitively by being able to agree to multi-year contract periods. The agencies with which they contract will be able to better plan for needed resources and to commit to developing additional resources if they successfully enter into multi-year contracts.

2. Compliance Requirements

The proposed regulatory amendments do not establish any compliance requirements. Insofar as the proposed regulatory changes provide LSSDs with additional options in contracting for services, they reduce compliance requirements.

3. Professional Services

The technical assistance to be provided by the Office of Children and Family Services (OCFS) will include professional services to assist local districts in implementing multi-year contracts on an as needed basis.

4. Compliance Costs

There are no identified compliance costs as the proposed regulatory amendments provide increased flexibility and choices to social services districts and service providers when they enter contracts for purchase of services.

5. Economic and Technological Feasibility

It is anticipated that the affected local governmental agencies (social services districts) have the economic and technological feasibility to enter multi-year contracts for the purchase of services, if they so choose.

6. Minimizing Adverse Impact

It is not anticipated that the proposed regulatory changes will result in an adverse impact on small businesses or local government agencies or instrumentalities. Consistent with State Administrative Procedure Act § 202-b(1), the proposed amendments provide increased flexibility in model contract form and length of contract term.

7. Small Business and Local Government Participation

OCFS held a series of conferences calls with social services commissioners, directors of services, and staff, and several service providers to discuss ways that OCFS could assist social services districts in providing workload relief. LSSDs suggested that having the ability to enter multi-year contracts would assist them by eliminating the time and effort otherwise required for annual contract negotiations. These proposed regulatory changes seek to implement the LSSDs' suggestion.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The proposed regulatory amendments apply to all local social services districts (LSSDs), including the 44 districts that contain rural areas. Those public and private agencies in rural areas contracting with LSSDs to provide social services also will be affected by the regulation.

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

The proposed regulatory changes do not impose any reporting, recordkeeping or other compliance requirements. The proposed regulatory amendments will increase flexibility regarding the current recordkeeping requirement that LSSDs maintain a master index of contracts by eliminating the specific requirements of that index.

3. Costs:

The proposed amendments will not impose any costs on LSSDs or agencies, including those in rural areas. The proposed regulatory changes will provide the opportunity for LSSDs to save administrative costs by eliminating the requirement of annual contract negotiations, and may enable LSSDs and service providers to enter into more competitive contracts.

4. Minimizing adverse impact:

It is not anticipated that the proposed regulatory amendments will result in an adverse impact on rural areas. Consistent with State Administrative Procedure Act § 202-bb(2), the proposed amendments provide increased flexibility in model contract form and length of contract term.

5. Rural area participation:

OCFS held a series of conferences calls with social services commissioners, directors of services, and staff, and several service providers, including those from LSSDs that contain rural areas, to discuss ways that OCFS could assist the districts in providing workload relief. LSSD staff suggested that having the ability to enter multi-year contracts would assist them by eliminating the time and effort otherwise required for annual contract negotiations. These proposed regulatory changes seek to implement this suggestion.

Job Impact Statement

A full job impact statement has not been prepared for the proposed regulatory amendments. The proposed regulatory amendments would not result in the loss of any jobs. It is apparent from the nature and purpose of the proposed amendments (allowing local social services districts to enter multi-year contracts for the purchase of social services with state or federal funds, and permitting additional flexibility in related contract procedures) that they will not have a substantially adverse impact on jobs and employment opportunities. The proposed regulations may have a positive impact on job stability insofar as it may enable private agencies to enter multi-year contracts with social services districts and accordingly plan for a more stable workforce.

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

Designation of Two County Officials to be Emergency Contacts When a Youth is Remanded to an Out-of-County Detention Facility

I.D. No. CFS-43-11-00015-P

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

Proposed Action: Amendment of section 180.7(c)(1) of Title 9 NYCRR.

Statutory authority: Executive Law, section 501(3)

Subject: Designation of two county officials to be emergency contacts when a youth is remanded to an out-of-county detention facility.

Purpose: To allow each county to designate one public official as the emergency contact for detention instead of two officials.

Text of proposed rule: Paragraph (1) of subdivision (c) of section 180.7 of 9 NYCRR is amended to read:

(1) When placement is from a county other than the operating county, [the names of two public officials] *contact information for a public official* authorized to make emergency decisions regarding the youth, and the telephone numbers where [each] *such official* may be reached on a 24-hour basis, shall be provided at the time of admission.

Text of proposed rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12210, (518) 473-7793

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law (ExL) § 502(3) defines detention as the temporary care and maintenance of a youth held away from his or her home as an

alleged or adjudicated juvenile delinquent, juvenile offender or person in need of supervision pending certain court actions, administrative hearings or change in custody.

ExL § 503(1) requires the Office of Children and Family Services (OCFS) to establish regulations for the operation of secure and non-secure detention facilities in accordance with Article 19-G of the Executive Law and County Law § 218-a.

ExL § 503 also requires OCFS to oversee detention facilities, including visiting and inspecting detention facilities and reporting to the appropriate local authorities on the operation and adequacy of such facilities. A detention facility may not receive or care for detained children unless the facility is certified by OCFS. OCFS may suspend or revoke a facility's certification for good cause shown.

County Law § 218-a requires each county to have adequate and conveniently accessible secure and non-secure detention accommodations available when required. A county may meet this requirement by arranging for access to detention accommodations located in another county. Provision of detention is a local responsibility that is monitored and regulated by the state.

2. Legislative objectives:

OCFS is charged with providing uniform standards and procedures for the establishment and operation of secure and non-secure juvenile detention facilities. (see 9 NYCRR § 180.1) Intake and admission procedures for juvenile detention are addressed in 9 NYCRR § 180.7. Section 180.7(c)(1) currently requires a county to designate two public officials to be on-call 24 hours a day to make emergency decisions regarding the youth, when the county places a youth in a detention facility located in another county.

3. Needs and benefits:

This proposed amendment to § 180.7(c)(1) requires a county to designate only one public official, instead of two, as the on-call 24 hour contact when the county places a youth in an out-of-county detention facility. The current regulatory requirement for two on-call designees predates the use of cell phones and other electronic devices that make it easier to reach a contact person in case of an emergency or unexpected contingency. The proposed change will be an administrative convenience for counties that use detention facilities located in another county. If a county compensates its staff for on-call coverage, the amendment also may result in cost savings to that county.

4. Costs:

None. The proposed amendment to require only one on-call contact instead of two may result in savings.

5. Local government mandates:

The proposed amendment reduces local mandates.

6. Paperwork:

The proposed amendment requires no additional paperwork.

7. Duplication:

None. There is no other relevant rule or legal requirement on this topic.

8. Alternatives:

OCFS did not consider any significant alternatives, such as eliminating the on-call requirement, to be feasible.

9. Federal standards:

There is no relevant federal standard on this topic.

10. Compliance schedule:

OCFS estimates that counties will be able to comply immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

9 NYCRR § 180.7(c)(1) currently requires a county to designate two public officials to be on-call 24 hours a day to make emergency decisions regarding the youth, when the county places a youth in a detention facility located in another county. The proposed amendment to § 180.7 requires the designation of only one public official as the on-call contact, instead of two. The proposed change will be an administrative convenience for counties that use detention facilities located in another county. If a county compensates its staff for on-call coverage, the amendment also may result in cost savings to the county.

The majority of detention facilities are operated by not-for-profit authorized agencies which also may be small businesses. OCFS does not anticipate that regulatory change will negatively affect these small businesses. The current regulation pre-dates the common use of cell phones and other electronic devices that make it easier to reach a person who is on-call. Even with only one emergency contact person, the detention facility should be able to readily reach a public official from the youth's home county when necessary.

2. Compliance requirements:

Counties will be required to designate only one public official, instead of two, as the on-call 24 hour contact when the county places a youth in a detention facility located in another county.

3. Professional services:

No professional services are needed to implement the proposed amendment.

4. Compliance costs:

None. Where a county pays compensation for on-call coverage, the amendment may result in cost savings to that county.

5. Economic and technological feasibility:

The proposed amendment is economically and technologically feasible.

6. Minimizing adverse impact:

No adverse impact on either local governments or small businesses is anticipated from this proposed amendment.

7. Small business and local government participation:

This proposed amendment to 9 NYCRR § 180.7(c)(1) was submitted as a mandate relief measure under Executive Order No. 17 and shared with OCFS stakeholders, including local governments and small businesses. OCFS received no negative comments from stakeholders regarding this measure.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

9 NYCRR § 180.7(c)(1) currently requires a county to designate two public officials to be on-call 24 hours a day to make emergency decisions regarding the youth, when the county places a youth in a detention facility located in another county. The proposed amendment to § 180.7 requires the designation of only one public official as the on-call contact, instead of two.

Under County Law § 218-a, each county is required to have adequate and conveniently accessible secure and non-secure detention accommodations available when needed. A county may meet this requirement by arranging for access to detention accommodations located in another county. However, some small rural counties use little or no detention.

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

The proposed amendment imposes no new reporting, recordkeeping or other compliance requirements. No professional services are needed to implement the proposed amendment.

3. Costs:

None. Where a county compensates staff for providing on-call coverage, the amendment may result in cost savings to that county.

4. Minimizing adverse impact:

No adverse impact on rural areas is anticipated from this proposed amendment.

5. Rural area participation:

This proposed amendment to 9 NYCRR § 180.7(c)(1) was submitted as a mandate relief measure under Executive Order No. 17 and shared with OCFS stakeholders, including stakeholders in rural areas. OCFS received no negative comments from stakeholders regarding this measure.

Job Impact Statement

A full job impact statement has not been prepared for the proposed amendment to 9 NYCRR 180.7(c)(1) which requires the designation of only one public official, instead of two, as the on-call 24 hour contact when the county places a youth in a detention facility located in another county. Reducing the number of staff providing on-call coverage when a youth is detained outside the county will not result in the loss of any jobs.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-12-11-00011-A

Filing No. 968

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the March 23, 2011 issue of the Register, I.D. No. CVS-12-11-00011-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-12-11-00012-A

Filing No. 953

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of final rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by adding thereto the position of Chief Information Security Officer 2 (1).

Final rule as compared with last published rule: Nonsubstantive changes were made the number 2 was added to the position title.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00002-A

Filing No. 955

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00003-A

Filing No. 957

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00004-A

Filing No. 954

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00005-A

Filing No. 958

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00006-A

Filing No. 959

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-18-11-00007-A

Filing No. 952

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CVS-18-11-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-11-00005-A

Filing No. 960

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. CVS-20-11-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-11-00006-A

Filing No. 961

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. CVS-20-11-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-11-00007-A

Filing No. 956

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. CVS-20-11-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-11-00008-A

Filing No. 965

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class and to classify a position in the non-competitive class.
Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. CVS-20-11-00008-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-20-11-00009-A
Filing No. 966
Filing Date: 2011-10-11
Effective Date: 2011-10-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the exempt class.
Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. CVS-20-11-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-11-00004-A
Filing No. 962
Filing Date: 2011-10-11
Effective Date: 2011-10-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from the exempt class.
Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CVS-25-11-00004-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-11-00005-A
Filing No. 967
Filing Date: 2011-10-11
Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CVS-25-11-00005-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-11-00006-A
Filing No. 964
Filing Date: 2011-10-11
Effective Date: 2011-10-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: Delete subheading from exempt and non-competitive classes; classify and delete positions in the exempt and non-competitive classes.
Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CVS-25-11-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-11-00007-A
Filing No. 969
Filing Date: 2011-10-11
Effective Date: 2011-10-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the non-competitive class.
Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CVS-25-11-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-25-11-00008-A
Filing No. 963
Filing Date: 2011-10-11
Effective Date: 2011-10-26

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class.

Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. CVS-25-11-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Annual Professional Performance Reviews for Classroom Teachers and Building Principals

I.D. No. EDU-23-11-00006-E

Filing No. 947

Filing Date: 2011-10-07

Effective Date: 2011-10-07

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(o); and addition of Subpart 30-2 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and 3012-c(1)-(8), as added by L. 2010, ch. 103

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

Specific reasons underlying the finding of necessity: On May 28, 2010, the Governor signed Chapter 103 of the Laws of 2010, which added a new section 3012-c to the Education Law, establishing a comprehensive evaluation system for classroom teachers and building principals. The new law requires each classroom teacher and building principal to receive an annual professional performance review (APPR) resulting in a single composite effectiveness score and a rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model)
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation

For the 2011-2012 school year, the law applies to classroom teachers in the common branch subjects, English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new law applies to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system.

By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the

school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual "ineffective" ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The law further provides that all evaluators must be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures must be locally developed in each school district and BOCES.

Section 3012-c of the Education Law requires that any regulations needed to implement the new evaluation system be implemented no later than July 1, 2011, after consultation with an advisory committee. In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c. Throughout its deliberations, the Task Force has been supported by the active participation of teams of research advisors, and numerous experts have made presentations to the Task Force. Research and best practice examples were disseminated and discussed at length.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations. At its May meeting, the Board of Regents adopted the proposed amendment as an emergency measure.

The proposed regulations implement the new law, by adding a new Subpart 30-2 to the Rules of the Board of Regents to establish the requirements for the new evaluation system.

Section 30-2.1 of the Rules of the Board of Regents explains that during the 2011-12 school year, teachers and principals who are not covered by the new law must still be evaluated under the existing APPR regulations and districts and BOCES must comply with the requirements in Subpart 30-2 for classroom teachers and building principals covered by the new law. It also reiterates the language from the statute that says the regulations do not override any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 until the agreement expires and a successor agreement is entered into; at that point, however, the new evaluation regulations apply. In response to comments, a revision to this section was also made to clarify that nothing in the regulations shall be construed to affect the statutory right of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the law.

Section 30-2.2 defines the terms used throughout the regulations. Section 30-2.3 lists the information that every district or BOCES must include in its APPR plan.

Section 30-2.4 lays out all the requirements for evaluating classroom teachers in common branch subjects, English language arts (ELA), and math in grades 4-8 and their building principals for the 2011-12 school year. This section explains that 20 points of the evaluation will be based on student growth on State assessments and 20 points will be based on locally selected measures; explains what types of locally selected measures of student achievement may be used (first for teachers, then for principals); and describes what types of other measures of effectiveness may be used for the remaining 60 points, including observations, surveys, etc. (first for teachers, then for principals).

Section 30-2.5 lays out the requirements for evaluating all classroom teachers and building principals for the 2012-13 school year and thereafter, following the same order as the preceding section. This section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points as-

signed for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades/courses and subjects. The remaining 60 points will be assigned based on the same criteria as the preceding section.

Section 30-2.6 explains how the subcomponents should be scored and provides scoring ranges for the State assessment and locally selected measures subcomponents and the overall rating categories. Sections 30-2.7 and 30-2.8 outline the processes by which the Department will review and approve teacher and principal practice rubrics and student assessments, respectively, for use in districts' and BOCES' teacher and principal evaluation systems. Section 30-2.9 describes the requirements for evaluator training; Section 30-2.10 covers teacher and principal improvement plans; and Section 30-2.11 covers appeal procedures.

The proposed amendment was adopted as an emergency rule at the May 2011 Regents meeting, with the provisions regarding the new Subpart 30-2 becoming effective on May 20, 2011 and the amendments to section 100.2(o) becoming effective on July 1, 2011. On June 28, 2011, litigation was commenced against the proposed amendment in State Supreme Court. On August 24, 2011, State Supreme Court, Albany County (Lynch, J.) issued a Decision and Order in *New York State United Teachers, et al. v. Board of Regents, et al.* finding sections 30-2.4(c)(3)(d), 30-2.4(d)(1)(iii), 30-2.4(d)(1)(iv)(c), 30-2.12(b), 30-2.1(d) and 2.11(c), and 30-2.6(a)(1) of the proposed regulations invalid to the extent set forth in the Decision and Order. An appeal is being taken from that Decision and Order. Because the May emergency rule would expire in August and no Regents meeting was scheduled for August, the proposed amendment was subsequently readopted as an emergency rule at the July Regents meeting and filed with the Department of State on August 11, 2011. The July emergency rule will expire on October 10, 2011 before the October 17-18, 2011 Regents meeting. Another emergency action is therefore necessary at the September 12-13, 2011 Regents meeting to ensure the emergency rule remains continuously in effect while litigation is pending on certain of its provisions until all appeals are final and it can be adopted as a permanent rule.

The recommended action is 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 emergency rule remains continuously in effect until it can be adopted as a permanent rule.

Subject: Annual professional performance reviews for classroom teachers and building principals.

Purpose: Establish standards and criteria for conducting annual professional performance reviews of classroom teachers and building principal.

Substance of emergency rule: The Commissioner of Education proposes to amend section 100.2 of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, effective October 10, 2011, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The following is a summary of the substance of the emergency rule.

Section 100.2(o) is amended to clarify that classroom teachers who are not subject to the provisions of Education Law section 3012-c in the 2011-2012 school year must still comply with the existing annual professional performance review set forth in section 100.2(o). A new provision was also added to section 100.2(o) to require that beginning July 1, 2011, all building principals that are not required to be evaluated under Education Law § 3012-c must be evaluated on an annual basis based on a plan agreed to by the building principal and the governing body of the school district or BOCES.

A new Subpart 30-2 is added to the Rules of the Board of Regents to establish requirements for the new annual professional performance review (APPR) system established by Education Law section 3012-c.

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are

conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

For an APPR conducted in the 2012-2013 school year and thereafter, the school district or BOCES shall ensure that the reviews of all classroom teachers and building principals are conducted in accordance with the requirements of section 3012-c and Subpart 30-2. However, nothing shall be construed to preclude a school district or BOCES from adopting an APPR for the 2011-2012 school year that applies to all classroom teachers and building principals in accordance with this Subpart or for BOES, for classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight and all building principals in which such teachers are employed.

The section also provides that nothing in Subpart 30-2 shall abrogate any conflicting provisions of any collective bargaining agreement in effect on July 1, 2010 during the term of such agreement and until the entry into a successor collective bargaining agreement, at which time the provisions in Subpart 30-2 will apply.

This section further provides that nothing in the Subpart shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal or to restrict a school district's or BOCES' discretion in making a tenure determination pursuant to the new law.

Section 30-2.2 provides definitions for certain terms used in the Subpart.

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. To the extent that any of the items required to be included in the plan are not finalized by such date, as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district or BOCES shall file an emended plan upon completion of such negotiations.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 40 of the 60 points for teachers shall be based on classroom observations. At least 40 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator.

Section 30-2.5 sets forth requirements for evaluating all classroom teachers and building principals for the 2012-2013 school year and thereafter. The section explains how the requirements for the State assessment and locally selected measures subcomponents will differ, including the points assigned for each subcomponent, depending on whether the Board of Regents has approved a value-added growth model for particular grades, courses. This section also describes the options that may be used for the State assessment subcomponent for non-tested subjects. The choice of locally selected measures and the other measures of teacher and principal effectiveness are based on the same criteria as in 30-2.4.

Section 30-2.6 describes the procedures for scoring and rating the

evaluations, including a requirement that the rating category (“Highly Effective”, “Effective”, “Developing”, or “Ineffective”) assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

Section 30-2.7 describes the criteria and approval process for teacher and principal practice rubrics to be used in the evaluation of teachers and building principals.

Section 30-2.8 describes the criteria and approval process for student assessments to be used in the evaluation of teachers and building principals.

Section 30-2.9 describes requirements for the training of evaluators and the training and certification of lead evaluators.

Section 30-2.10 describes requirements for teacher and principal improvement plans.

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR.

Section 30-2.12 provides that the Department will annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests that a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school, district or BOCES identified by the Department may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, a requirement that the school district or BOCES utilize independent trained evaluators, where appropriate.

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-23-11-00006-EP, Issue of June 8, 2011. The emergency rule will expire December 5, 2011.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of the educational work of the State and establishes the Regents as head of the Department.

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Education Law section 215 authorizes the Commissioner to require reports from schools under State educational supervision.

Education Law section 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies. Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES), including the use of measures of student achievement; differentiation of teacher and principal effectiveness using quality rating categories of “highly effective”, “effective”, “developing” and “ineffective”, with explicit minimum and maximum scoring ranges for each category as prescribed in Commissioner’s Regulations; use of a single composite effectiveness score which incorporates multiple measures of effectiveness related to criteria included in Commissioner’s Regulations; the training of individuals conducting evaluations in accordance with Commissioner’s Regulations; and implementation of improvement plans consistent with Commissioner’s regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3012-c by prescribing criteria for APPR of classroom teachers and building principals.

3. NEEDS AND BENEFITS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. This evaluation system is a critical element of the Regents reform agenda—an agenda aimed at improving teaching and learning in New York and increasing the opportunity for all students to graduate from high school ready for college and careers.

A primary objective of the evaluation system is to foster a culture of continuous professional growth. The system’s three components are designed to complement one another:

- Statewide student growth measures will identify those educators whose students’ progress exceeds that of their peers, as well as those whose students are falling behind compared to similar students.
- Locally selected measures of student achievement will reflect local priorities, needs, and targets.
- Teacher observations, school visits, and other measures will provide educators with detailed, structured feedback on their professional practice.

Together, this information will be used to tailor professional development and support for educators to grow and improve their instructional practices, with the ultimate goal of ensuring an effective teacher in every classroom and an effective leader in every school.

4. COSTS:

a. Costs to State government: The rule implements Education Law section 3012-c and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

b. Costs to local government: Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The costs discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will impose the following costs on school districts/BOCES. The estimated costs below assume that school districts and BOCES will need to pay for extra time for personnel at current rates. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, \$700 million in Race to the Top funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of these costs.

State assessments or Other Comparable Measures

The statute requires that 20% of a teacher or principal’s evaluation be based on student growth on State assessments or other comparable measures (increases to 25% upon implementation of a value-added growth model). There are no additional costs beyond those imposed by statute for evaluating a teacher based on State assessments.

For non-tested subjects where there is no approved growth or value-added model for such grade/subject, the proposed amendment requires the district/BOCES to evaluate teachers and principals using a State-determined district- or BOCES-wide student growth goal setting process with an approved student assessment. The Department estimates that for non-tested subjects, a teacher or principal will spend approximately 4 hours to set his/her goals for the year and that a

principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will cost a school district/BOCES \$257.74 per teacher (4 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$373.31 per principal (4 principal hours to set goals plus 1 superintendent hour to review goals with principal).

The goal-setting process also requires the use of a student assessment. In core subjects where no State assessment or Regents examination exists for such grades/subjects, the district/BOCES must use the goal setting process with an approved third-party assessment (at a cost per student of \$10-\$20 per student) or a Department-approved alternative examination (which the Department expects would have no additional cost). For all other non-tested grades/subjects, districts must use the goal-setting process with either an approved third-party assessment (at a cost of \$10-\$20 per student), a district- or BOCES-created assessment or a teacher-created assessments(which the Department expects would have minimal, if any, costs).

Locally Selected Measures

An additional 20% of the evaluation must be based on locally selected measures. The regulation provides districts/BOCES with several options for this component. For teacher evaluations, the regulation provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide, group or team metric based on such assessments; student achievement on State assessments Regents examinations and/or Department approved alternative examinations; and a structured district-wide student growth goal-setting process to be used with any State assessment, an approved student assessment, or other school or teacher-created assessment. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs. If the district/BOCES uses the goal-setting process, the costs are the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State's approved list, which the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected. If a district/BOCES selects a school or teacher-created assessment, it will need to implement a growth goal setting process at a similar cost to the one described above. The estimated costs for a teacher-created assessment itself are negligible and capable of being absorbed using existing staff and resources.

For principals, the regulation provides many options for the locally selected measures subcomponent, which include, but are not limited to, student achievement on State assessments for certain subgroups, student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward graduation rates, the Department expects these costs to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost for principals that wasn't already incurred for teachers.

Other Measures

For the remaining 60% of the evaluation, the proposed amendment requires that 40 of the 60 points be based on multiple classroom observations for teachers and at least 40 of the 60 points be based on a broad assessment of the principal's leadership and management actions by the building principal's supervisor or a trained independent evaluator. The proposed amendment requires at least 2 observations for teachers and at least 1 principal assessment. For a teacher observation, the Department estimates the following costs:

Teacher Observations: While the regulation does not specifically prescribe how a district must conduct its observations. Based on a model currently in use, the Department expects a teacher will spend approximately 2 hours per classroom observation for pre- and post-conference meetings with the principal/evaluator, which would equate to 4 hours per year. Based on the same model, the Department expects that a principal/evaluator would spend approximately 1 hour for a teacher classroom observation and 2 additional hours for pre-conference and post-conference meetings associated with the conference, which would equate to 3 hours per observation or 6 hours per teacher per year. Therefore, for each teacher, a school district or BOCES would spend approximately \$617.24 per year on classroom observations, under the proposed rule. The Department believes that many districts currently conduct classroom observations and some districts conduct more than 2 observations per year, so for many districts there will be no additional costs imposed by the regulation.

Principal Assessment: The Department expects that a principal will spend approximately 4 hours preparing for a school visit by a superintendent and that a superintendent will spend approximately 2 school days assessing and observing a principal's practice. Therefore, the cost for a district to assess a principal's performance under the requirements of the proposed amendment are estimated to be \$287.60 for the principal and \$1,371.36 for the superintendent.

The proposed amendment also requires that the 60 points be based on a teacher or principal practice rubric approved by the Department or a rubric approved through a variance process. The Department estimates that more than one rubric on the State's approved list will be available to districts/BOCES at no cost. While some rubrics may offer training for a fee and others may require proprietary training, any costs incurred for training are costs imposed by the statute. Many rubric providers do not require a school district/BOCES to receive training through the provider and some providers even provide free online training. The Department estimates that districts/BOCES can obtain a principal practice in the following range: \$0-\$360 per principal evaluated. Some principal practice rubrics may charge an additional fee for training on the rubric, although most rubric providers do not require a user to receive training through the rubric provider.

Reporting and Data Collection

The proposed amendment requires that school districts or BOCES report information to the Department on enrollment and attendance data and any other student, teacher, school, course and teacher/student linkage data. The majority of this data is required to be reported under the America COMPETES Act (20 U.S.C. 9871). Therefore, no additional costs are imposed by the proposed amendment. To the extent that such information is not required to be reported under federal law, the Department expects that most districts/BOCES already compile this information and, therefore, these reporting requirements are minimal and should be absorbed by existing district or BOCES resources.

The proposed amendment also requires that every teacher and principal be required to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will cost a district or BOCES \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will cost a district/BOCES \$575.20 per principal.

As for the additional reporting requirements contained in section 30-2.3 of the Rules of the Board of Regents, school districts or BOCES are required to report many of these requirements under the existing APPR regulations (section 100.2[o])- i.e., explanation of evaluation system used and description of timely and constructive feedback) and the Department expects that most districts or BOCES would put their evaluation process, including appeal procedures in writing and, therefore, reporting of such information would not impose any additional costs on a school district or BOCES.

Vested Interest

The proposed amendment also requires that districts certify that teachers and principals not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place. However,

in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that any costs imposed by this requirement in the regulation are minimal, if any.

Scoring

The statute requires that a teacher receive a teacher or principal composite effectiveness score based on their score on three subcomponents (student growth on State assessments or other comparable measures; locally selected measures of student achievement and other measures of teacher and principal effectiveness). The proposed amendment sets forth the scoring ranges for the rating categories in two of these subcomponents and overall rating categories. The proposed amendment does not impose any additional costs beyond those imposed by statute.

Training

The statute requires that all evaluators be properly trained before conducting an evaluation. The proposed amendment requires that a lead evaluator be certified by the district/BOCES before conducting and/or completing a teacher's or principal's evaluation and that evaluators be properly trained. Since the training is required by statute, the only additional cost imposed are associated with the district or BOCES' certification and recertification of lead evaluators, which costs are expected to be negligible and capable of absorption using existing staff and resources.

Teacher and Principal Improvement Plans and Appeal Procedures

The statute also requires school districts/BOCES to develop teacher and principal improvement plans for teachers rated ineffective or developing and to develop an appeals procedure through which a teacher or principal may challenge their APPR. The proposed amendment reiterates these statutory requirements and does not impose any additional costs on districts/BOCES relating to the development of TIP/PIP's or an appeal procedure, beyond those imposed by statute.

c. Costs to private regulated parties: None. The rule applies to annual professional performance reviews of teachers and building principals that are conducted by school districts/BOCES and does not impose any costs on private parties.

d. Cost to regulatory agency for implementing and continued administration of the rule: See above cost to State government.

5. LOCAL GOVERNMENT MANDATES:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model)
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York

can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

If a teacher or principal is rated "developing" or "ineffective," the law requires the school district/BOCES to develop and implement a teacher or principal improvement plan (TIP or PIP). Tenured teachers and principals with a pattern of ineffective teaching or performance - defined by law as two consecutive annual ineffective" ratings - may be charged with incompetence and considered for termination through an expedited hearing process.

The statute also requires all evaluators to be appropriately trained consistent with standards prescribed by the Commissioner and that appeals procedures be locally developed in each school district/BOCES.

6. PAPERWORK:

In addition to the paperwork requirements described in Section 5 of this document, the proposed amendment contains the following paperwork requirements.

Section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires any school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-

party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

7. DUPLICATION:

The rule is necessary to implement Education Law section 3012-c and does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, NYSUT, SAANYS and teachers and administrators across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

9. FEDERAL STANDARDS:

The rule is necessary to implement Education Law section 3012-c. There are no applicable Federal standards concerning the APPR for classroom teachers and building principals as established in Education Law section 3012-c.

10. COMPLIANCE SCHEDULE:

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By 9/01/11, each school district shall adopt a plan for the APPR of its classroom teachers in the

common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by 9/01/12, each school district and BOCES shall adopt a plan, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The proposed rule does not impose any reporting, record-keeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule applies to all school districts and boards of cooperative educational services ("BOCES") in the State.

2. COMPLIANCE REQUIREMENTS:

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model)
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendments to section 100.2(o) of the Commissioner's regulations require that beginning July 1, 2011, each school district evaluate

their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identifica-

tion of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES. Economic feasibility is addressed above under Compliance Costs.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

7. LOCAL GOVERNMENT PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the

proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

The statute requires each classroom teacher and building principal to receive an APPR resulting in a single composite effectiveness score and rating of "highly effective," "effective," "developing," or "ineffective." The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 40 of the 60 points be based on multiple classroom observations, including at least one observation by a principal or other trained administrator and, for principals, at least 40 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained independent evaluator, including one or more school visits by a supervisor.

For the 2011-2012 school year, the new law only applies to classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and the building principals of schools in which such teachers are employed. In the 2012-2013 school year, the new evaluation system will apply to all classroom teachers and building principals. However, the Department recommends that, to the extent possible, districts and BOCES begin the process of rolling this system out for the evaluation of all classroom teachers and building principals in the 2011-2012 school year so that New York can quickly move to a comprehensive teacher and principal evaluation system. By law, the APPR is required to be a significant factor in employment decisions such as promotion, retention, tenure determinations, termination, and supplemental compensation, as well as a significant factor in teacher and principal professional development.

The proposed amendment also prescribes the following requirements:

The amendment to section 100.2(o) of the Commissioner's regulations requires that beginning July 1, 2011, each school district evaluate their building principals on an annual basis according to procedures developed by the governing body of each school district. Such procedures shall be filed in the district office and available for review by an individual no later than September 10th of each year.

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language

arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By September 1, 2012, each school district/BOCES shall adopt an APPR plan, which may be an annual or multi-year plan, for all of its classroom teachers and building principals. To the extent that any of the items required to be included in the annual professional performance review plan are not finalized by September 1 of each year as a result of pending collective bargaining negotiations, the plan shall identify those specific parts of the plan and the school district shall file an amended plan upon completion of such negotiations. Such plan shall be filed in the district or BOCES office, as applicable, and made available to the public on its web-site no later than September 10th of each school year, or within ten days after its adoption, whichever shall later occur.

This section also requires that the APPR plan describe the school district's or BOCES' process for ensuring that the Department receives accurate teacher and student data, including certain identified information; how the district or BOCES will report subcomponent scores and the total composite effectiveness score for each classroom teacher and building principal in the school district or BOCES; the assessment development, security and scoring processes utilized by the school district or BOCES, which includes a requirement that any process and assessment or measures are not disseminated to students before administration and that teachers and principals do not have a vested interest in the outcome of the assessments they score; describe the details of the evaluation system used by the district or BOCES; how the district or BOCES will provide timely and constructive feedback to teachers and building principals and the appeal procedures used by the district or BOCES.

The proposed amendment also requires a school district or BOCES that uses a district, regional or BOCES-developed assessment; a school-wide, group or team metric or a structured district-wide student growth goal setting process to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

If a school district or BOCES seeks to use a teacher or principal practice rubric that is either a close adaptation of a rubric on the approved list, or a rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

The proposed amendment also requires that the process by which points are assigned in the various subcomponents and the scoring ranges for the subcomponents must be transparent and available to those being rated before the beginning of each school year.

A provider seeking to place a practice rubric in the list of approved rubrics, or an assessment on the list of approved assessments, shall submit to the Commissioner a written application that meets the requirements of sections 30-2.7 and 30-2.8, respectively. An approved rubric or approved assessment may be withdrawn for good cause. The provider may reply in writing within 10 calendar days of receipt of Commissioner's notification of intent to terminate approval.

The governing body of each school district is required to ensure that evaluators have appropriate training before conducting an evaluation under this section and the lead evaluator must be appropriately certified and periodically recertified.

If a teacher or principal is rated "developing" or "ineffective," the school district or BOCES is required to develop and implement a teacher or principal improvement plan (TIP or PIP) that complies with section 30-2.10. Such plan shall be developed locally through negotiations pursuant to Civil Service Law Article 14, and include identification of needed areas of improvement, a timeline for achieving improvement, the manner in which the improvement will be assessed and, where appropriate, differentiated activities to support improvement in those areas.

In accordance with the requirements of the statute, the proposed amendment also requires a school district or BOCES to develop an appeals procedure through which a teacher or principal may challenge their annual professional performance review.

The proposed amendment does not impose any additional professional services requirements on school districts or BOCES.

3. COSTS:

See the Costs Section of the Regulatory Impact Statement that is published in the State Register on this publication date for an analysis of the costs of the proposed rule, which include costs for school districts and BOCES across the State, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

Regarding how student growth should be measured in non-tested subjects, the rule strikes a balance between prescriptiveness and choice by requiring, for teachers in grades 6-11 core subjects where there is no State assessment used as part of a growth or value-added growth model, use of a State-determined, district-wide growth goal-setting process with standardized student assessments chosen from a State-approved list; and, in other grades/subjects where there is no State assessment used as part of a growth or value-added growth model, requiring use of a State-determined, district-wide growth goal-setting process with an assessment selected by districts from a range of choices (including State-approved commercially available assessments, district or BOCES developed assessments, school-wide, group, or team results based on State assessments, and teacher-created assessments).

The rule also provides flexibility in the allocating the 20 points assigned to locally selected measures. The Department has provided a list of local options for the evaluation of teachers and principals for the 20 points of the teacher or principal composite effectiveness score attributed to this subcomponent (15 points once value-added model is implemented).

Consistent with providing flexibility, the rule does not set scoring ranges for the rating categories within the 60 point other measures subcomponent and the rule provides for a variance process for school districts or BOCES that wish to use an existing rubric or a new innovative rubric.

5. RURAL AREA PARTICIPATION:

In September 2010, the Department convened an advisory committee known as the Regents Task Force on Teacher and Principal Effectiveness ("Task Force"), which is comprised of representatives of teachers, principals, superintendents of schools, school boards, school districts and board of cooperative educational services officials, and other interested parties. The Task Force has been meeting since September 2010 and they have been divided into workgroups to provide guidance and consider certain aspects of Education Law 3012-c.

After months of discussion and deliberations, the Task Force generated a written report of their recommendations. At the April 2011 Regents meeting, the Task Force presented their recommendations to the Board of Regents. Thereafter, the Department presented their recommendations, which incorporated most of the Task Force's recommendations. At that point, the Regents directed the Department to draft regulations reflecting the Department's recommendations.

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

Job Impact Statement

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 8, 2011, the State Education Department received the following comments.

1. COMMENT:

The use of student test data to evaluate teachers and administrators is contrary to the evidence as established in research and reports, which predicts that, using one year of data, 35% of teacher classifications will be wrong, and that different tests yield different teacher rankings. More importantly, it creates a system which ties the economic well being of educators to student test scores, which will give rise to treating students as mere conduits of cash, leading to student abuse and debasement of public education.

DEPARTMENT RESPONSE:

The provisions in the proposed rule relating to student growth on State assessments or other comparable measures, and locally selected measures of student achievement, are necessary to implement Education Law section 3012-c, which provides that the annual review of teachers and principals must "include measures of student achievement" (§ 3012-c[1]). Because this requirement is imposed by statute, it cannot be changed except through a statutory amendment, which is beyond the scope of this rule making.

2. COMMENT:

The proposed rule provides that the "State Assessments or Other Comparable Measures" subcomponent of a teacher's or principal's quality rating be based on a comparison of the individual teacher's or principal's results with the State average for similar students. An average merely shows how individuals in a group compare relative to each other and shows nothing about how they compare to an actual standard. Whenever comparisons are made to any average, 50% of the individuals within a group will be above average and 50% will be below average, regardless of how the data are disaggregated into various types of similar groupings. This will result in 50% of teachers and building principals in every school district in the State being below average and will require them to have mandated improvement plans. Furthermore, since the year-to-year reliability of New York State Assessments is low and approximately equal to random chance, the same individuals who happened to be above average one year will likely be below average the next year thus requiring that they also have mandated improvement plans. Also, the proposed rule will result in more mandated student testing to generate the data needed to rate teachers, which will put an enormous strain on school district resources.

DEPARTMENT RESPONSE:

The provisions in the proposed rule relating to student growth on State assessments or other comparable measures are necessary to implement Education Law section 3012-c, which provides that the annual review of teachers and principals must "include measures of student achievement" (§ 3012-c[1]). Because this requirement is imposed by statute, it cannot be changed except through a statutory amendment, which is beyond the scope of this rule making. The rule requires scores for each of the three subcomponents in addition to an overall score out of 100 points. Section 30-2.6(a)(1) lists the range of scores needed to classify the overall composite score into the four rating categories. The composite score classification, not a single subcomponent score classification, is used to determine whether a teacher or principal improvement plan is required. Per section 30-2.10(a), a teacher or principal who is rated as developing or ineffective on the entire annual professional performance review (i.e. the

composite score) shall have an improvement plan implemented; improvement plans are NOT required for educators who receive a rating of developing or ineffective on a subcomponent score, they are only required if they receive a developing or ineffective rating on the composite score.

3. COMMENT:

Section 30-2.4(c)(3)(i)(d) of the proposed rule should be revised to require that 20% of the teacher’s evaluation for student performance be based on State and standardized assessments and the remaining 20% be based on local assessment tools. Concern was expressed that having school districts use scores from State and standardized tests for 40% of a teacher’s annual professional performance review, by permitting districts to select State and standardized assessments as their local assessment tool, will discourage school districts from developing effective local assessments, because of the ease in simply doubling the score received by State and standardized assessments and the possibility that funding may at some point be tied to the use of standardized assessments.

DEPARTMENT RESPONSE:

On August 24, 2011, State Supreme Court, Albany County (Lynch, J.) issued a Decision and Order in *New York State United Teachers, et al. v. Board of Regents, et al.* that, among other things, found section 30-2.4(c)(3)(i)(d) of the proposed rule invalid to the extent that the same student growth measures used to measure the first 20% category may not be used to measure the second 20% category. An appeal is being taken from that Decision and Order. The Department acknowledges that, to the extent set forth in the Decision and Order, section 30-2.4(c)(3)(i)(d) is invalid and unenforceable, pending a final determination on appeal. School districts and BOCES will not be required to comply with section 30-2.4(c)(3)(i)(d) while the appeal is pending to the extent it has been declared invalid. Additional guidance on the impact of the litigation is being provided separately.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amend Information Recorded in Poll Books (Eliminate Voter Height/Eye Color); Reduction of Record Retention Regarding Poll Book

I.D. No. SBE-43-11-00001-P

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

Proposed Action: Amendment of section 6212.9(b) of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 8-312(6), 9-102(1) and 9-106

Subject: Amend information recorded in poll books (eliminate voter height/eye color); reduction of record retention regarding poll book.

Purpose: Amend existing regulation to comply with current federal statutory requirements.

Text of proposed rule: Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by amending Part 6212.9, to read as follows:

§ 6212.9. Registration poll list

(a) For each election, a registration poll list shall be prepared in alphabetical order for each election district which shall include the name and other information required by the law and these regulations relating to each voter eligible to vote in that district in that election. The pages of the list shall be bound or fastened so that all pages are securely held together and the list shall be identified as an official document of the county board.

(b) For each individual voter, the following information shall be in the registration poll list:

- (1) name;
- (2) street address;
- (3) date of birth;
- (4) [height;

- (5) eye color;
- (6) [party enrollment;
- [(7)](5) month, day and year of registration;
- [(8)](6) facsimile of the voter’s signature printed or an indication that the voter is unable to sign his name;
- [(9)](7) a place for the voter to sign his name or to make his mark in the event he is unable to sign his name; and
- [(10)](8) a place for the inspector to record the [voting machine number, the public county number and the] number *appearing on the stub of any election day paper ballot[s]* given to the voter.

(c) Each page of the registration poll list shall contain:

- (1) The number of the election district, assembly district, legislative district, town, ward, etc. in which such election district is located.
- (2) Date of the election for which the list is prepared.
- (3) Page number. The last page of the list shall be so marked.
- (4) Range of names listed on that page.

(d) Prior to the first election in which a registration poll list is used to replace the registration poll ledger, the State Board shall review and approve the content, format and layout of the registration poll list, as well as the adequacy of the facsimile signatures included in it. For that purpose, the county board shall submit a specimen registration poll list containing the records of at least 500 voters. At the same time, the county board shall certify to the State Board that the verification of the file required by section 6212.8(f) of this Part has been performed.

(e) Registration poll lists shall be preserved in secure storage by the board until the end of the [fourth] *second* calendar year following the election in which they were used.

Text of proposed rule and any required statements and analyses may be obtained from: Paul M. Collins, New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-6367, email: pcollins@elections.state.ny.us

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

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

Regulatory Impact Statement

- 1. Statutory Authority:
Election Law sections 3-100; and 8-312(6), 9-102(1) and 9-106
- 2. Legislative Objectives:

In 2010, the Legislature amended the NYS Election Law to accommodate the transition to optical scan voting systems (Chapters 163, 164 and 165 of the Laws of 2010). Under the new system, which was entirely paper based, the election day paper ballot became the key to the entire election process and there was need to establish ballot accountability which the Legislature mandated in changes to Election Law 9-106 after defining what an election day paper ballot was in 9-102(1). The Legislature, in amending Election Law 8-312(6) had in 2009 (Chapter 464) tasked the State Board of Elections with the task of establishing rules and regulations governing the manner in which ballots in the optical scan system are to be delivered to the voter. The primary means of identifying voters is the use of the signature in the poll book pursuant to Election Law 8-304 to match against the signature of the person claiming, on election day, to be that voter. The Elections Law contains no requirement that the voter’s height and eye color be recorded and the current voter registration form contains no space to record that information since the amendment to Election Law 5-210(5)(k)(v) (Chapter 659 of the Laws of 1994) to comply with the National Voter Registration Act of 1993.

3. Needs and Benefits:

The proposed adjustments in adopted rules have been prepared while taking into consideration the statutory objectives and balancing the impact of the statute and these regulations on county boards of elections against the need for the constant affirmation of accuracy and accountability in order to maintain public confidence. They continue to ensure that the rules accurately reflect the technical and functional requirements of the new voting system. Also, while balancing the statutory requirement to establish such rules as to the delivery of election day paper ballots to the voter, this change provides a simple method of ballot accountability. The elimination of long ago abandoned statutory requirements and the lessening of the record retention period will reduce the expense and workload of the county boards of elections.

4. Costs:

There is no cost to the changes made herein and in fact there is a cost savings in terms of the retention of election records.

5. Local Governmental Mandates:

These adjusted procedures as to the elimination of the recording of height and eye color are consistent with long-standing county board of elections practices and the recording of the election day ballot stub number is consistent the existing regulation and the new statutory definition of an election day paper ballot.

6. Paperwork:

These adjusted procedures do not reduce, increase, or modify compliance with paperwork or preparation of forms and will adjust the rules to accurately reflect the technical and functional requirements of the new voting system.

7. Duplication:

These regulations do not duplicate or overlap with any other federal or state regulations.

8. Alternatives:

The alternatives were to continue with an outdated and not longer statutorily required information gathering and record retention mandates, which simply were not viable options.

9. Federal Standards:

42 USC § 1794 is the statutory authorization for the Retention of voting records (twenty two months after the date of the election).

10. Compliance Schedules:

Compliance can be achieved by the county board of elections immediately after adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

There are 58 local boards of elections which must meet these requirements.

2. Compliance Requirements:

County boards of elections will be governed these standards for the elimination of unnecessary recording of no longer statutorily mandated information, a shortened record retention period and proper nomenclature for the election day ballot.

3. Professional Services:

The county boards of elections and/or their designated staff will be able to develop and implement the requirements of the NYS Election Law and these regulations.

4. Compliance Costs:

As this change reduces the burden upon counties, there will be a cost savings.

5. Economic and Technological Feasibility:

County boards of elections currently comply with the existing, more onerous regulation so compliance with a less onerous regulation will be simple.

6. Minimizing Adverse Effect:

Public trust in our elections is fundamental to governmental effectiveness. These draft proposed regulations have been prepared while taking into considerations the statutory obligations and balancing the impact of the statute and these regulations on county boards of elections against the need for the constant affirmation of accuracy in order to maintain voter confidence. The adjustment to the adopted rule will continue a normal business process and have no adverse effect on the local boards of elections that are impacted.

7. Small Business and Local Government Participation:

The State Board has had discussions with county commissioners to obtain their opinions and suggestions during the preparation of these draft regulations. Also, the county election commissioners and the public will have the opportunity to comment further on these regulations prior to final adoption.

Rural Area Flexibility Analysis

The adjustment to the adopted rule will require that county boards of elections in jurisdictions from rural areas of New York State will be governed by these standards for recording information as to the voter given an election day ballot in the voter registration poll list and receive the benefit of the reduced record retention time the new regulation provides.

These draft proposed regulations have been prepared while taking into consideration the statutory obligations and balancing the impact of the statute and these regulations on county boards of election against the need for the constant affirmation of accuracy in order to maintain voter confidence. Public trust in our elections is fundamental to governmental effectiveness. The adjustment to the adopted rule will continue a normal business process as most county boards have not been recording the voter's height and eye color and will clarify a new and relatively simple procedure, the recording of the election day ballot's stub number, to ensure accurate ballot accountability. The reduction for the record retention period from four to two years will benefit all counties as will the elimination of the requirement to record the voter's height and eye color, items that are no longer statutorily required. These regulatory changes will have no adverse effect on the local boards of elections that are impacted.

Job Impact Statement

These regulations neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State. Amendments to the adopted regulation do not change this analysis.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hunting Upland Game Birds

I.D. No. ENV-33-11-00002-A

Filing No. 949

Filing Date: 2011-10-11

Effective Date: 2011-10-26

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

Action taken: Amendment of section 2.25 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0905

Subject: Hunting upland game birds.

Purpose: To establish a youth pheasant hunting season on Long Island prior to the start of the regular pheasant season.

Text or summary was published in the August 17, 2011 issue of the Register, I.D. No. ENV-33-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Bryan Swift, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8922, email: wildliferegs@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Assessment of Public Comment

The department received two comments stating support for the proposed youth pheasant hunting season in Nassau and Suffolk counties. No other public comments were received.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hospital Quality Contribution

I.D. No. HLT-43-11-00017-P

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

Proposed Action: Amendment of Subpart 86-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-d-1

Subject: Hospital Quality Contribution.

Purpose: To collect thirty million dollars annually for the Medical Indemnity Fund.

Text of proposed rule: Subpart 86-1 of 10 NYCRR is amended by adding a new section 86-1.41, to read as follows:

86-1.41 Hospital Quality Contribution.

(a) For the period July 1, 2011 through March 31, 2012 a quality contribution shall be imposed on the inpatient revenue of each general hospital that is received for the provision of inpatient obstetrical patient care services in an amount equal to 2.4% of such revenue, as defined in § 2807-d(3)(a) of the Public Health Law.

(b) For the period on and after April 1, 2012, a quality contribution shall be imposed on the inpatient revenue of each general hospital that is received for the provision of inpatient obstetrical patient care services in an amount equal to 1.6% of such revenue, as defined in § 2807-d(3)(a) of the Public Health Law.

(c) For the purposes of computing revenue subject to this section, inpatient obstetrical patient care services shall also include services related to the care of newborns, but shall exclude neonatal intensive care services.

(d) The funds collected pursuant to this section shall be subject to and administered in accordance with the provisions of § 2807-d-1 of the Public Health Law.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Authorization for the collection of "Hospital Quality Contributions" is set forth in section 2807-d-1 of the Public Health Law (PHL), as enacted as part of the 2011-12 state budget and effective for periods on and after July 1, 2011. That statute set the Hospital Quality Contribution at 1.6% of each hospital's revenue for inpatient obstetrical care services, but provided that the percentage could be increased or decreased by regulation if such an increase or decrease was required to maintain total annual collections at a level of \$30 million.

Legislative Objectives:

The express provisions of PHL section 2807-d-1 requires the Department to collect thirty million dollars for the state fiscal year beginning April 1, 2011 and each state fiscal year thereafter for the Medical Indemnity Fund.

Needs and Benefits:

Since PHL section 2807-d-1 is not effective until on and after July 1, 2011 the Hospital Quality Contributions will only be collected for nine months of the 2011-12 state fiscal year. The 1.6% set forth in the statute was computed so as to generate \$30 million over a period of twelve months. To generate \$30 million over only nine months the Department of Health has determined that the percentage needs to be increased from 1.6% to 2.4%. The proposed regulation therefore effectuates this increase for the nine month period of July 1, 2011 through March 31, 2012.

Costs:

There are no additional administrative costs to the implementation of and continuing compliance with this amendment. There are no additional costs to the Department of Health, state government, or local governments for the implementation of and continuing compliance of this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon and county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of the amendment.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law section 2807-d-1 to promulgate implementing regulations.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Section 86-1.41 requires the Department of Health to adjust the Hospital Quality Contribution rate to collections to 2.4% for the period of July 1, 2011 through March 31, 2012 and to 1.6% for the period of April 1, 2012 through March 31, 2013. No further action is required by the providers to achieve compliance with this rule.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees. This rule will have no effect on Local Governments.

Compliance Requirements:

There are no reporting, recordkeeping or other affirmative acts that small business or local governments will need to undertake to comply with the proposed rule. A small business guide is therefore not required.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendment.

Compliance Costs:

There are no initial capital costs required to comply with the proposed rules, and there are no annual costs for continuing compliance.

Economic and Technological Feasibility:

As the proposed rule affects only the rate applied to the Hospital Quality Contribution paid by General Hospitals, compliance by small businesses and local government is not expected to have any economic or technological implication.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Small Business and Local Government Participation:

The proposed rule resulted from the 2011-12 budget and is based on the recommendation of the Medicaid Redesign Team created by Executive Order. The recommendations process allowed for input from Medicaid industry stakeholders, including large and small providers, and the general public, through statewide hearings and website outreach.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

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

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of the proposal. No additional professional services will be required for this compliance.

Costs:

There are no initial capital costs or additional annual costs which are required to comply with this proposal.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Rural Area Participation:

The proposed rule resulted from the 2011-12 budget and is based on the recommendations of the Medicaid Redesign Team created by Executive Order. The recommendation process allowed for input from Medicaid stakeholders from all areas of the state, including rural areas, through regional hearings and website outreach.

Job Impact Statement

Nature of Impact:

The proposed regulation will implement statutory action to change the rate of the Hospital Quality Contribution from 1.6% to 2.4% for collections during the period of July 1, 2011 through March 31, 2012. The rate will then be reduced back to 1.6% effective April 1, 2012.

Categories and Numbers Affected:

It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

Regions of Adverse Impact:

The proposed regulations have no implications for job opportunities for any region.

Minimizing Adverse Impact:
No minimizing measures are required.

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

Reduction to Statewide Base Price

I.D. No. HLT-43-11-00018-P

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

Proposed Action: Amendment of section 86-1.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

Subject: Reduction to Statewide Base Price.

Purpose: Imposes a reduction to the statewide base price as an interim measure.

Text of proposed rule: Section 86-1.16 of Subpart 86-1 of title 10 NYCRR is amended by adding a new subdivision (c), to read as follows:

(c) For the period effective July 1, 2011 through March 31, 2012, the statewide base price shall be adjusted such that total Medicaid payments are decreased by \$24,200,000.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in section 35 of part B as added by Chapter 58 of the laws of 2009. Section 2807-c(35) of the Public Health Law states that the Commissioner has the authority to set emergency regulations for general hospital inpatient rates and such regulations shall include but not be limited to a case-mix neutral statewide base price. Such statewide base price will exclude certain items specified in the statute and any other factors as may be determined by the Commissioner.

Legislative Objectives:

The Legislature and Medicaid Redesign Team adopted a proposal to reduce unnecessary cesarean deliveries to promote quality care and reduce unnecessary expenditures. Due to industry concerns with the initial proposal it was determined that a more clinically sound method needs to be developed. To generate immediate savings, however, a reduction in the statewide base price is being implemented while an obstetrical workgroup develops a more clinically sound approach to meet Legislative objectives.

Needs and Benefits:

The proposed amendment appropriately implements the provisions of Public Health Law section 2807-c(35)(b)(xii), which authorizes the Commissioner to address the inappropriate use of cesarean deliveries. Cesarean deliveries are surgical procedures that inherently involve risks; however, elective cesarean deliveries increase the risks unnecessarily. Therefore, high rates of cesarean deliveries are increasingly viewed as indicative of quality of care issues.

Due to industry concerns with the initial proposal it was determined that a more clinically sound method needs to be developed. To generate immediate savings, however, this amendment, in concert with enacted statute, implements a statewide base price reduction of \$24.2 million dollars (\$12.1 million State share) to achieve the immediate savings target for the 2011/2012 SFY for unnecessary cesarean deliveries while the state undergoes consultation with affected stakeholders to develop a clinically sound approach to reducing inappropriate cesarean deliveries.

Costs:

Costs to State Government:

There are no additional costs to State government as a result of this amendment.

Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this amendment.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and federal regulations.

Alternatives:

No significant alternatives are available at this time. In collaboration with the hospital industry, the State is in the process of developing a more clinically sound method to achieve this savings. Several methods were considered to implement this savings measure but it was determined that none of the options were clinically sound. There is no option to not act on this initiative since the Enacted Budget assumes savings that total \$24.2 million.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Section 86-1.16 requires that the statewide base price be reduced by \$24,200,000 for the period effective July 1, 2011 through March 31, 2012.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Health care providers subject to the provisions of this regulation under section 2807-c(35)(b)(xii) of the Public Health Law will see a minimal decrease in funding as a result of the reduction in the statewide base price.

This rule will have no direct effect on Local Governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required.

The rule should have no direct effect on Local Governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

As a result of the new provision of 86-1.16, overall statewide aggregate hospital Medicaid revenues for hospital inpatient services will decrease in an amount corresponding to the total statewide base price reduction.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Small Business and Local Government Participation:

Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster

Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

- Compliance Requirements:**
No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.
- Professional Services:**
No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.
- Compliance Costs:**
No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.
- Minimizing Adverse Impact:**
The proposed amendments reflect statutory intent and requirements.
- Rural Area Participation:**
This amendment is the result of ongoing discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the final statewide base price for the period beginning July 1, 2011 through March 31, 2012. The proposed regulations have no implications for job opportunities.

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

Medicaid Managed Care Programs

I.D. No. HLT-43-11-00019-P

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

Proposed Action: Repeal of Subparts 360-10, 360-11, sections 300.12, 360-6.7; and addition of new Subpart 360-10 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a, 364-j and 369-ee

Subject: Medicaid Managed Care Programs.

Purpose: To repeal old and outdated regulations and to consolidate all managed care regulations to make them consistent with statute.

Substance of proposed rule (Full text is posted at the following State website: www.health.state.ny.us): The proposed rule repeals various sections of Title 18 NYCRR that contain managed care regulations and replaces them with a new Subpart 360-10 that consolidates all managed care regulations in one place and makes the regulations consistent with Section 364-j of the Social Services Law (SSL). Section 364-j of the SSL contains the Medicaid managed care program standards. The new Subpart 360-10 will also apply to the Family Health Plus (FHP) program authorized in Section 369-ee of the Social Services Law. FHP-eligible individuals must enroll in a managed care organization (MCO) to receive services and FHP MCOs must comply with most of the programmatic requirements of Section 364-j of the SSL.

The new Subpart 360-10 identifies the Medicaid populations required to enroll and those that are exempt or excluded from enrollment, defines good cause reasons for changing/disenrolling from an MCO, or changing primary care providers (PCPs), adds enrollee fair hearing rights, adds marketing/outreach and enrollment guidelines, and identifies unacceptable

practices and the actions to be taken by the State when an MCO commits an unacceptable practice.

The proposed rule repeals the existing Subparts 360-10 and 360-11 and Sections 300.12 and 360-6.7 of Title 18 NYCRR. Section 300.12 applied to the Monroe County Medicaid program, a managed care demonstration project that was undertaken in the mid-1980s and that no longer exists. Section 360-6.7 addresses processes and timeframes for disenrollment from the various types of MCOs and these provisions are included in the new Subpart 360-10. Subpart 360-11 implemented provisions relating to special care plans formerly contained in SSL Section 364-j; these provisions were added by Chapter 165 of the Laws of 1991 and later removed by Chapter 649 of the Laws of 1996.

360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

360-10.4 Individuals required to enroll in a Medicaid managed care organization

This section identifies the individuals who will be required to enroll in an MCO.

360-10.5 Individuals exempt or excluded from enrolling in a Medicaid mandatory managed care organization

This section identifies the good cause reasons for a Medicaid recipient to be exempt or excluded from enrollment in a mandatory managed care program. The section also includes the procedures for requesting an exemption or exclusion and the timeframes for processing the request. This section also describes the notices that must be provided to a Medicaid recipient if his/her request is denied.

360-10.6 Good cause for changing or disenrolling from an MCO

This section describes the good cause reasons for an enrollee to change MCOs and the process for requesting a change or disenrollment. This section also identifies the timeframes for processing the request and the notices that must be provided to the enrollee regarding his/her request.

360-10.7 Good cause for changing primary care providers

This section describes the good cause reasons for a managed care enrollee to change primary care providers, the process through which the enrollee may request such a change and the timeframes for processing the request.

360-10.8 Fair Hearing Rights

This section identifies the circumstances under which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its utilization review agent about services. The section describes the notices that must be sent to advise the enrollee of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

360-10.9 Appeal Rights for Recipients Enrolled in Medicaid Advantage

This section identifies the Medicaid and Medicare appeal rights that are available for recipients enrolled in a Medicaid Advantage plan.

360-10.10 Marketing/Outreach

This section defines marketing/outreach and establishes marketing/outreach guidelines for MCOs including requiring MCOs to submit a marketing/outreach plan, requiring MCOs to get approval of materials before distribution, and establishing limits for marketing/outreach representative reimbursement.

360-10.11 MCO unacceptable practices

This section identifies additional unacceptable practices for MCOs. These are generally related to marketing/outreach.

360-10.12 MCO sanctions and due process

This section identifies the actions the Department is authorized to take when an MCO commits an infraction.

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

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

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

Regulatory Impact Statement**Statutory Authority:**

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 364-j of the SSL governs the Medicaid managed care program, under which certain Medicaid recipients are required or allowed to enroll in and receive services through managed care organizations (MCOs). Section 369-ee of Social Services Law authorized the State to implement the Family Health Plus (FHP) program, a managed care program for individuals aged 19 to 64 who have income too high to qualify for Medicaid. The intent of the Legislature in enacting these programs was to assure that low-income citizens of the State receive quality health care and that they obtain necessary medical services in the most effective and efficient manner.

Chapter 59 of the Laws of 2011 amended SSL section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the exemptions and exclusions from enrollment previously contained in the statute.

Needs and Benefits:

The proposed regulations reflect current program practices and requirements, consolidate all managed care regulations in one place, and conform the regulations to the provisions of SSL section 364-j, including the recent amendments made by Chapter 59 of the Laws of 2011. The proposed regulations identify the individuals required to enroll in Medicaid managed care and identify the populations who are exempt or excluded from enrollment.

The proposed regulations also contain provisions, which apply to both the Medicaid managed care and the FHP programs: specifying good cause criteria for an enrollee to change MCOs or to change their primary care provider; explaining enrollees' rights to challenge actions of their MCO or social services district through the fair hearing process; establishing marketing/outreach guidelines for MCOs; and identifying unacceptable practices and sanctions for MCOs that engage in them.

Costs:

The proposed regulations do not impose any additional costs on local social services districts beyond those imposed by law. The current managed care program operates under a federal Medicaid waiver pursuant to section 1115 of the Social Security Act. Through the waiver, the State receives federal dollars for its Safety Net and FHP populations. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

Local Government Mandates:

The proposed regulations do not create any additional burden to local social services districts beyond those imposed by law.

Paperwork:

Social Services Law requires that Medicaid recipients be advised in writing regarding enrollment, benefits and fair hearing rights. In compliance with the law, the proposed regulations describe the circumstances under which a Medicaid managed care participant should be provided with such notices, who is responsible for sending the notice and what should be included in the notice. There are reporting requirements associated with the program for social service districts and MCOs. The social services district is required to report on exemptions granted, complaints received and other enrollment issues. MCOs must submit network data, complaint reports, financial reports and quality data. These requirements have been in existence since 1997 when the mandatory Medicaid managed care program began. There are no new requirements for the social services districts or the MCOs in the proposed regulations.

Duplication:

The proposed regulations do not duplicate any State or federal requirements unless necessary for clarity.

Alternative Approaches:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

Federal Standards:

Federal managed care regulations are in 42 CFR 438. The proposed regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The mandatory Medicaid managed care program has been in operation since 1997. As a result, all counties in the State have some form of managed care. The requirements in the proposed rules have been implemented through the contract between the State or eligible social services and participating MCOs.

Regulatory Flexibility Analysis**Effect on Small Businesses and Local Governments:**

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997 the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to receive services through managed care organizations (MCOs). Currently, all counties have implemented some form of managed care. As of April, 2011, forty-nine counties have a mandatory Medicaid managed care program; nine counties have a voluntary Medicaid managed program. All counties have a FHP program.

As a result of the implementation of the Medicaid managed care program and FHP programs, most Medicaid recipients and all FHP eligible persons are required to enroll and receive services from providers who contract with a managed care organization (MCO). MCOs must have a provider network that includes a sufficient array and number of providers to serve enrollees, but they are not required to contract with any willing provider. Consequently, local providers may lose some of their patients. However, this loss may be offset by an increase in business as a result of the implementation of FHP.

The proposed regulations do not impose any additional requirements beyond those in law and the benefits of the program outweigh any adverse impact.

Compliance Requirements:

No new requirements are imposed on local governments beyond those included in law and there are no requirements for small businesses.

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap. Additionally, the 1115 waiver reduced local government costs by authorizing Federal participation for the Safety Net and Family Health Plus (FHP) populations.

Economic and Technological Feasibility:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Minimizing Adverse Impact:

The mandatory Medicaid managed care program is implemented only when there are adequate resources available in a local district to support the program. No new requirements are imposed beyond those included in law.

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has fourteen years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Small Business and Local Government Participation:

The regulations do not introduce a new program. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Rural Area Flexibility Analysis

Effect on Rural Areas:

All rural counties with managed care programs will be affected by this rule. As of April 2011, all rural counties have a Medicaid managed care and Family Health Plus (FHP) program.

Compliance Requirements:

This rule imposes no additional compliance requirements other than those already contained in Section 364-j of the Social Services Law (SSL).

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in 2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Feasibility Assessment:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Rural Area Participation:

The proposed regulations do not reflect new policy. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of the SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Job Impact Statement

Nature of Impact:

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

Higher Education Services Corporation

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

Participation in the Tuition Assistance Program (TAP)

I.D. No. ESC-43-11-00020-P

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

Proposed Action: Addition of Parts 2400-2411 to Title 8 NYCRR.

Statutory authority: Education Law, sections 655(4) and 661(4)

Subject: Participation in the Tuition Assistance Program (TAP).

Purpose: To implement part Z of chapter 58 of the Laws of 2011.

Substance of proposed rule (Full text is posted at the following State website: content.nsf/HESC/Regulatory_Activity): I. Subchapter A. Administration.

A. Part 2400. General Purposes and Definitions.

Section 2400.1. General Purpose. This section sets forth the New York State Higher Education Services Corporation's (Corporation) statutory purpose, which includes awarding Tuition Assistance Program (TAP) awards consistent with Education Law §§ 661(4)(b) and 661(4)(b-1).

Section 2400.2. Definitions. This section sets forth the meanings of various terms used in new Chapter XXII.

B. Part 2401. Public Access to Records.

Section 2401.1. Duties of Records Access Officer. This section states that the records access officer shall have all the duties defined in Section 2002.2 of Subchapter A of Chapter XX of Title 8 of the NYCRR.

Section 2401.2. Availability of Records.

This section sets forth the process by which the public may request public records of the Corporation consistent with the Freedom of Information Law.

Section 2401.3. Appeals.

This section sets forth the process by which a person denied access to records may appeal such decision consistent with the Freedom of Information Law.

Section 2401.4. Personal Privacy Protection

This section sets forth the requirements regarding the maintenance of personal records by the Corporation and the process by which a person may access or correct his or her record consistent with the Personal Privacy Protection Law.

C. Part 2402. Procedures for Declaratory Ruling.

Section 2402.1. Petition for Declaratory Ruling.

This section sets forth the process for obtaining a declaratory ruling from the Corporation regarding the statutes, rules, and regulations enforced by the Corporation.

D. Part 2403. Hearing Procedures.

Section 2403.1. Hearings.

This section sets forth the manner in which parties are notified of hearings in connection with adjudicatory proceedings.

Section 2403.2. Record.

This section sets forth the contents of the record in an adjudicatory proceeding.

Section 2403.3. Presiding Officers.

This section sets forth who can be designated as a presiding officer to conduct hearings in adjudicatory proceedings.

Section 2403.4. Powers of Presiding Officer.

This section sets forth the powers of the presiding officers.

Section 2403.5. Disclosure.

This section authorizes the presiding officer to provide for discovery in a manner appropriate to the proceeding.

Section 2403.6. Evidence.

This section sets forth the scope of the rules of evidence to be used during an adjudicatory proceeding.

Section 2403.7. Decisions, Determinations and Orders.

This section sets forth the content and delivery of decisions, determinations and orders upon conclusion of an adjudicatory proceeding.

Section 2403.8. Representation.

This section sets forth the right of a person appearing before the corporation to be accompanied by counsel or other representation.

E. Part 2404. Suspension and Limitation of Awards Participation.

Section 2404.1. Possible Sanctions.

This section sets forth the penalties which may be imposed as a result of a violation of applicable laws, regulations or agreements.

Section 2404.2. Procedures.

This section sets forth both informal and formal procedures for addressing suspected violations of applicable laws, regulations, agreements or limitations.

Section 2404.3. Application for Reinstatement.

This section sets forth the process for requesting reinstatement of eligibility to participate in the award program after a final adverse decision has been issued by the corporation.

Section 2404.4. Causes for Formal Sanctions.

This section sets forth the grounds for the limitation, suspension or termination of an educational institution's eligibility to participate in the award program.

F. Part 2405. Recovery of Refunds and Overpayments.

Section 2405.1. Remedies.

This section sets forth the different repayment arrangements available in connection with a refund and/or overpayment owed from a student or educational institution.

Section 2405.2. Grounds for Recovery.

This section sets forth the circumstances under which a student and an educational institution would owe a refund or overpayment.

Section 2405.3. Procedures.

This section sets forth the procedures for notifying a student and an educational institution that a refund or overpayment is owed to the corporation, including the right to dispute the demand and the right to a hearing on the matter.

G. Part 2406. Special Administrative Relief Provisions.

Section 2406.1. Eligibility for Further Financial Aid After Default.

This section mirrors section 2008.1 of Subchapter A of Chapter XX of Title 8 of the NYCRR regarding what is required of an applicant in order to receive TAP if that applicant is in default on a student loan, TAP overpayment or is out of compliance with the terms and conditions of any other State award.

II. Subchapter B. Tuition Assistance Awards for Additional Participants.

A. Part 2407. Student Eligibility Awards.

Section 2407.1. Student Eligibility Criteria.

This section sets forth the specific criteria a student must satisfy in order to be eligible for an award as contained in sections 661(4)(b-1) of the Education Law. This section also sets forth the general criteria a student must satisfy in order to be eligible for an award.

B. Part 2408. Tuition Assistance Program Awards.

Section 2408.1. Eligibility Criteria and Award Limitations.

This section sets forth the award limitations based on the applicant's income.

Section 2408.2. Adjustments to Income.

This section sets forth the adjustments to the income information reported that may be made based on certain specified criteria.

Section 2408.3. Financial Independence of Applicants.

This section sets forth the criteria that must be established in order for an applicant to demonstrate financial independence and exclude the income of his/her parents in the computation of an award.

Section 2408.4. Exclusion of Income of Parent or Spouse.

This section sets forth the criteria that must be established for a dependent applicant to exclude the income of a parent or spouse in the computation of an award.

Section 2408.5. Tax Dependents.

This section sets forth when an applicant shall be considered to have tax dependents for purposes of determining the schedule under which an applicant shall be paid.

Section 2408.6. Full Time Study.

This section sets forth the period of attendance that constitutes full time study.

Section 2408.7. Academic Requirements; Program Pursuit and Academic Progress.

This section sets forth the academic requirements required to receive an award.

Section 2408.8. Registration of Postsecondary Curricula.

This section requires that every curricula be registered subject to the requirements of the Corporation.

Section 2408.9. Standards for the Registration of Curricula.

This section provides that the standards for the registration of curricula be established by the Corporation.

Section 2408.10. Procedures on Denial of Reregistration.

This section sets forth the procedures for an educational institution to appeal a decision denying its registration of an existing curriculum.

Section 2408.11. Procedures on Denial of Initial Registration.

This section sets forth the procedures for an educational institution to appeal a decision denying its registration of a proposed curriculum.

Section 2408.12. Information to be Provided.

This section sets forth the information an educational institution is required to provide students regarding financial assistance, and other related aspects of the educational institution, available to them.

Section 2408.13. Approved Programs for Tuition Assistance Awards.

This section establishes the approved programs for the award program.

Section 2408.14. Matriculated Status.

This section sets forth the requirements to achieve a matriculated status, which is required to receive an award.

Section 2408.15. In-State Study and Study Abroad.

This section sets forth the requirements for in-state study and the criteria that must be satisfied in order to be eligible for an award when studying outside the United States.

Section 2408.16. Educational Fees.

This section sets forth the specific fees considered educational fees for purposes of student aid.

Section 2408.17. Limitation of Amount of Award.

This section sets forth other assistance considered duplicative, and therefore would result in a limitation, of an award pursuant to sections 661(4)(b) and 661(4)(b-1) of the Education Law.

Section 2408.18. Administration of Ability-to-Benefit Tests for Purposes of Eligibility for Awards.

This section sets forth the requirements in connection with ability-to-benefit tests in order to be eligible for an award.

C. Part 2409. Duration of Eligibility.

Section 2409.1. Duration of Eligibility.

This section sets forth the number of years a recipient is eligible to receive an award based on his/her program of study.

Section 2409.2. Partial Payments.

This section sets forth the circumstances under which a partial payment would be made.

D. Part 2410. Applicant, Institutional, and Accrediting Agency Responsibilities.

Section 2410.1. Generally.

This section provides that the applicant and the institution are responsible for the accuracy of the information provided to, and relied upon by, the corporation.

Section 2410.2. Applicant Responsibility.

This section sets forth the information the applicant must provide to the corporation.

Section 2410.3. Institutional Eligibility and Responsibility.

This section sets forth specific criteria an educational institution must satisfy in order to be eligible for an award as contained in sections 661(4)(b) of the Education Law. This section also sets forth the information the educational institution must provide to the corporation. This section also requires educational institutions to enter into a participation agreement with the corporation. This section also sets forth the educational institution's responsibilities under the award program.

Section 2410.4. Accrediting Agency Responsibility.

This section sets forth that the accrediting agency must comply with all laws and regulations governing the award program. This section also sets forth the information the accrediting agency must provide to the corporation.

Section 2410.5. Audit.

This section establishes the corporation's authority to audit institutional and accrediting agency adherence to the statutes, rules and regulations governing the award program.

E. Part 2411. Payment of Awards.

Section 2411.1. Payment

This section sets forth the methods of payment.

Section 2411.2. Payment Terms.

This section sets forth the terms of study under which payment will be made.

Section 2411.3. Methods of Payment.

This section details each method of payment.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

Pursuant to Part II of Article 14 of the Education Law, HESC is authorized to administer the provisions of the Tuition Assistance Program (TAP), in which the Corporation grants awards to qualified students attending eligible institutions. Part Z of Chapter 58 of the Laws of 2011 amended section 661(4) of the Education Law to authorize the Corporation to make TAP awards available to full-time resident undergraduate students not currently eligible for such awards and to adopt rules and regulations accordingly.

2. Legislative objectives:

The Legislature enacted the Tuition Assistance Program to help students pay for college. This amendment increases participation in TAP thereby increasing access to a college education.

3. Needs and benefits:

It is in the public interest to enable all New York students who wish to receive higher education to be able to do so. New York has a Tuition Assistance Program (TAP) that helps eligible New York residents pay tuition at approved schools in New York State. Each year, TAP helps many thousands of New Yorkers who meet the income qualifications to be able to afford to attend the educational institution of their choice. However, there are some income-eligible students who attend bona fide, non-profit institutions of higher education that currently are not eligible to receive TAP, solely because their schools, although authorized by the State Education Department (SED) to offer postsecondary education, are not under SED's direct supervision. This regulation would correct this inequity by enabling those students to apply for TAP. In order to ensure that only students, who attend bona fide, federally recognized postsecondary institutions are included, the regulation restricts eligibility to those students enrolled in school that meet the stringent eligibility requirements for Federal Pell grants. This will enable these needy students to afford the high and rising costs of a postsecondary education.

4. Costs:

There is no anticipated cost to the regulated parties, other state agencies, or local governments for the implementation of, or continuing compliance with, this rule.

There is no anticipated cost to the State for the implementation of, or continuing compliance with, this rule other than the cost contained in the 2011-12 State Budget.

The annual anticipated cost to the Corporation for the implementation of, and continuing compliance with, this rule is \$133,988, which is comprised of salary, fringe benefits, and travel expenses.

5. Paperwork:

This rule will not result in any additional paperwork on students or colleges. The Corporation will be required to process additional applications; however, the majority of applications are electronically processed.

6. Local government mandates:

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

7. Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

8. Alternatives:

The 'no action' alternative was not a viable option for consideration since the statute requires the Corporation to adopt regulations to implement the statutory amendment.

9. Federal standards:

This proposal does not exceed any minimum standards of the federal government.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the

New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to add Chapter XXII of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. The Corporation finds that this rule will not impose reporting, recordkeeping or compliance requirements on small businesses or local governments. The regulation implements Part Z of Chapter 58 of the Laws of 2011 regarding the Tuition Assistance Program (TAP), which will enable New York students who meet the stringent eligibility requirements for Federal Pell grants and attend Title IV eligible colleges in New York State to be able to participate in the Tuition Assistance Program.

The Corporation has determined that this rule will not impose an adverse economic impact or impose reporting or other compliance requirements on either small businesses or local governments; therefore, a full Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

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

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. The Corporation finds that this rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The regulation implements Part Z of Chapter 58 of the Laws of 2011 regarding the Tuition Assistance Program (TAP), which will enable New York students who meet the stringent eligibility requirements for Federal Pell grants and attend Title IV eligible colleges in New York State to be able to participate in the Tuition Assistance Program.

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

Job Impact Statement

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

It is apparent from the nature and purpose of this rule that it could only have a positive impact or no impact on jobs and employment opportunities. The regulation implements Part Z of Chapter 58 of the Laws of 2011 regarding the Tuition Assistance Program (TAP), which will enable New York students who meet the stringent eligibility requirements for Federal Pell grants and attend Title IV eligible colleges in New York State to be able to participate in the Tuition Assistance Program.

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

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Requirements Pertaining to the Investigation and Review of Serious Reportable Incidents and Abuse Allegations

I.D. No. PDD-33-11-00003-A

Filing No. 951

Filing Date: 2011-10-11

Effective Date: 2011-11-01

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

Action taken: Amendment of Part 624 of Title 14 NYCRR.

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

Subject: Requirements pertaining to the investigation and review of serious reportable incidents and abuse allegations.

Purpose: To reduce conflicts of interest in the investigation and review of serious reportable incidents and abuse allegations.

Text or summary was published in the August 17, 2011 issue of the Register, I.D. No. PDD-33-11-00003-P.

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

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

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

Assessment of Public Comment

The Mental Hygiene Legal Service (MHLS) Directors and the Director of Investigations of a not-for-profit provider submitted comments.

Comment: The MHLS Directors endorsed the proposed rule. MHLS noted that the proposed rule, if adopted, will prohibit immediate supervisors and those in the "chain of command" from investigating employees under their supervision. (The existing regulation provided that every effort be made to have someone conduct the investigation who is not an immediate supervisor.) In the opinion of MHLS, eliminating the limited discretion inherent in the existing rule is an improvement to the regulatory scheme and should serve to achieve the objective of independent investigations.

Response: OPWDD appreciates the support from MHLS.

Comment: The MHLS Directors commented on the provision in the regulation which states, "The agency shall assign an investigator whose work function is at arm's length from staff who are directly involved in the serious reportable incident or allegation of abuse." MHLS noted that the phrase "arm's length" is not defined which in its view could render problematic implementation and enforcement of the new rule. MHLS commented that any ambiguity which compromises this provision should be eliminated. MHLS recommended that OPWDD replace the phrase "arm's length" with the phrase "independent of."

Response: OPWDD considers that the suggested replacement phrase would also be ambiguous and could be interpreted in a more stringent manner than "at arm's length." OPWDD is concerned that with the suggested change the regulation could be interpreted in a manner that could preclude appropriate individuals from being assigned to be investigators. It is therefore retaining the original phrase in the final regulations.

Comment: The MHLS Directors commented that situations arise where untoward events are not initially classified as serious reportable incidents or allegations of abuse, but upon further investigation are re-classified as such. MHLS recommends that the regulation be strengthened and clarified to require that it apply to any incident which, after a preliminary investigation, is re-classified as a serious reportable incident or allegation of abuse.

Response: OPWDD considers that the proposed regulations clearly apply to all events classified as serious reportable incidents or allegations of abuse as defined in its Part 624 regulations even if they were re-classified. OPWDD considers that it is not necessary to include a specific reference to reclassified situations in the actual regulation text and that this level of detail is not warranted. Therefore, OPWDD is retaining the original language in the final regulations. However, to address any possible confusion, OPWDD will consider the provision of additional guidance on this matter in its Part 624 Handbook, which is a guidance document that corresponds with the Part 624 regulations.

Comment: The MHLS Directors also submitted a recommendation concerning the provisions of current regulation and the proposed regulation that establish a restriction on review by members of the agency's standing committee. The provisions concern review by those who are conflicted because they are involved in an incident, are the spouse of an involved person, are the immediate supervisor of involved staff, etc. While the current and proposed regulation restricts participation in the review of the incident, it permits participation by the conflicted person in committee deliberation regarding appropriate corrective or preventive action. MHLS recommends that conflicted committee members not be permitted to participate in the committee's deliberation regarding corrective or preventive action and that this language be deleted.

Response: OPWDD considers that, while in some cases it may be inappropriate for the conflicted committee member to participate in the committee's deliberation regarding corrective or preventive action, in many instances the committee member may offer valuable insight in the matter. For example, committee members who are managers of a particular program may be able to offer an informed perspective on proposed recommendations for corrective or preventive actions in that program based on their greater knowledge of that program. Other committee members may

not have the same familiarity with the program and would not be able to bring the same perspective to the discussion. For this reason, OPWDD disagrees with the inflexible prohibition on the participation of conflicted committee members that is suggested and is promulgating the language as proposed. However, as noted, OPWDD considers that the participation of conflicted committee members in these deliberations may be inappropriate in some circumstances and will consider the addition of guidance on this topic in the Part 624 Handbook.

Comment: The Director of Investigations of a not-for-profit provider submitted a comment in opposition to the proposed regulations. She stated that her agency has long prohibited investigation of staff by their immediate supervisors and that that has worked well. However, she also stated that the prohibition on anyone in the chain of command from conducting an investigation would "really tie our hands." She stated that suggesting that the CEO conduct investigations seemed like a very unrealistic and impractical approach. She stated that the question of using "outside" investigators did not seem viable to her and posed a series of questions on various issues of concern when an "outside" investigator is used. These questions focused on potential practical and legal issues that might arise when an investigator from one agency conducts an investigation of an incident in another agency. She also stated that in the current fiscal climate it would be extremely difficult (if not impossible for some agencies) to simply hire a group of new investigators - particularly when this is an unfunded mandate. She stated that the suggestion of OPWDD staff doing an investigation for a voluntary provider is unrealistic. Finally, while she acknowledged the current climate as placing a great deal of scrutiny on the safeguarding of individuals receiving services, she stated that her agency is also sensitive to the stress that additional requirements and unfunded mandates have had and will have on staff who are already stretched very thin.

Response: OPWDD acknowledges that implementation of the proposed regulations will pose a challenge for some agencies. In its memo to the field about the proposed regulation, OPWDD stated that it recognized that imposing additional restrictions regarding who can investigate serious reportable incidents and allegations of abuse may exacerbate the current problem of finding in-house investigators in certain circumstances, especially for smaller agencies. OPWDD consequently notified providers of its intention to promulgate these regulations well in advance of the anticipated effective date to give providers enough time to make any changes or arrangements that might be necessary for the agency to come into compliance. In the notice, OPWDD offered several suggestions to providers such as instituting changes in the organizational structure and exploring the use of outside investigators (which were discussed in the comment). OPWDD notes that the writer is from a large agency which according to its website employs over 1300 staff at 59 locations. OPWDD considers that a large provider such as the one submitting the comment will be able to institute changes in its organizational structure and policies to accommodate the need for more independent investigations without using outside investigators and that it is well within the capacity of this particular provider to comply with the regulations.

OPWDD does not consider these new amendments to be an unfunded mandate, since OPWDD regulations already include a longstanding requirement to investigate all serious reportable incidents and allegations of abuse. OPWDD notes that this new regulation does not require agencies to conduct more investigations; it merely restricts the choice of the person who is assigned the task. Given the importance of the independence of investigators as noted in the Regulatory Impact Statement, OPWDD considers that the challenges associated with any operational changes necessitated by promulgation of this regulation are outweighed by the expected benefits of better, more objective investigations. Consequently, OPWDD is promulgating the proposed regulations with no changes.

Request for clarification: OPWDD received requests for clarification of the provisions of clause 624.5(c)(1)(iii)(b), which states: "No party in the line of supervision of staff who are directly involved in the serious reportable incident or allegation of abuse may conduct the investigation of such an incident or allegation, except for the CEO."

Response: OPWDD notes that the restriction on conducting the investigation applies to the immediate supervisor of the directly involved staff, the immediate supervisor of the immediate supervisor of the directly involved staff, the immediate supervisor of that person, and so on up the chain of command to the CEO. The CEO, as noted in the regulation text, is excluded from the restriction established in this particular clause. (A different clause specifies the circumstances when CEO may not conduct the investigation.)

NOTICE OF ADOPTION

Requirements for Training of Employees, Volunteers, Family Care Providers, and Board Members in the OPWDD System

I.D. No. PDD-33-11-00004-A

Filing No. 950

Filing Date: 2011-10-11

Effective Date: 2011-11-01

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

Action taken: Amendment of sections 633.8 and 633.99 of Title 14 NYCRR.

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

Subject: Requirements for training of employees, volunteers, family care providers, and board members in the OPWDD system.

Purpose: To require annual training in positive relationships, abuse/incidents and safety and security procedures in some situations.

Text of final rule: Paragraph 633.8(a)(1) is amended as follows:

(1) It is the responsibility of the agency/[facility] or the sponsoring agency to heighten the awareness of its employees, volunteers, and [or] family care providers to those factors which affect and/or contribute to situations that can be potentially abusive or harmful. To this end, there shall be training (see [Glossary,] section 633.99 of this Part) of employees, volunteers and family care providers to meet the needs of staff, volunteers and persons *who receive services* [in the facility] in the following topics:

- (i) principles of human growth and development;
- (ii) characteristics of the persons served;
- (iii) *promoting positive relationships*;
- [(iii)] (iv) abuse prevention, identification, reporting, and processing of allegations of abuse;
- [(iv)] (v) laws, regulations and policies/procedures governing protection from abuse;
- [(v)] (vi) incident and abuse reporting and processing;
- [(vi)] (vii) the [facility's] *agency's* safety and security procedures (including *fire safety*);
- [(vii)] (viii) the prevention of circumstances that would result in exposure to body substances which could put persons or others at significant risk (see glossary) for HIV infection (see glossary);
- [(viii)] (ix) the program for managing anyone exposed to significant risk body substances during circumstances which meet the criteria for significant risk contact; and
- [(ix)] (x) other appropriate topics relative to safety and welfare, especially those that may be related to the functions of the employee, volunteer or family care provider. [; and]

Paragraph 633.8(a)(2) is deleted as follows and paragraphs (3) - (5) are renumbered to be paragraphs (2) - (4):

(2) While administrators, with substantially equivalent knowledge or experience, may be exempted from specific training programs in accordance with the policies/procedures of the agency, their involvement in such training provides them with the opportunity to model, supervise and understand the employees and volunteers whom they supervise, and is highly desirable.]

Renumbered paragraphs 633.8(a)(3) and (4) are amended as follows:

(3) The agency/[facility] or sponsoring agency shall monitor the need for and supervise the provision of such training specified in paragraphs (1)-[(3)] (2) of this subdivision.

(4) All reasonable and necessary actions shall be taken to ensure that employees, volunteers and family care providers are kept apprised on a current basis of all applicable policies and procedures relating to the protection of [clients] *individuals receiving services* from abuse.

Paragraph 633.8(b)(1) is amended as follows:

(1) [OMRDD] *OPWDD* shall verify that employees [(other than exempted administrators)], volunteers, and [or] family care providers have received or will receive training within three months of initial employment, *commencing volunteer activities, or initial certification as a family care provider. The training shall be on:*

- (i) principles of human growth and development;
- (ii) characteristics of the persons served;
- (iii) *promoting positive relationships*;
- [(iii)] (iv) abuse prevention, identification, reporting, and processing of allegations of abuse;
- [(iv)] (v) laws, regulations and policies/procedures governing protection from abuse;

- [(v)] (vi) incident reporting and processing;
- [(vi)] (vii) the [facility's] *agency's* safety and security procedures (including *fire safety*); and
- [(vii)] (viii) other appropriate topics relative to the safety and welfare as may have been specified by the [facility] *agency*.

A new paragraph 633.8(b)(2) is added as follows and existing paragraphs (2) - (3) are renumbered to be (3) - (4):

(2) *Employees, volunteers and family care providers shall receive training in the following areas on at least an annual basis:*

- (i) *promoting positive relationships*;
- (ii) *abuse prevention, identification, reporting, and processing of allegations of abuse*;
- (iii) *laws, regulations and policies/procedures governing protection from abuse*;
- (iv) *incident reporting and processing*; and
- (v) *the agency's safety and security procedures (including fire safety)*.

A new paragraph 633.8(b)(5) is added as follows:

(5) *Effective November 1, 2011, members of boards of directors of certain not-for-profit corporations shall receive a one-time training within three months of the date the party becomes a board member.*

(i) *This training applies only to not-for-profit corporations which operate certified facilities and/or provide Home and Community Based Waiver Services and/or provide Medicaid Service Coordination.*

(ii) *Training of board members is required in the following topics:*

- (a) *abuse prevention, identification, reporting, and processing of allegations of abuse*;
- (b) *laws, regulations and policies/procedures governing protection from abuse*; and
- (c) *incident reporting and processing*.

(iii) *All parties serving on boards of directors on November 1, 2011 shall receive the specified training by February 1, 2012 (if the party remains on the board of directors on February 1, 2012).*

Subdivision 633.99(cw) is amended as follows:

(cw) Training. As used in this Part, training refers to the dissemination of information to employees, volunteers, family care providers, *members of boards of directors*, or persons receiving services by any appropriate method and which is documented to have taken place. Thus, training may include, but is not limited to, orientation (formal or informal), instruction sessions (formal or informal), self-instruction, onsite instruction, formal training or educational activities at a facility or elsewhere, and field trips.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 633.8(b)(1), (2), (5) and 633.99(cw).

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

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

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

There were four non-substantive amendments made to text of the regulations: 1) to correct a minor typographical error, 2) to repeat a list under the appropriate paragraph and remove the reference to the list from this paragraph, 3) to add additional more explicit language to a requirement for the purpose of clarification, and 4) to add language to an existing definition so that the definition conforms to the new requirements.

These changes do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

OPWDD received three comments about the proposed regulations. A provider association submitted comments expressing concerns about two aspects of the proposed regulations. A provider submitted a comment on a different aspect of the proposed regulations. The Mental Hygiene Legal Service (MHLS) submitted a comment.

Comment: The provider association recommended that OPWDD give providers an additional three months from the effective date of the regulation (November 1, 2011) to become compliant with two provisions of the proposed regulations. Specifically, these provisions include the requirement to provide training on the topic "promoting positive relationships" and the requirement to provide training to administrators in the specified topic areas.

Response: As part of recent reform initiatives, OPWDD has established a goal of improving the culture of its system in effort to prevent abuse and promote positive relationships. The foundation of quality care for

individuals with developmental disabilities is based on establishing and nurturing a culture that promotes positive relationships with those who support individuals receiving services. OPWDD considers that the training in promoting positive relationships is a critical step in improving the culture of agencies which provide services. In addition, OPWDD considers that training of administrators in promoting positive relationships as well as topics associated with incident and abuse is an important component of this vital culture change. Consequently, in May and June of 2011, OPWDD employees (including all administrators) completed training to reinforce principles of individual respect, dignity, and professional ethics in the care of individuals receiving services, as well as methods of preventing and reporting abuse.

In August of 2011, OPWDD distributed the proposed regulations and informed providers of its intention to promulgate the regulations effective November 1, 2011. OPWDD considers that this notice provided adequate lead time for agencies to complete the required training in promoting positive relationships and to complete the required training for administrators. As noted above, OPWDD considers this training to be vital to its efforts to promote culture change and that further delay is not warranted. OPWDD is therefore promulgating the regulations with no changes in the required timeframe for compliance.

Comment: The provider association also recommended that OPWDD clarify in the final regulations that the required training for board members is on a one time basis as opposed to an annual basis for employees, volunteers, and family care providers.

Response: In the proposed regulations concerning training of board members, OPWDD mirrored long standing language in existing regulations that required initial training only. OPWDD considers that the language in the proposed regulations was sufficient to distinguish that the requirements related to training of board members was for one-time training only. However, OPWDD agrees with the provider association that adding additional more explicit language could be helpful to providers in understanding the new requirement. OPWDD is consequently adding language to its final regulation which explicitly states that board members are only required to receive training on a one-time basis.

Comment: The provider expressed concerns pertaining to the requirement to provide training to boards of directors of certain not-for-profit corporations. The provider asserted that this requirement will place an undue burden on many not-for profit agencies already struggling to recruit and maintain active and involved board members with the competencies needed to support such agencies. The provider also expressed that not-for-profit agencies need to have the freedom to select a board that reflects the competencies needed by each agency. The provider stated that a good board is comprised of individuals with diverse competencies and concluded by indicating that agencies cannot and should not require any director to be competent in all areas.

Response: OPWDD notes that existing regulations in 14NYCRR Part 624 identify the responsibilities of an agency's governing body (which is the board of directors for a not-for-profit corporation) in relation to incident management. Specifically subdivision 624.2(h) requires a process whereby the governing body ensures the effectiveness of the identification, recording, investigation, review and corrective actions with regard to events or situations involving individuals receiving services referenced within the regulations. The regulations states that this shall be achieved through the establishment of the governing body's own protocol, which may include but shall not be limited to: regular review of the minutes of the standing committee which reviews and monitors reportable incidents, serious reportable incidents, and allegations of abuse, and periodic attendance at that committee's meetings. Further, subdivision 624.2(i) indicates that the governing body and the chief executive officer are responsible for the management of incidents and allegations of abuse.

OPWDD considers that in order for a board of directors to effectively fulfill its oversight responsibilities as described in regulations, it is essential that the members of the board have a basic understanding of laws, regulations, policies/procedures, and other information associated with identifying, reporting, and responding to incidents and abuse. OPWDD considers that the lack of effective oversight by the board of directors is often either the cause or a contributing factor in situations when an agency is cited for failure to comply with incident management requirements and that training all members of the boards of directors will improve the board's oversight in the area of incident management. OPWDD is therefore retaining the provision requiring that members of boards of directors be trained in the final regulations.

Comment: The MHLS Directors endorsed the proposed regulations. MHLS stated that the regulations will strengthen the existing training requirements toward the end of ensuring that those who support individuals receiving services are both knowledgeable about abuse and act responsibly. MHLS commented that this is an extremely laudable goal that it shares with OPWDD.

Response: OPWDD appreciates the support from MHLS.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Provisions for Medical Director Coverage in Article 16 Clinics

I.D. No. PDD-43-11-00016-P

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

Proposed Action: Amendment of section 679.3 of Title 14 NYCRR.

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

Subject: Provisions for medical director coverage in Article 16 clinics.

Purpose: To scale medical director coverage to the size of the clinic.

Text of proposed rule: Subdivision 679.3(i) is amended as follows:

(i) The facility shall have sufficient professional (see glossary) staff to deliver the services offered in accordance with the intensity, duration and frequency recommended by the treating clinician(s) for the persons admitted to the facility.

(1) The medical director shall be appointed [for one-third time (i.e., .34 full-time equivalent) or additionally] at a [level] sufficient *full-time equivalent (FTE) level (based on a 40 hour work week)* to provide adequate oversight of the constellation of services offered by the clinic facility for a clinic in operation five days or more per week.

(i) *The medical director shall be at least .10 FTE for programs that are required to complete 300 annual physician assessments or less per year (see subdivision 679.3(t) for requirements related to physician assessments).*

(ii) *The medical director shall be at least .20 FTE for programs that are required to complete more than 300 and up to and including 600 annual physician assessments per year.*

(iii) *The medical director shall be at least .30 FTE for programs that are required to complete more than 600 annual physician assessments per year.*

[(i)] (iv) For programs operating less than five days per week on a regular basis, the medical director coverage shall be at least proportional based on the criteria stated in subparagraphs (i), (ii) and (iii) of this paragraph.

[(ii)] (v) Nothing herein shall preclude the medical director as a physician from delivering appropriate and needed medical services, including the *annual physician assessments*, for up to one half of his/her assigned time. If the services are not principal source primary medical care, the requirements at subdivision (f), (k) and (n) of this section need not be met.

[(iii)] (vi) Nothing herein shall preclude the clinic provider from filling the medical director position allocation utilizing more than one physician, as long as only one physician is formally designated as having overall responsibility for the facility's medical direction.

Note: Paragraph (2) of this subdivision is unchanged.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and facilities and the provision of services pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law. The proposed amendments are concerning provisions for medical director coverage in Article 16 clinics which will scale coverage to the size of the clinic.

3. Needs and benefits: OPWDD regulations governing the operation of Article 16 Clinics (Part 679 Clinic Treatment Facilities) require that the clinics have a medical director. To provide adequate oversight of the constellation of services offered by the clinic, the regulations also specify the minimum level of time of the appointment of the medical director. The proposed amendments will revise current required levels of full time equivalents (FTE) for medical directors from .34 FTE for clinics operating 5 days or more per week to new scaled levels of FTE based on the size of each clinic, the highest level being .30 FTE. OPWDD has determined that current requirements exceed the levels necessary to provide adequate oversight. Funding for Article 16 clinics will not be affected by this proposal, which means that clinics can redirect funds that pay for the medical director in excess of the minimum to more productive purposes. The proposal also addresses an inequity among clinics, since all clinics were required to provide the same minimum .34 FTE for medical director regardless of size. Consequently, these amendments will allow for more fair and equitable distribution of costs among Article 16 clinics.

- 4. Costs:
 - a. Costs to the Agency and to the State and its local governments: There are no costs or savings to the State as the rates for clinic services remain unchanged. State-operated clinics which may reduce expenditures for the medical director may experience minor cost savings. However, it is expected that clinics will generally redirect any savings to more productive purposes.
 - b. Costs to private regulated parties: There are neither initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. There may be minor cost savings associated with the rule as clinics reduce expenditures for the medical director. However, it is expected that clinics will generally redirect any savings to more productive purposes.
- 5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.
- 6. Paperwork: No additional paperwork will be required by the proposed amendments.
- 7. Duplication: The proposed amendments do not duplicate any existing State or federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.
- 8. Alternatives: OPWDD considered requiring higher levels of FTEs for medical directors which would provide more coverage; however it was decided that these higher levels of coverage were neither necessary nor cost effective.
- 9. Federal standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.
- 10. Compliance schedule: OPWDD expects to finalize the proposed amendments with the earliest effective date consistent with the State Administrative Procedure Act. Since the proposed regulations reduce the minimum FTE for medical directors, clinics which are in compliance with the current regulations (with higher minimum levels) will be in compliance with the revised requirements as they will exceed the minimum levels when the new regulations become effective.

Regulatory Flexibility Analysis

1. Effect on small business: The proposed regulatory amendments will apply to Article 16 clinics that serve persons with developmental disabilities in New York State. Many clinics are operated by providers which also serve this population by offering other services and programs and in such instances are likely to employ more than 100 people overall even if the discrete clinic site does not. Of the 56 voluntary clinics certified by OPWDD, less than one quarter of them may operate exclusively as clinics and those clinics are likely to be classified as small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses. These amendments are concerned with provisions for medical director coverage in Article 16 clinics. OPWDD has determined that these amendments will not result in increased costs for additional services or increased compliance requirements. Conversely, these amendments may result in a minor savings for providers since they implement an overall reduction in the full-time equivalent levels from previous required levels for medical directors.

2. Compliance requirements: The proposed amendments will require that Article 16 clinic providers comply with levels of full time equivalents for medical directors that will be scaled to the size of each clinic. Since the proposed regulations reduce the minimum FTE for medical directors, clinics which are in compliance with the current regulations (with higher minimum levels) will be in compliance with the revised requirements as they will exceed the minimum levels when the new regulations become effective.

The amendments will have no effect on local governments.
 3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to regulated parties associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties, the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts. However, they may provide modest economic relief to providers.

7. Small business participation: The proposed regulations were discussed conceptually with representatives of providers of Article 16 clinics on 1/12/10, 3/26/10, 6/11/10, 10/15/10, 11/17/10 and 12/3/10. Representatives of providers also reviewed the draft language in December, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

The amendments in this proposed regulation are primarily concerned with provisions for medical director coverage in Article 16 clinics which will scale coverage to the size of the clinic. There may be minor cost savings associated with the rule as clinics reduce expenditures for the medical director. However, it is expected that clinics will generally redirect any savings to more productive purposes.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities. Although the amendments will allow clinics to reduce their employment of medical directors, they will only allow a modest reduction. The most a clinic will be able to reduce a medical director's hours is from a .34 FTE to a .10 FTE, a reduction of less than one quarter of an FTE. Approximately 35 percent of voluntary-operated clinics will be eligible to reduce their medical director FTE to .1, which equates to a loss of approximately 5 FTEs. The reduction in FTEs associated with the other tiers would be less than 5 FTEs per tier. Overall, this is not a substantial reduction. Furthermore, due to the shortage of physicians in today's job market, it is anticipated that this reduction will not put any medical directors out of work.

Conversely, the amendments could have a positive impact on jobs. The proposed amendments are concerning provisions for medical director coverage in Article 16 clinics which will scale coverage to the size of the clinic. The amendments will implement an overall reduction in the minimum full-time equivalent levels from previous required levels for medical directors, which may promote more efficient use of funds. OPWDD expects that generally clinics will redirect any funds that become available to more productive purposes, such as expanding employment of clinicians and/or support staff. Since the compensation of these individuals is expected to be less than the compensation of the medical director, there could be a modest overall growth in employment opportunities. Therefore, OPWDD does not anticipate an adverse impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-10-00-00012-P	March 8, 2000
PSC-01-01-00022-P	January 3, 2001
PSC-04-01-00011-P	January 24, 2001
PSC-09-01-00017-P	February 28, 2001
PSC-09-01-00019-P	February 28, 2001
PSC-10-01-00026-P	March 7, 2001
PSC-10-01-00027-P	March 7, 2001
PSC-10-01-00028-P	March 7, 2001
PSC-10-01-00029-P	March 7, 2001

PSC-10-01-00030-P	March 7, 2001
PSC-10-01-00031-P	March 7, 2001
PSC-14-01-00021-P	April 4, 2001
PSC-14-01-00023-P	April 4, 2001
PSC-26-01-00015-P	June 27, 2001
PSC-33-01-00016-P	August 15, 2001
PSC-36-01-00009-P	September 5, 2001
PSC-49-01-00012-P	December 5, 2001
PSC-50-01-00010-P	December 12, 2001
PSC-16-02-00018-P	April 17, 2002
PSC-17-02-00013-P	April 24, 2002
PSC-18-02-00023-P	May 1, 2002
PSC-23-02-00012-P	June 5, 2002
PSC-25-02-00024-P	June 19, 2002
PSC-28-02-00014-P	July 10, 2002
PSC-32-02-00011-P	August 7, 2002
PSC-49-02-00025-P	December 4, 2002
PSC-53-02-00008-P	December 31, 2002
PSC-03-03-00006-P	January 22, 2003
PSC-10-03-00003-P	March 12, 2003
PSC-17-03-00009-P	April 30, 2003
PSC-37-03-00011-P	September 17, 2003
PSC-42-03-00009-P	October 22, 2003
PSC-41-04-00003-P	October 13, 2004
PSC-16-05-00014-P	April 20, 2005
PSC-47-05-00016-P	November 23, 2005
PSC-47-06-00016-P	November 22, 2006

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

Area Development and Business Incentive Rates

I.D. No. PSC-43-11-00006-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 a proposed tariff filing by KeySpan Gas East d/b/a Brooklyn Union of LI (KEDLI) to make various changes in rates, charges, rules and regulations contained in Schedule for Gas Service, PSC No. 1.

Statutory authority: Public Service Law, section 66

Subject: Area Development and Business Incentive Rates.

Purpose: For approval to extend KEDLI's Area Development and Business Incentive Rates (BIR) applications for three years.

Substance of proposed rule: The Commission is considering a proposal filed by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) to amend its tariff to extend the acceptance of applications for KEDLI's Area Development and Business Incentive Rate program for three years. The proposed tariff revisions have an effective date of January 2, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(11-G-0538SP1)

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

Central Hudson's Procedures, Terms and Conditions for an Economic Development Plan

I.D. No. PSC-43-11-00007-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 a petition from Central Hudson Gas & Electric Corporation detailing its procedures, terms, and conditions for an economic development plan.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Central Hudson's procedures, terms and conditions for an economic development plan.

Purpose: Consideration of Central Hudson's procedures, terms and conditions for an economic development plan.

Substance of proposed rule: On August 26, 2011, Central Hudson Gas & Electric Corporation submitted its Economic Development Grant Programs Annual Report to the Commission detailing the economic development programs and proposed changes to the program. The Commission is considering whether to grant, deny or modify, in whole or part, the proposal filed by Central Hudson. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(05-E-0934SP9)

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

Minor Rate Filing

I.D. No. PSC-43-11-00008-P

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

Proposed Action: The Commission is considering a proposed filing by the Village of Fairport to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1 — Electricity.

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

Subject: Minor Rate Filing.

Purpose: To increase annual electric delivery revenues by approximately \$475,184 or 2.5%.

Substance of proposed rule: The Commission is considering a proposal filed by the Village of Fairport (Fairport) which would increase its annual electric revenues by about \$475,184 or 2.5%. The proposed filing has an effective date of March 1, 2012. The Commission may adopt in whole or in part, modify or reject Fairport's proposal. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secre-

tary, 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-0537SP1)

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

Business Incentive Rates

I.D. No. PSC-43-11-00009-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 a proposed tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to make various changes in rates, charges, rules and regulations contained in Schedule for Gas Service, PSC No. 12.

Statutory authority: Public Service Law, section 66

Subject: Business Incentive Rates.

Purpose: For approval to extend KEDNY's Area Development and Business Incentive Rates (BIR) applications for three years.

Substance of proposed rule: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY or "the Company") to amend its tariff to extend the acceptance of applications for KEDNY's Area Development and Business Incentive Rates for three years. In addition, the Company made housekeeping changes to remove obsolete references. The Company's proposed tariff revisions have an effective date of January 2, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

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

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

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

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

(11-G-0539SP1)

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

Request for Waiver of 16 NYCRR 86.3(a)(1), (a)(2) and (b)(1)(iii), and 86.4(b)

I.D. No. PSC-43-11-00010-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 the waiver of certain provisions of 16 NYCRR regarding Rochester Gas and Electric Corporation's application pursuant to PSL Article VII for a Certificate of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, sections 4, 122(1), and art. VII

Subject: Request for waiver of 16 NYCRR 86.3(a)(1), (a)(2) and (b)(1)(iii), and 86.4(b).

Purpose: To consider a requested waiver of 16 NYCRR 86.3(a)(1), (a)(2) and (b)(1)(iii), and 86.4(b).

Substance of proposed rule: The Public Service Commission (PSC) is

considering a motion by Rochester Gas and Electric Corporation (RG&E) for waivers of PSC filing requirements. The waiver motion was included in RG&E's application, filed pursuant to Public Service Law Article VII, for a Certificate of Environmental Compatibility and Public Need to construct 1.9 miles of new 345 kV transmission line, 23.6 miles of new or rebuilt 115 kV transmission line, a new substation, and equipment upgrades at several existing substations in Monroe and Niagara Counties. RG&E requests a waiver of the requirements of 16 NYCRR 86.3(a)(1), (a)(2), (b)(1)(iii), and 86.4(b). These provisions require, in relevant part, the submission of detailed maps, drawings and explanations of the right-of-way for each proposed facility, using Department of Transportation (DOT) maps at specified scales, showing at least five miles on either side of the proposed facility location; where permanent clearing or other changes to the topography, vegetation or man-made structures would be required; any known archaeological, geologic, historical or scenic areas within three miles of the right-of-way; and the relationship of the proposed facility to the applicant's overall system in several respects; aerial photographs showing the location of access and maintenance routes; and DOT maps indicating any alternative route considered. RG&E also requests that the application of 16 NYCRR 86.3(a)(1)(ii) be modified to allow it to provide 1:6,000 scale aerial photographs showing where permanent clearing or other changes to the topography, vegetation or man-made structures would be required.

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

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

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

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

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

(11-T-0534SP1)

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

Central Hudson's Procedures, Terms and Conditions for an Economic Development Plan

I.D. No. PSC-43-11-00011-P

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

Proposed Action: The Commission is considering a petition from Central Hudson Gas & Electric Corporation detailing its procedures, terms, and conditions for an economic development plan.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Central Hudson's procedures, terms and conditions for an economic development plan.

Purpose: Consideration of Central Hudson's procedures, terms and conditions for an economic development plan.

Substance of proposed rule: On August 26, 2011, Central Hudson Gas & Electric Corporation submitted its Economic Development Grant Programs Annual Report to the Commission detailing the economic development programs and proposed changes to the program. The Commission is considering whether to grant, deny or modify, in whole or part, the proposal filed by Central Hudson. The Commission may apply its decision here to other utilities.

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

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

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

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

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

(05-G-0935SP8)

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

Transfer of Outstanding Shares of Stock

I.D. No. PSC-43-11-00012-P

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

Proposed Action: The Commission is considering the petition of HPWS, LLC for approval to acquire all of the outstanding shares of stock of The Meadows at Hyde Park Water-Works Corporation.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h

Subject: Transfer of outstanding shares of stock.

Purpose: Transfer the issued outstanding shares of stock of The Meadows at Hyde Park Water-Works Corporation to HPWS, LLC.

Substance of proposed rule: The Meadows at Hyde Park Water-Works Corporation (company) was created to serve up to 74 customers in the The Meadows at Hyde Park development (development) located in the Town of Hyde Park, Dutchess County. The developer, BVC Land Development, Inc., defaulted on a mortgage secured by lots in the development and those lots are currently in title of the referee in foreclosure. An entity affiliated with HPWS, LLC (HPWS) is expected to acquire title from the referee and take over developing pending HPWS's acquiring control and ownership of the company.

On June 24, 2011, a petition was filed by HPWS requesting approval, pursuant to Public Service Law § 89-h, of the transfer of ownership of the shares of stock by the company to HPWS. The Commission may approve or reject, in whole or in part, or modify the request.

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

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

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

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

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

(11-W-0344SP1)

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

Transfer of Issued and Outstanding Capital Stock

I.D. No. PSC-43-11-00013-P

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

Proposed Action: The PSC is considering a Joint Petition of Aqua New York, Inc. and its utility subsidiaries for the sale of 100% of the issued and outstanding stock of Aqua New York, Inc.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h

Subject: Transfer of issued and outstanding capital stock.

Purpose: Transfer 100% of the issued and outstanding capital stock of Aqua New York, Inc. to American Water Works Company, Inc.

Substance of proposed rule: Aqua New York, through itself and its utility subsidiaries, serves more than 152,000 residents in four counties across New York State in Nassau, Westchester, Ulster and Washington Counties. Aqua New York's companies include: New York Water Service Corporation, Aqua New York of Sea Cliff. In addition, Aqua New York directly serves rate districts comprising the former Cambridge Water Works Company, Dykeer Water Company, Kingsvale Water Company, Wacabuc Water Works, Inc., and Wild Oaks Water Company, Inc.

On September 1, 2011, a joint petition was filed by Aqua Utilities, Inc., Aqua New York, Inc., and American Water Works Company, Inc., for approval, pursuant to Public Service Law § 89-h, of the sale of 100% of the issued and outstanding stock of Aqua New York, Inc., by Aqua Utilities, Inc., to American Water Works Company. The Commission may approve or reject, in whole or in part, or modify the company's request.

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

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

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

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

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

(11-W-0472SP1)

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

Refunding and Issuance of Securities

I.D. No. PSC-43-11-00014-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. requesting permission to refund its preferred stock with unsecured debt as well as extend the period for issuance of securities to no later than 12/31/14.

Statutory authority: Public Service Law, section 69

Subject: Refunding and Issuance of Securities.

Purpose: To permit the Company to issue and sell securities.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. enhancing their financing authority as outlined below under PSL Section 69. On September 30, 2011, Consolidated Edison Company of New York, Inc. submitted a petition requesting authority to enhance its order, issued and effective March 12, 2009, as previously enhanced by its order, issued and effective November 20, 2009, in the same proceeding, to (i) authorize the Company to issue and sell, not later than December 31, 2012, not to exceed \$243 million of unsecured debt of the Company (the "Preferred Refunding Debt") for purposes of the optional refunding of all or part of its outstanding preferred stock (the "Outstanding Preferred"); 1,915,319 shares of \$5 Cumulative Preferred, without par value and 375,626 shares of its Cumulative Preferred Stock (\$100 par value); and (ii) extend the period for issuance of the securities authorized pursuant to the Order, including the New Debt, the Refunding Securities and the RCA (revolving credit agreements) authorized in the Original Order, the New Preferred authorized in the Order Enhancement and the Preferred Refunding Debt for which authorization is requested herein, to not later than December 31, 2014.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary,

tary, 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.
 (08-M-1244SP3)

Racing and Wagering Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Testing of Certain Licensees and Officials in Horse Racing Activities for Blood Alcohol Content in Excess of .05 Percent

I.D. No. RWB-43-11-00003-P

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

Proposed Action: Addition of section 4042.6; and amendment of section 4104.12 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 301(1)

Subject: Testing of certain licensees and officials in horse racing activities for Blood Alcohol Content in excess of .05 percent.

Purpose: To detect and deter alcohol intoxication by licensees, thereby ensuring safe operations and integrity of racing.

Text of proposed rule: New section 4042.6 is added to 9 NYCRR to read as follows:

4042.6 Test for alcoholic consumption.

(a) Each track shall provide a device approved by the board at a location to be designated by the State steward or designee capable of measuring the presence of alcohol by weight within the blood. The Board shall only approve the use of breath analysis instruments that have been approved by the National Highway Traffic Safety Administration. The use of such device shall be under the supervision of the board steward or board designee.

(b) Tests shall be administered to licensees and officials at such times as directed by the board steward or board designee, and shall only be administered by qualified individuals employed by the Board. All jockeys named to ride or who will ride in a race must be tested prior to racing on each race date.

(c) Violations. The following shall constitute violations:

(1) Refusal to take such test shall constitute a violation of this section.

(2) The presence of .05 percent or more alcohol in the blood by weight per volume as indicated by said device shall constitute alcoholic impairment and be a violation of this section. Blood alcohol concentration (BAC) means the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/100ml blood and expressed as "percent BAC."

(d) A jockey who is alcoholically impaired or who refuses to be tested shall not compete and may be fined or suspended. An official who is alcoholically impaired or refuses to be tested shall not be assigned his duties and a report thereof shall be made immediately to the board. Any other licensee who is alcoholically impaired or refuses to be tested shall not be permitted to continue to perform in a licensed capacity on that day. In the event of a violation of this section, the board may take such other action as is deemed appropriate, including fine, revocation, suspension or the conditioning of continued licensing upon the satisfactory enrollment in and completion of a state certified treatment program.

4104.12. Test for alcoholic consumption.

(a) Each track shall provide a device approved by the board [commission] in the paddock capable of measuring the presence of alcohol by weight within the blood. The Board shall only approve the use of breath analysis instruments that have been approved by the National Highway Traffic Safety Administration. The use of such device shall be under the supervision of the [track] board steward or board designee. [and tests]

(b) Tests shall be administered to such licensees and officials at such times as directed by the [track] board steward or board designee. Tests

shall be administered to licensees and officials at such times as directed by the board presiding judge or board designee, and shall only be administered by qualified individuals employed by the Board.

(c) Violations. The following shall constitute violations:

(1) Refusal to take such test shall constitute a violation of this section.

(2) The presence of .05 percent or more alcohol in the blood by weight per volume as indicated by said device shall constitute alcoholic impairment and be a violation of this section. Blood alcohol concentration (BAC) means the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/100ml blood and expressed as "percent BAC."

(d) A driver who is alcoholically impaired or who refuses to be tested shall not compete and may be fined or suspended. An official who is alcoholically impaired or refuses to be tested shall not be assigned his duties and a report thereof shall be made immediately to the [commission]board. Any other licensee who is alcoholically impaired or refuses to be tested shall not be permitted to continue to perform in a licensed capacity on that day. In the event of a violation of this section, the board may take such other action as is deemed appropriate, including fine, revocation, suspension or the conditioning of continued licensing upon the satisfactory enrollment in and completion of a state certified treatment program.

Text of proposed rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305, (518) 395-5400, email: info@racing.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law Sections 101(1) and 301(1). Section 101 subdivision (1) vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 301 subdivision (1) grants the Board the power to supervise generally all harness race meetings in this state at which pari-mutuel betting is conducted, and adopt rules and regulations consistent with provisions of the Racing Law.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rule is necessary to ensure that jockeys, other licensees and racing officials at thoroughbred and harness race tracks are not intoxicated or alcohol-impaired while performing their duties, thereby making certain that horse racing is conducted safely and the integrity of pari-mutuel racing is preserved. It is necessary to deter alcohol intoxication under an effective regulatory framework that excludes intoxicated persons and is capable of imposing penalties and/or compulsory treatment. Currently, there is no Board rule requiring alcohol testing at a thoroughbred race track. The proposed thoroughbred rule amendment is similar to the existing harness racing rule in that both require that the track provide the breathalyzer equipment, place the use of the device under the track steward, make it a violation to refuse to submit to an alcohol test, establish the blood alcohol content at .05 percent, and establish exclusion and reporting requirements for positive tests. This thoroughbred rule will bring uniform testing for alcohol consumption to all of New York State horseracing. These rules are similar to the model rules of the Association of Racing Commissioners International, which prohibits racing officials and licensees from being intoxicated or impaired by alcohol, establishes limit of .05 percent of alcohol in the blood, and makes it a violation for a person to refuse to submit to alcohol testing. A jockey, exercise rider, out-rider or any other person on a horse respectively risks injury or death, for himself or other jockeys, if riding while intoxicated during a race, during training or in preparation for a race. The job of a jockey involves unique risks, riding atop a horse that weighs an average of 1100 pounds and races at speeds averaging 40 miles per hour, with spurts of speed that exceed that average. Exercise riders ride thoroughbreds every day at a race meet for workouts and training, and while they don't actually race horses, they ride horses in conditions similar to an actual race. All jobs involving riding a horse require a keen sense of awareness, finely-honed reflexes, coordination, balance and highly-developed motor skills. Alcohol impairs all of these abilities and therefore impairs the ability of the jockey or rider to safely control his or her horse. Furthermore, the integrity of a thoroughbred race is undermined when a jockey or any person involved in officiating a horse race is under the influence of alcohol. A jockey is required to give their best effort when racing, and a jockey who is impaired and performing at less than their normal abilities cannot give his or her best effort. Race officials are required to pass eye exams as a licensing condition, and their duties require them to be mentally alert and employ superior judgment. Obviously, a judge who is whose judgment and senses are

impaired by alcohol will adversely impact his or her ability to do his or her job properly. This rule is beneficial because it will help the Board ensure that racing officials are not impaired while performing their duties.

The amendments to the harness rule are necessary to subject all on-duty licensees at a harness racetrack to testing for alcohol consumption, to remove obsolete references to the racing "commission" and "track steward," to give the board steward the authority to delegate supervision and administration duties related to alcohol testing, and prescribe procedures for on-duty licensees and officials who test in excess of allowable BAC levels. The amendment to include all harness track licensees for alcohol testing is necessary because, in addition to drivers and officials, there are licensees who operate motorized vehicles, handle horses, prepare and handle horse racing equipment and tack, prepare official documentation related to pari-mutuel wagering events, and perform their duties in the public eye, all of which require safe, sober and professional conduct. This rule would benefit horse racing by giving the Board the power to test those individuals for excess alcohol consumption while on duty and exclude them from their duties if they are intoxicated.

The amendment is also beneficial because it makes proper references to the "board" and "board steward" rather than the "commission" and "track steward." These amendments are technical in nature, but necessary nonetheless to ensure that the Board's rules reflect current terminology.

The amendment to the harness rule also gives the board steward the authority to name a designee for the purposes of supervising and administering the alcohol test. This delegation authority is necessary because the board steward is often occupied before a race with a host of other regulatory matters related to horse racing, such as supervision of equine drug testing, equine drug administration, processing claims for claiming races, reviewing driver assignments and directing the activities of other judges, such as the starting judge and the paddock judge.

Both the thoroughbred and harness rule amendments include a provision that authorizes the Board to take appropriate action in the event a violation of the respective alcohol testing rules. This provision is necessary to enable the Board to deal with persons who are intoxicated by removing them from their official duties and prescribing appropriate remedies.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule. There are four thoroughbred race tracks in New York. Belmont, Aqueduct and Saratoga race tracks are all operated by the New York Racing Association. NYRA already has 2 breathalyzer machines for testing blood alcohol content, and paid \$650 for both. It is unclear whether these machines are NHTSA approved. Finger Lakes Race Track is operated by Delaware North, and would have to purchase an alcohol testing device, which would cost between \$250 and \$500 per device. The Monticello harness racetrack purchased its alcohol testing machine for \$480. If a track currently has an alcohol tester that is not NHTSA approved, an approved model will have to be purchased for between \$250 and \$500. All tracks will be required to purchase the disposable breath tubes, which cost approximately 16 cents apiece and are purchased in bulk packages of a thousand at \$161. The bottled gas that is used to calibrate the machines costs approximately \$170 per tank. These costs are based on purchases made by the Racing and Wagering Board, which uses the tubes and gas to calibrate the alcohol testing machines used at harness tracks.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Local governments would bear no costs because the regulation of thoroughbred racing is exclusively regulated by the New York State Racing and Wagering Board. This rule would impose no costs upon the Racing and Wagering because the equipment and machines would be purchased by the race track operator.

(c) The information related to costs was obtained by the New York State Racing and Wagering Board based upon inquiries to racetrack operators that have alcohol testing devices and from Board staff who administer alcohol testing at harness tracks. Board staff also researched costs through vendors' internet websites.

5. Paperwork: This rule will not require any additional paperwork.

6. Local government mandates: Since the New York State Racing & Wagering Board is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

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

8. Alternative approaches: This Board did not consider an alternative thoroughbred rule because it intended to adopt a rule similar to the harness rule. No other alternatives were considered in regards to the provisions.

9. Federal standards: There are no federal standards for thoroughbred racing.

10. Compliance schedule: This rule will go into effect permanently on the day that it is published in the State Register under a Notice of Adoption.

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

As is evident by the nature of this rulemaking, this proposal affects operations at thoroughbred and harness racetracks and will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This rule is intended to determine whether an individual licensee working at a racetrack is alcoholically intoxicated. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. The rule will have a positive impact on thoroughbred and harness businesses that employ licensees at the racetrack by ensuring that the jockeys, outriders and other licensees who ride their horses or work at the tracks are not impaired, thereby reducing the probability of personal injury or property damage by an intoxicated employee. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will also be no adverse impact on small businesses and jobs in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either. Thoroughbred race tracks may use alcohol sensing devices that have been in use by harness tracks for years, and which require no special training or knowledge. Calibration of a modern alcohol testing device does not require any special knowledge other than the ability to follow the manufacturer's instructions.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of Cellular Telephones in the Paddock

I.D. No. RWB-43-11-00004-P

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

Proposed Action: Addition of section 4104.14 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1) and 301(1)

Subject: Use of Cellular Telephones in the Paddock.

Purpose: To allow cellular telephones and other electronic communication devices in designated areas of a harness race track paddock.

Text of proposed rule: New Section 4104.14 is added to 9 NYCRR to read as follows:

4104.14 Use of cellular telephones and electronic communication devices

The use of cellular telephones or any other electronic communication device, including devices that are capable of sending or receiving text messages or e-mails, by any person while in the paddock or receiving barn is restricted to use in an area designated by the Paddock Judge.

a.) Notwithstanding the provisions of Rule 4104.11, a sign shall be posted prominently at the entrance of the paddock or receiving barn stating that the use of a cellular telephone or an electronic communication device by any person while in the paddock is restricted to an area designated by the Paddock Judge, and identified by a sign that reads "Designated Cell Telephone Area".

b.) Nothing contained in this rule shall diminish the right of any track to adopt or implement more restrictive procedures concerning the use of cellular telephones and other electronic devices.

c.) This section shall continue for one year after the date that it goes into effect.

Text of proposed rule and any required statements and analyses may be obtained from: Mark Stuart, Assistant Counsel, New York State Racing & Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law sections 101(1) and 301(1). Section 101(1) of the Racing, Pari-Mutuel Wagering and Breeding Law vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 301(1) grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly.

Legislative objectives: To enable the Board to assure the public's confidence in -- and preserve the integrity of -- racing at pari-mutuel wagering tracks located in New York State, and to ensure that the state can receive reasonable revenue in support of government arising from such wagering.

3. Needs and benefits: This rule is needed to permit trainers, drivers, owners and groom the ability to communicate while in the paddock area. This amendment will permit cellular telephone and electronic messaging that is currently allowed at thoroughbred racetracks.

This rule is necessary to allow paddock personnel to communicate during the long period of time they are required to remain in the paddock. Board Rule 4104.8 requires trainers and/or assistant trainers to report to the paddock at least one hour prior to post time. A driver, trainer or groom, once admitted to the paddock may not leave the paddock until the horse to which he or she is assigned shall have completed its race, returned to the paddock, and the race is declared official. If these persons have multiple horses racing, they may be required to spend many hours in the paddock. During that time, they may need to make telephone calls to co-workers, or make personal telephone calls. This rule is necessary to allow them to make such legitimate telephone calls.

4. Costs: There are no projected costs to regulated persons or state and local governments associated with the adoption of this rule. As is apparent from the permissive nature of this rule, there are no costs imposed on any owner, guest or track. Persons in the paddock will be allowed to use cellular telephones or electronic devices in designated areas of the paddock, which adds no cost to regulated persons. State and local governments are not affected by this rule.

5. Paperwork: There will be no new paperwork created by this prohibition.

6. Local government mandates: Since the New York State Racing & Wagering Board is solely responsible for the regulations of pari-mutuel wagering activities in the State of New York, there is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication: There are no relevant rules or legal requirements of the state and federal governments that duplicate, overlap or conflict with the amendment of Board Rule.

8. Alternative approaches: The objective of this rule is permit the use of cellular telephones and other electronic communication devices in the paddock, while preserving the Paddock Judge's ability to observe when a telephone call is made from the paddock. Another alternative approach considered was the total prohibition of cellular telephones in the paddock area. This was considered impracticable because trainers and grooms are required to report to the paddock one hour prior to a race and remain in the paddock area while race horse is prepared. If a trainer has multiple horses racing on a given day, he or she may be required to remain in the paddock for several hours. During that time, the trainers or grooms may need to communicate with assistants or other employees, or conduct personal telephone calls.

Another alternative was to require that the Paddock Judge have the ability to monitor the telephone call or read the text messages to ensure that such communications were in compliance with the board's Code of Conduct rules prohibiting certain conversations and requiring persons in the paddock to conduct themselves as to avoid creating any appearance or suggestion that would reflect adversely on the integrity

of racing. This monitoring requirement was considered overly intrusive, particularly in cases where the telephone call was of a personal nature. It was considered adequate for the Paddock Judge to know that a telephone call took place, and if further investigation of the telephone call was warranted based upon reasonable suspicion, Board investigators could be notified to conduct further inquiry.

9. Federal standards: There are no federal standards for pari-mutuel wagering on harness races in New York State.

10. Compliance schedule: The rule would be effective immediately upon publication of the Notice of Adoption in the State Register.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment deals with the conduct of personnel within the paddock or receiving barn at a licensed harness race track. Consequently, the rule does not adversely affect small business, local governments, jobs nor rural areas. The rule proposal requires Paddock Judges, who are employees of the New York State racing and Wagering Board, to designate areas where track personnel may use their cellular telephones or electronic communication devices, prominently post signs regarding the restricted use of cell phones in the paddock and other signs that identify the cellular phone use area. These regulatory activities will not have an impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8). Nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either. By removing an obsolete rule regarding recording of telephone conversations in the paddock, and replacing it with a restrictive rule that permits the use of cellular telephones, the rule is more in accord with current communications technology.