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.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Patient Rights, Inpatient Rehabilitation Services, Residential Services

I.D. No. ASA-18-12-00005-A
Filing No. 617
Filing Date: 2012-06-20
Effective Date: 2012-07-11

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

Action taken: Amendment of Parts 815, 818 and 819 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Patient Rights, Inpatient Rehabilitation Services, Residential Services.

Purpose: Improve quality of service by clarifying regulations to eliminate frequent waiver requests and reduce administrative burdens.

Text or summary was published in the May 2, 2012 issue of the Register, I.D. No. ASA-18-12-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasa.ny.gov

Assessment of Public Comment

The agency received no public comment.

Education Department

NOTICE OF ADOPTION

Landscape Architecture

I.D. No. EDU-12-12-00006-A
Filing No. 625
Filing Date: 2012-06-26
Effective Date: 2012-07-11

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

Action taken: Amendment of sections 79-1.1 and 79-1.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 7324(1) and (2)

Subject: Landscape Architecture.

Purpose: Align Landscape Architect Registration Examination admission requirements with national standards and clarify professional study and experience requirements for landscape architecture candidates.

Text or summary was published in the March 21, 2012 issue of the Register, I.D. No. EDU-12-12-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on March 21, 2012, the State Education Department received the following comments.

1. COMMENT:

A commenter asked why section 79-1.2(b) did not remove the passing score requirement of a 75.0 for the licensing examination. The commenter noted that the passing score went from a 75.0 to a ''Pass'' a number of years earlier, and suggested that the passing score of 75.0 should be removed.

DEPARTMENT RESPONSE:

The commenter is correct that the licensing examination is currently reported on a pass/fail basis, which is one reason why regulatory amendments are proposed. The proposed amendment includes an allowance for scores to be reported on a pass/fail basis. However, the passing score of 75.0 is required to accommodate those licensure applicants who were licensed out of State some years ago and whose scores are reported to the Department on a numerical basis.

2. COMMENT:

A commenter noted that by accepting the Council of Landscape Architectural Registration Boards' (CLARB) certification as eligibility for licensure that New York would be reducing the amount of experience required for licensure. The commenter noted that the current education and experience requirements were appropriate for licensure.

DEPARTMENT RESPONSE:

The commenter misunderstood the proposed amendment's impact

to the licensure requirements. The Department is not accepting CLARB certification as the only requirement for licensure in New York, and is not reducing the education and experience requirements for licensure. CLARB certification is not required for licensure in New York.

3. COMMENT:

The commenter requested that the Department permit candidates to take the licensing exam prior to completion of the experience requirements for licensure. The commenter noted that the Department could still hold off on licensing candidates until New York's education and experience requirements were satisfied.

DEPARTMENT RESPONSE:

The proposed amendment permits a candidate to take the licensing exam prior to completion of the experience requirements for licensure. This reason was one of the factors in proposing the regulatory amendments.

4. COMMENT:

A commenter noted that perhaps the Department ought to consider using CLARB's eligibility requirements for taking the licensing exam while maintaining its current education and experience requirements for licensure.

DEPARTMENT RESPONSE:

This is what the proposed amendment accomplishes. The majority of candidates will apply to take the licensing exam directly with CLARB; however, candidates will not be licensed until they meet New York's education and experience requirements.

5. COMMENT:

A commenter asked if varied experience working with allied professionals such as environmental and civil engineers ought to be considered as acceptable experience for licensure.

DEPARTMENT RESPONSE:

The Department does accept a limited amount of experience working for related allied professionals to count towards the experience requirement for licensure in New York. However, a minimum of two years of diversified experience earned while under the direct supervision of a lawfully practicing landscape architect is still required for all candidates.

NOTICE OF ADOPTION

Form and Use of Electronic Prescriptions and Maintenance of Prescriptions by Pharmacists in a Secure Electronic Record

I.D. No. EDU-16-12-00015-A

Filing No. 624

Filing Date: 2012-06-26

Effective Date: 2012-07-11

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

Action taken: Amendment of sections 29.7(a) and 63.6(a)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6509(9), 6802(23) and 6810(6)(a); and L. 2011, ch. 590

Subject: Form and use of electronic prescriptions and maintenance of prescriptions by pharmacists in a secure electronic record.

Purpose: To implement Education Law sections 6802(23), as added, and section 6810(6)(a), as amended, by chapter 590 of the Laws of 2011.

Text or summary was published in the April 18, 2012 issue of the Register, I.D. No. EDU-16-12-00015-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon,, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 474-6400, email: legal@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on April 18, 2012, the State Education Department received the following comments.

1. COMMENT:

One writer, representing the New York City Pharmacists Society, wrote in general support of the proposed amendments. However, the writer suggested that prescriptions, both those for controlled substances and those that are for non-controlled substances, that are converted to a facsimile transmission should be considered a true electronic prescription. The writer also believes the proposed amendment will affect a pharmacist's current means of communicating with a prescriber to obtain authorization for additional refills on existing prescriptions.

DEPARTMENT RESPONSE:

Education Law § 6802, as recently amended by Chapter 590 of the Laws of 2011, specifically provides that facsimile transmissions must be manually signed and therefore, are not electronic prescriptions. Federal requirements promulgated by the Drug Enforcement Administration and those being developed by the Bureau of Narcotic Enforcement of the New York State Department of Health also preclude facsimile transmissions from being considered electronic prescriptions in that facsimile transmissions lack required security features. With regard to the writer's second comment, the proposed amendment relates to new prescriptions, and not to refill authorizations on existing prescriptions.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Impartial Hearings

I.D. No. EDU-05-12-00007-RP

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

Proposed Action: Amendment of sections 200.1 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), 4403(3) and 4404(1)

Subject: Special Education Impartial Hearings.

Purpose: To align State's timeline requirements for issuing impartial hearing decisions to Federal requirements; address factors leading to delays in the completion of impartial hearings; and address issues relating to the manner in which hearings are conducted.

Substance of revised rule: The State Education Department proposes to amend sections 200.1 and 200.5 of the Commissioner's Regulations. Since publication of a Notice of Proposed Rule Making in the State Register on February 1, 2012, the proposed rule has been substantially revised, as set forth in the Revised Regulatory Impact Statement submitted herewith. The following is a summary of the substantive provisions of the revised proposed rule.

Certification and appointment of IHOs [new sections 200.1(x)(vi) and 200.5(j)(3)(c)]:

The proposed rule would require an individual certified by the Commissioner as a hearing officer to be willing and available to accept appointment to conduct impartial hearings, and would provide for the rescinding of an impartial hearing officer (IHO)'s certification if he or she is unavailable or unwilling to accept an appointment within a two-year period of time, unless good cause is shown.

The proposed rule would also prohibit an IHO from accepting appointment as an IHO if he or she is an attorney involved in a pending due process complaint involving the same school district, or has, within a two-year period of time, served in the same district as an attorney in a due process complaint, or if he or she is an individual with special knowledge or training with respect to the problems of children with disabilities who has accompanied and advised a party from the same school district in a due process complaint.

Consolidation of multiple due process requests for the same student [new section 200.5(j)(3)(ii)(a)]:

In the interests of judicial economy and in furtherance of the student's educational interests, the proposed rule would establish procedures for the consolidation of multiple due process hearing requests filed for the same student, including the factors that must be considered in determining whether to consolidate separate requests for due process.

Prehearing conferences [200.5(j)(3)(xi)]:

The proposed rule would require that IHOs conduct prehearing conferences for all due process requests received on or after January 1, 2013, and that the IHO issue a prehearing order to address certain procedural matters and to identify the factual issues to be adjudicated at the hearing. These requirements will provide IHOs with the tools to move the hearing forward in a smooth, orderly fashion, and to render decisions in an efficient and expeditious manner.

Withdrawals of requests for due process hearings [new section 200.5(j)(6)]:

The proposed rule would address existing concerns regarding the withdrawal and subsequent resubmission of the same or substantially similar due process complaints by establishing procedures for the withdrawal of a due process complaint and requiring a withdrawal to be made on notice to the IHO if it is made after the commencement of the hearing. In particular, the amendment would require that a request for a withdrawal made after the commencement of the hearing must be on notice to the IHO and would be presumed to be without prejudice, provided, however, that the impartial hearing officer may issue a written decision finding that the withdrawal is with prejudice upon review of the balancing of the equities.

Extensions to the due date for rendering the impartial hearing decision [section 200.5(j)(5)]:

The proposed amendment further reinforces the importance of granting extensions for only limited purposes, while addressing the practical concerns IHOs may face in conducting a hearing when the parties attempt to engage in settlement negotiations. The amendment would expressly prohibit an IHO from soliciting extensions for purposes of his or her own scheduling conflicts; prescribe additional considerations an IHO must consider in granting an extension; prohibit an IHO from granting an extension after the record close date; and require the IHO to set forth the facts relied upon for each extension granted.

Timeline to render a decision [section 200.5(j)(5)]:

To further align the State's timeline requirements for issuing decisions with the federal requirements, the proposed amendment would clarify that:

- when a district files a due process complaint, the decision is due not later than 45 days from the day after the public agency's due process complaint is received by the other party and the State Education Department; and
- when a parent files a due process complaint notice, the decision must be rendered 45 days after the date on which one of the following conditions occurs first: (1) the IHO receives the parties written waiver of the resolution meeting, (2) the IHO receives the parties written confirmation that a mediation or resolution meeting was held but no agreement could be reached, or (3) the expiration of the 30-day resolution period (unless the parties agree in writing to continue mediation at the end of the 30-day resolution period).

Overall, the proposed amendment will streamline the process for conducting hearings, which will in turn, facilitate a more efficient and expeditious hearing. This improved process will promote timely due process decisions and is likely to result in costs savings to districts.

Revised rule compared with proposed rule: Substantial revisions were made in section 200.5(j)(3)(i), (ii), (5) and (6).

Text of revised proposed rule and any required statements and analyses may be obtained from Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Kenneth Slentz, Deputy Comm. P-12 Education, State Education Department, Office of P-12 Education, State Education Building, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on February 1, 2012, the following substantial revisions were made to the proposed rule:

The proposed amendment to section 200.5(j)(3)(i)(c) was revised to define an individual who has provided direct special advocacy as an individual with special knowledge or training with respect to the problems of children with disabilities who has accompanied and advised a party from the same school district in a due process complaint within a two-year period.

The proposed amendment to section 200.5(j)(3)(ii)(a) was revised to add that the impartial hearing officer (IHO) must consider relevant factors as indicated in the regulations in determining whether to consolidate more than one due process complaint, and to remove subclauses (1) and (4), which were added in the original proposed amendment, and which had provided, respectively, that in determining whether to consolidate one or more separate requests for due process, the IHO must consider the similarity of the issues in the due process complaints and whether the parties had sought mediation with regard to a due process complaint notice.

Proposed section 200.5(j)(3)(xi) was revised to clarify that a prehearing conference may be scheduled only upon the commencement of the hearing and that the IHO has no authority to convene a pre-hearing conference prior to the date on which a hearing may be commenced in accordance with the applicable timeline requirements. Section 200.5(j)(3)(xi) was also revised to amend the proposed date by which IHOs are required to conduct pre-hearing conferences from on or after July 1, 2012 to on or after January 1, 2013.

The proposed amendment to section 200.5(j)(3)(xi)(b) was revised to clarify that although the final disclosure of evidence is required no later than five days prior to the commencement of the hearing, final disclosure of all witnesses is not required to be submitted at least five business days prior to the hearing. The IHO may establish an alternative deadline date for witnesses.

The proposed amendment to section 200.5(j)(3)(xi)(d) was revised to add that both parties must be given an opportunity to render objections to the prehearing order.

The proposed amendment to section 200.5(j)(3)(xi)(e) was revised to add that the notice to the parties of the pre-hearing order must be included in the hearing record.

The proposed amendment to section 200.5(j)(3)(xi)(f) was revised to add that nothing in this section shall authorize the IHO to conduct a prehearing conference prior to the conclusion of the resolution period pursuant to paragraph (2)(v)(b) of this subdivision.

The proposed amendment to section 200.5(j)(5) has been revised to add that, after a final decision has been rendered, the IHO must promptly return the record to the school district together with a certification of the materials included in the record.

The proposed amendment to section 200.5(j)(5)(ii) was revised to remove subsections (e) whether the reasons for the delay were foreseeable; and (f) whether granting the extension is likely to contribute to reaching a final decision within the revised timeline or is likely to cause additional extension requests, from the factors the IHO must fully consider when considering granting a request for an extension.

The proposed amendment to section 200.5(j)(5)(ii)(a) was revised to clarify that in considering whether to grant a request for an extension of the hearing, the IHO should consider whether the delay of the hearing would positively contribute to, or adversely affect, the child's educational interests or well-being.

The proposed amendment to section 200.5(j)(5)(iii) was revised to delete the provision authorizing an IHO to grant one 30-day extension for the purposes of settlement discussions between the parties.

The proposed amendment to section 200.5(j)(5) has been revised to add a new subparagraph (vi) to define the contents of the hearing record for purposes of such impartial hearing.

The proposed amendment to section 200.5(j)(6)(ii) was revised to require that a withdrawal shall be presumed to be without prejudice except that the IHO, upon review of the balancing of the equities, may issue a written decision that the withdrawal of a due process complaint shall be with prejudice.

The above revisions to the proposed rule require that the Local Government Mandates section of the previously published Regulatory Impact Statement be revised to read as follows:

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments beyond those already imposed by federal and State statutes and regulations. Among other things, the proposed rule amends the procedures that must be followed by an IHO in accepting an appointment, conducting a hearing, and rendering a decision and providing the decision to the State Education Department. The proposed rule amends the procedures for conducting hearings to ensure they are held in an efficient and expeditious manner in compliance with the federal timeline requirements, and provides IHOs with the tools to properly manage and conduct these hearings in such a manner. The rule also aligns the State's timeline requirements for issuing an impartial hearing decision with the federal requirements.

Revised Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on February 1, 2012, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions do not require any changes to the previously published Regulatory Flexibility Analysis and Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on February 1, 2012, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement filed herewith.

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

Assessment of Public Comment

The following is a summary assessing the public comment received by the State Education Department since publication of a Notice of Proposed Rule Making in the State Register on February 1, 2012.

1. Impartial Hearing Officer (IHO) Certification - section 200.1(x)(4)(vi)

COMMENTS: Rule is reasonable and helps to ensure impartiality; will remove individuals who might find IHO credential helpful, but who have no real interest in actually serving; will reduce time devoted to appointment of IHOs by eliminating those who currently remain on the list and have to be canvassed regardless of availability; and will discourage continued unwillingness to accept an appointment without good cause. Other comments expressed concern over how determinations would be made as to whether an IHO has been unwilling or unavailable to accept appointments within a two year period, and stated that IHOs should be allowed to take a leave of absence.

DEPARTMENT RESPONSE: Such determinations would be made on a case-by-case basis and would include the reasons for an IHO's leave of absence and number of appointments offered to the IHO during the two-year period.

2. IHO Acceptance of Appointments - section 200.5(j)(3)(i)

COMMENTS: Rule will eliminate conflicts of interest and foster impartiality, increase efficiency of the hearing process, and eliminate IHO from needing to decide his/her recusal. Other comments recommended revising rule to prohibit individuals from serving as IHOs when they have represented parents in the State, or who are members of firms or organizations that represented the school district, during the prior two years; and providing a definition of ''direct special education advocacy.''

DEPARMENT RESPONSE: It would be inappropriate to further restrict IHO appointment based on his/her history of representing parents; and that as attorney, many IHOs have other employment responsibilities and the purpose of the rule is only to further ensure that IHO does not have a professional conflict of interest with the school district in which he/she presides as IHO.

3. Consolidation and multiple due process hearing requests - section 200.5(j)(3)(ii)

COMMENTS: Consolidation will result in improved efficiency, save time and expense, result in determinations in best interests of children, eliminate forum shopping, avoid duplication of attorney fees and professional time. Other comments recommended deleting detailed considerations from rule and disseminating them in guidance, prohibiting consolidations if subsequent due process complaint filed with five days of commencement of hearing, unless upon written consent, and requested clarification of specific procedures and factors.

DEPARTMENT RESPONSE: Revised amendment retains the considerations, but clarifies consolidation is at the discretion of IHO, who must consider only those factors relevant to consolidation and use the consideration in justifying his/her decision whether to consolidate; and deletes the factors relating to similarity of issues and whether parties have sought mediation; and that prohibiting consolidations of complaints filed within five days of hearing may not be in the interests of judicial economy and further the student's educational interests.

4. Pre-hearing Conferences - 200.5(j)(3)(xi)

COMMENTS: Rule allows IHO to focus on and research pertinent issues, facilitate efficient and expeditious decisions, and assure factual issues in question are commonly understood prior to hearing. Other comments stated rule could impose burden on pro se parents and increase costs, create delays in scheduling hearings, take away opportunity for early informal resolution, shift burden of proof and require parties to narrow or exclude issues before all evidence is presented, and violates due process by requiring IHO to proceed with conference even if a party cannot attend.

DEPARTMENT RESPONSE: Rule is necessary to ensure that IHO effectively and efficiently manage hearings and issues decisions; that the rule authorizes IHO to assist unrepresented party at all stages of impartial hearing, including pre-hearing conference; that rule is expected to result in fewer hearing sessions and more timely decisions, thereby reducing costs. The rule has been revised to state IHO is not authorized to conduct a pre-hearing conference prior to conclusion of the resolution period; to separate the pre-hearing order requirement for the list of expected hearing witnesses from the requirement that the deadline data for final disclosure of all evidence intended to be offered at the hearing, which must be no later than at least five business days prior to the first scheduled hearing date; to add that if a party does not participate in pre-hearing conference, IHO may proceed and issue pre-hearing order, provided both parties given opportunity to object.

5. Settlement Agreements - section 200.5(j)(4)(iii)

COMMENTS: Matters not before IHO should not be included in a settlement; if both parties agree, IHO should have discretion to so-order settlement agreement on matters not before IHO in due process complaint; IHO should have discretion to review proposed settlement and opine on its benefits to parties; no mandate relief from limiting range of settlement orders that may be so-ordered.

DEPARTMENT RESPONSE: Rule is not intended to limit settlement agreements to only those issues before IHO, but rather to limit IHO authority to so-order settlement agreement on any issues not before IHO in a complaint. The rule clarifies that while an IHO may order a settlement agreement, he/she is limited in authority under IDEA to do so only for issues raised in complaint or amended complaint notice.

6. Timeline to Render a Decision - section 200.5(j)(5)

COMMENTS: Rule guarantees adhered-to timeline; promotes timely resolution of complaints; and discourages extension of timelines over objection of other party. Other comments stated rule will cause more cases to be out of compliance, further complicate regulations, impose additional unnecessary burdens on parties and IHOs; be hard to implement, and violate parties' rights under IDEA; parties should have to go to a resolution meeting when district files a due process complaint.

DEPARTMENT RESPONSE: Rule does not provide further restrictions or burdens than is required by federal law and regulations and does not violate parties' rights or the IHO's ability to make decisions on a case-by-case basis. Federal law does not require a resolution session when school files a complaint.

7. Submission of IHO Decisions - section 200.5(j)(5)

COMMENTS: Rule allows Department to be better aware of IHO cases and decision and will maintain greater confidentiality for all parties. Other comments stated current redaction guidelines run counter to State's Freedom of Information Law; the Department should follow-up when necessary upon its review; redaction requirements are unduly complicated, burdensome, unnecessary and interfere with purpose of disclosure; IHOs should be paid for redaction; narrower redaction standards should be developed; rule will increase costs by requiring IHOs to spend additional time redacting personally identifiable information from their decisions; State should assume additional expenses.

DEPARTMENT RESPONSE: Requirement that IHO submit a redacted copy of his/her decision to State is a long-standing requirement based on federal regulations, and the cost of which is therefore properly placed on schools.

8. Extensions to Due Date for Rendering Impartial Hearing Decision - section 200.5(j)(5)(i)-(iv)

COMMENTS: Rule will promote quick resolution to conflicts; make it less likely extensions will be granted for wrong reasons; and likely increase adjudication rates within required timelines. Other comments stated timeline is sufficient and extensions should not be granted; the Department should not micromanage impartial hearings; the rule encroaches on rights of parties to seek extensions and discretion of IHOs to grant extensions and by treating federal statute as a ceiling, not a floor, violates precept that State may not foreclose IDEA rights; additional timeline extension limits serve no reasonable purpose and ignores practical considerations; rule impinges on public policy by limiting extensions to permit settlement negotiations; on districts' capacity to present essential witnesses, and on districts' and parents' capacity to be represented by counsel of their choosing; amend the regulations to allow for extensions based on availability of parties, their attorneys and the various witnesses to make certain parties can fully present their case.

DEPARTMENT RESPONSE: State must have procedures in place in regulations to ensure that extensions are properly granted and to responsibly oversee the federally-required timelines; and that nothing in the rule discourages settlement negotiations or limits the parties' continued settlement discussions during the hearing process. Upon further reflection by Department staff, section 200.5(j)(5)(ii)(a) was revised to clarify that in considering whether to grant a request for an extension of the hearing, the IHO should consider whether the delay of the hearing would positively contribute to, or adversely affect, the child's educational interests or well-being. Such section had originally required the IHO to consider the overall impact of the delay on the child's educational interests and well-being. The revisions are necessary to clarify that the IHO should continue to consider whether the delay would result in an adverse impact on the child, as well as whether the delay would positively contribute to the child's educational interests, such as awaiting a determination of custodial matters in a pending divorce proceeding or foster care placement, which would clarify the identity of the individual acting as the parent or guardian with the educational decision-making authority. Furthermore, because the proposed amendment that would authorize the IHO to approved one 30-day extension for settlement discussions was read to limit the IHO's discretion to grant or not grant a party's extension based on a full consideration of the cumulative impact that the requested extension would have on the child's educational interest or well-being which may be occasioned by the delay, the need of a party for additional time to prepare or present the party's position at the hearing, any financial or other detrimental consequences likely to be suffered by a party in the event of delay and whether there has already been a delay in the proceeding, it has been deleted in the revised proposed amendment.

9. Withdrawals of Requests for Due Process Hearings - Section 200.5(j)(3)

COMMENTS: Rule is appropriate as it will reduce costs and decrease inefficiencies in current process; and reduce incentive to forum shopping through withdrawal and re-filing of due process complaints. Other comments stated the proposed amendment to section 200.5(j)(6)(iv) contains a typographical error in that it fails to state that the original hearing officer would be appointed to hear the re-filed due process complaint; the rule is unclear, there is a need for more discussion; a parent should have an unrestricted right of withdrawals; the rule goes substantially further than the IDEA permits or res judicata doctrine would allow; automatic determination of when prejudice attaches should not occur; restricting parent's ability to withdraw without prejudice after the pre-hearing conference may force parties into unnecessary hearings and increase litigation costs; parties will have very little time after a hearing request has been filed before they need to seek IHO permission to withdraw without prejudice; giving IHOs authority to dismiss claims with prejudice creates disincentives for settlement negotiations; claims should not be precluded in future proceedings when they are withdrawn prior to adjudication on the merits.

DEPARTMENT RESPONSE: The rule has been revised to indicate that a party's withdrawal is presumed to be without prejudice except that the IHO, upon review of the balancing of the equities, may issue a written decision that the withdrawal shall be with prejudice. The rule has been revised to clarify that original IHO will hear the refilled due process complaint. Timeline for commencing the hearing or pre-hearing conference is stipulated in 8 NYCRR § 200.5(j)(3)(iii).

State Board of Elections

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Amendment to Section 6209.4 Repeals Regulation Relating to Disclosure of Political Contributions; Amendment to Section 6204.2 Cover Sheets

I.D. No. SBE-28-12-00007-P

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

Proposed Action: This is a consensus rule making to repeal section 6204.2 and amend section 6209.4 of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 3-102, 3-103, 3-104, 3-105 and 3-106

Subject: Amendment to section 6209.4 repeals regulation relating to disclosure of political contributions; amendment to section 6204.2 cover sheets.

Purpose: To conform with Public Officers Law 73 and to eliminate unnecessary regulations as to cover sheets.

Text of proposed rule: 9 NYCRR section 6204.2 is being repealed.

9 NYCRR section 6209.4(i) is repealed and (j) is re-lettered (i).

Text of proposed rule and any required statements and analyses may be obtained from: Paul M. Collins, Deputy Special Counsel, State Board of Elections, 40 North Pearl St., STE 5, Albany, NY 12207-2729, (518) 473-5088, email: paul.collins@elections.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.

Consensus Rule Making Determination

The Resolution adopted by the State Board of Elections on June, 2012 as to these proposed regulations amendments contains the following language:

Whereas it is the opinion of the Commissioners that there will be no objection to the repeal of this Regulations as the change merely reflects the Board coming into compliance with State Law and may therefore be adopted as a Consensus Regulation.

Job Impact Statement

These regulation amendments neither create nor eliminate employment positions and/or opportunities, and, therefore, have no adverse impact on employment opportunities in New York State.

Department of Environmental Conservation

NOTICE OF ADOPTION

Hunting Deer and Bear and Wildlife Management Unit Descriptions

I.D. No. ENV-14-12-00010-A
Filing No. 626
Filing Date: 2012-06-26
Effective Date: 2012-07-11

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

Action taken: Amendment of Part 1 and section 4.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903, 11-0907, 11-0911, 11-0913, 11-0929 and 11-0931

Subject: Hunting deer and bear and Wildlife Management Unit descriptions.

Purpose: To implement strategies of the recently adopted Management Plan for White-tailed Deer in New York State.

Substance of final rule: The purpose of this rule making is to amend the Department of Environmental Conservation's (the department) general regulations governing deer and bear hunting (6 NYCRR Part 1) and to correct a technical error in the delineation of Wildlife Management Units (6 NYCRR section 4.1). These changes are needed to implement multiple strategies of the recently adopted Management Plan for White-tailed Deer in New York State, 2012-2016. The Plan was adopted in October 2011 and can be viewed at: www.dec.ny.gov/docs/wildlife__pdf/deerplan2012.pdf. The deer season changes require some adjustment of bear hunting seasons because they are generally concurrent with deer seasons. Also, the legal boundary descriptions for Wildlife Management Units 5A and 5C in Franklin County need to be corrected with a minor technical edit. Following is a summary of the amendments that the department is proposing:

1. Establish a 3-day youth firearms season for deer to occur during Columbus Day weekend in the portions of the Northern and Southern Zone where deer may be taken with a firearm, to increase opportunities for junior hunters. Junior hunters will be authorized to take one deer of either-sex with a firearm during the youth season;

2. Lengthen bowhunting seasons in the Southern Zone by changing to a fixed opening date of October 1, to increase bowhunting opportunities;

3. Lengthen regular seasons (bowhunting only) in Westchester County by changing to a fixed opening date of October 1 to increase bowhunting opportunities;

4. Adjust the Northern Zone muzzleloader and regular season start dates by up to one week to allow for a longer early bow season in some years;

5. Allow bowhunting during the late muzzleloading season in the Northern Zone to increase bowhunting opportunities;

6. Allow Deer Management Permits (DMPs) to be used during Northern Zone bow and early muzzleloader seasons to simplify regulations and increase hunter opportunity and choice;

7. Establish mandatory antler restrictions in Wildlife Management Units (WMUs) 3A, 4G, 4O, 4P, 4R, 4S, and 4W to reduce harvest of yearling (1.5 year old) bucks;

8. Simplify the description of the area open for deer hunting during the January firearms season on Long Island (Suffolk County) to state that all of Suffolk County is open for the January firearms season, subject to local discharge restrictions;

9. Establish provisions for designation of Deer Management Focus Areas to intensify use of traditional hunting in specifically designated geographic areas to assist communities with the burden of overabundant deer populations; increase bag limits to 2 antlerless deer per hunter per day and establish a Deer Management Focus Area deer hunting season in portions of January; establish specific permit, tagging and reporting requirements in focus areas; and define a focus area in Tompkins County that includes portions of the towns of Caroline, Danby, Dryden, Enfield, Ithaca, Lansing, Newfield and Ulysses. This area has very high deer populations and relatively poor access for hunters. The focus area approach will enable greater harvest opportunity for hunters able to gain access to lands for hunting;

10. Adjust bear seasons to remain consistent with bow, muzzleloader and regular seasons for deer;

11. Correct a road name in the boundary descriptions for WMUs 5A and 5C, where Franklin County Route 24 was incorrectly identified as State Route 24; and

12. Reorganize and clarify various sections of Part 1 to make deer hunting regulations easier to understand and eliminate inconsistencies or redundancy; these instances do not result in any substantive regulation changes.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1.11(a)(1), 1.31(b)(1) and (4).

Text of rule and any required statements and analyses may be obtained from: Bryan L. Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, 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.

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

We made a minor adjustment to the season date formulas for Northern Zone seasons in response to concerns that our proposal would extend deer seasons too late into December. We also clarified that the late bowhunting season in the Northern Zone will be open only in the same areas as the late muzzleloading season, which was our intent all along. These are minor, non-substantive changes that accomplish our original objectives while responding to hunter concerns. The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Assessment of Public Comment

The Department of Environmental Conservation (DEC or department) received comments from several thousand individuals and organizations on the proposed amendments to deer and bear hunting regulations during the 45-day public comment period (April 4 - May 21, 2012). Many of the comments simply offered support or opposition to specific proposals, whereas others offered more detailed arguments for or against one or more of our proposals. Overall, the comments were consistent with those we received during summer 2011 on the draft ''Management Plan for White-tailed Deer in New York State, 2012-2016'', and few significant alternatives were suggested. This was not surprising because the proposed regulations were based upon the final deer management plan that was adopted in October 2011.

More detailed explanations of the proposals and a full assessment of the public comment with DEC's response is available at www.dec.ny.gov/regulations/34113.html. A much shorter summary is provided below. We did not respond to comments that were not specifically related to the proposed amendments, including those related to possible changes to the Environmental Conservation Law (ECL), such as changing the minimum age for big game hunting, allowing the use of crossbows during bowhunting seasons, or reducing the setback distance for discharge of bowhunting equipment.

1. Establishment of a youth firearms deer season.

Many hunters enthusiastically supported the proposed youth deer hunt over Columbus Day weekend, indicating that this is a great way to promote hunting for future generations. Many other hunters disagreed with timing the hunt over Columbus Day weekend or at any time during bowhunting seasons. Primary objections to the proposed youth hunt related to some hunters' beliefs that: (1) a youth hunt is unnecessary; (2) young hunters with firearms present an increased safety risk for bowhunters or small game hunters afield in camouflage; (3) the youth hunt will affect bowhunting by altering deer behavior patterns; and (4) unscrupulous adults will illegally take deer during the youth season.

DEC is committed to providing junior hunters a special opportunity to hunt deer under the mentoring and supervision of an experienced adult without competition from adult firearms hunters. This is believed to be an important factor for recruiting new hunters, which is essential for the future of deer management. DEC believes that concerns about adverse consequences of having a youth hunt during bowhunting season, or on Columbus Day specifically, are unwarranted and inconsistent with the interests of the broader spectrum of New York hunters. We considered a variety of alternatives for timing of the season, and Columbus Day weekend was determined to be the best option for likely participants (junior hunters and their mentors).

2. Earlier opening of bowhunting seasons in the Southern Zone and the regular season (bowhunting-only) in Westchester County.

The department received enthusiastic support from bowhunters for the longer season. The department also received comments with substantial opposition to the bow season expansion largely on grounds that a longer bow season is unnecessary and is unfair to other hunters.

DEC believes that starting the Southern Zone bowhunting season on October 1 each year is a reasonable action to increase opportunity for New York deer hunters and considers bowhunting to be compatible with other hunting activities that will occur in early October. We do not expect any adverse management impacts to result from additional harvest of deer by bowhunters, so the alternative of not extending the bow season was rejected.

3. Adjustment of Northern Zone season dates.

Some hunters were concerned that the proposed season adjustments in the Northern Zone would extend hunting later into December, when it was more likely that winter weather conditions could restrict deer movements or hunter access, or make deer more vulnerable to harvest or disturbance in their winter yards.

DEC does not agree that the original proposal would have had significant adverse impacts on deer populations, hunter opportunity, or other recreationists in the Northern Zone. However, we are concerned about hunter perceptions and acceptance of later seasons in those years when snow conditions might make some localized deer herds more vulnerable, particularly in areas of the Adirondacks and Tug Hill. Consequently, we adopted a formula in the final regulation where the Northern Zone will open for 44 consecutive days beginning on the second Saturday after Columbus Day, followed by a 7-day late bow and muzzleloader season in some areas. This alternative, while nonsubstantive, will result in fewer years when seasons will extend later than they have in the past.

4. Allow bowhunting during the late muzzleloading season in the Northern Zone.

Comments were largely supportive of this rule, though several comments expressed concern for low deer populations in portions of the Northern Zone and suggested that there be no late muzzleloader season.

This rule did not propose any changes to the areas open for a late muzzleloading season, but simply creates a late bowhunting season during the same time and in the same areas as the late muzzleloading season. These seasons are open where DEC considers deer populations capable of sustaining the harvest associated with late bowhunting and muzzleloader seasons. No significant alternatives were suggested.

5. Use of Deer Management Permits (DMPs) during the early bowhunting and muzzleloader seasons in the Northern Zone.

DEC received several comments supporting and opposing this rule. Those opposed expressed concern for the impact of DMPs on deer populations in the Adirondacks.

The department believes this change will simplify regulations and increase hunter opportunity and choice. No management impact is expected since DEC determines the total number of DMPs issued in each WMU based on current deer population conditions and hunting activity. No significant alternatives were suggested.

6. Expansion of mandatory antler restrictions (ARs) into WMUs 3A, 4G, 4O, 4P, 4R, 4S, 4W.

We received a large volume of comments related to the proposed expansion of mandatory ARs, including several thousand form letters and copies of letters submitted on the draft deer management plan prior to this rulemaking. The substance of the input received was generally consistent with comments received by DEC on the draft deer management plan (www.dec.ny.gov/docs/wildlife__pdf/deerplanapc.pdf).

Clearly, mandatory ARs remain a very contentious issue among hunters and other stakeholders across New York State. Previous assessments of the biological and management implications of ARs are summarized in Appendix 3 of the ''Management Plan for White-tailed Deer in New York State, 2012-2016'' (www.dec.ny.gov/docs/wildlife__pdf/deerplan2012.pdf), and in the ''Summary of New York's Pilot Antler Restriction Program'' (www.dec.ny.gov/docs/wildlife__pdf/arsummary11.pdf). DEC does not consider mandatory ARs biologically necessary to maintain a healthy deer population in New York.

Because the comments received were generally consistent with views expressed on the draft deer management plan in 2011, we have proceeded with adoption of mandatory ARs to the seven Catskill WMUs as originally proposed. Although some people suggested expansion of ARs to other individual WMUs, the entire Southern Zone, or statewide, DEC has no plans to expand mandatory ARs outside of the area of this rule. Rather, DEC is working to develop a more systematic and objective process to guide future decisions regarding alternative buck harvest strategies that may offer more acceptable outcomes for New York deer hunters and stakeholders.

7. Expand the open area for the January firearms season in Suffolk County.

We did not receive any substantive comment related to this proposal.

8. Designation of a Deer Management Focus Area in portions of Tompkins County.

Several key stakeholders, including local residents, hunters and property managers in the focus area, expressed strong support for the proposal and reiterated the need for deer population reduction in this area. Two individuals objected to the proposal, concerned that it would result in overharvest of deer. One person suggested a boundary change to expand the focus area and several others recommended that other areas be considered for designation as focus areas.

Deer harvests during previous seasons have not been sufficient to alleviate the overabundance of deer in this localized area. The focus area is established to reduce total deer populations within the focus area boundary by providing more time and more tags to hunters who can gain access to huntable land. We reviewed the specific concerns related to boundaries of the Tompkins County focus area, and concluded that no changes from our original proposal were warranted. We plan to evaluate this new approach over the next several years and, depending on the results, will consider designation of other areas.

9. Adjustment of bear hunting seasons to remain consistent with deer hunting seasons.

DEC received several comments supportive of keeping deer and bear hunting seasons consistent. DEC agrees that retaining a consistent season structure for big game hunting is currently preferable.

10. Correction of a boundary description for WMUs 5A and 5C in Franklin County.

DEC did not receive any substantive comment related to this proposal.

Department of Health

EMERGENCY RULE MAKING

Medicaid Managed Care Programs

I.D. No. HLT-43-11-00019-E
Filing No. 621
Filing Date: 2012-06-22
Effective Date: 2012-06-22

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

Action taken: Repeal of Subparts 360-10 and 360-11 and sections 300.12 and 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

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment take effect April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

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 emergency rule: 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 Medicap 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.

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. HLT-43-11-00019-P, Issue of October 26, 2011. The emergency rule will expire August 20, 2012.

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

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.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

AIDS Scatter Beds

I.D. No. HLT-28-12-00001-E

Filing No. 614

Filing Date: 2012-06-20

Effective Date: 2012-06-20

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

Action taken: Amendment of section 86-2.40 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(2-c)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure that adequate resources continue to be available to care for AIDS Scatter Beds patients. Proceeding with the proposed regulations on an emergency basis is in accordance with the provisions of Public Health Law section 2808(2-c) which provides the Commissioner of Health the explicit authority to issue these emergency regulations. Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: AIDS Scatter Beds.

Purpose: Provides a rate adjustment to eligible nursing homes that are not eligible for payment rates as AIDS facilities/discrete AIDS units.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2808(2-c) of the Public Health Law, subdivision (z) of section 86-2.40 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon filing with the Secretary of State, to add a new paragraph (4), to read as follows:

(4) Effective for services provided on and after June 1, 2012, rates of payment for residential health care facilities which have received approval by the Commissioner of Health to provide services to more than 25

patients whose medical condition is HIV Infection Symptomatic, and the facility is not eligible for separate and distinct payment rates for AIDS facilities or discrete AIDS units, shall be adjusted by a per diem adjustment that shall not be in excess of the difference between such facility's 2010 allowable operating cost per day, as determined by the Commissioner, and the weighted average non-capital component of the rate in effect on and after January 1, 2012, and as subsequently updated by case mix adjustments made in July and January of each calendar year as described in paragraph (m) of this section.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 17, 2012.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Section 86-2.40 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

This regulation, which authorizes residential facilities who are not eligible for separate and distinct payment rates for AIDS facilities or discrete AIDS units and that receive approval by the Commissioner to provide services to more than 25 patients whose medical condition is HIV Infection Symptomatic (i.e., ''AIDS Scatter Beds''), to continue to receive a rate add-on under the pricing methodology authorized by 2808(2-c) of the Public Health Law. A similar rate add-on was provided to rates in effect prior to April 1, 2009. The rate add-on will ensure that HIV Infection Symptomatic patients continue to receive appropriate services and avoid the otherwise higher cost of care that would be provided to such patients by an AIDS facility or discrete AIDS unit. Currently, there is one nursing home which cares for more than 25 HIV Infection Symptomatic patients (i.e., has 25 or more ''AIDS Scatter Beds''). The per diem, non-capital component (including the rate add-on of $11.72 as authorized by this regulation) of roughly $181 is significantly less than the average AIDS facility/AIDS discrete unit rate of $384.

Needs and Benefits:

This regulation will continue to ensure an appropriate level of reimbursement is provided for nursing homes that routinely care for a significant number of AIDS patients under the AIDS Scatter Beds program under the new pricing reimbursement methodology. In addition, providing a modest per diem adjustment avoids the otherwise significantly higher costs (204 percent higher) of caring for these patients in an AIDS facility or discrete AIDS unit.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

It is estimated Medicaid expenditures will increase by $1 million annually. However, regulation avoids significantly higher costs of treating AIDS scatter beds patients in a traditional AIDS facility or discrete AIDS unit.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

The proposed regulation does not create new or additional paperwork responsibility of any kind.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The alternative option for caring for AIDS scatter beds patients would be to treat them at a traditional AIDS facility or discrete AIDS unit. The per diem add on provided in this regulation ensures these patients received the care required at the most efficient cost.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The per diem add-on will be published by the department and transmitted to the EMedNY system. There are no new compliance efforts required by the nursing homes.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities were identified as employing fewer than 100 employees. Currently, there is one nursing home that is impacted by this regulation and this nursing home does not meet the definition of a small business as defined above.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

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

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

Currently, there is one nursing home that is impacted by this regulation and this nursing home does not meet the definition of a small business as defined above.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. Currently, there is one nursing home that is impacted by this regulation and this nursing home does not meet the definition of a small business as defined above.

Rural Area Flexibility Analysis

Effect on Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population of less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (http://quickfacts.census.gov). Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County

Erie County Onondaga County

Compliance Requirements:

There are no new compliance requirements as a result of the proposed rule.

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 additional compliance costs are anticipated as a result of this rule.

Minimizing Adverse Impact:

Currently, one nursing home which is not located in the jurisdictions described above (it is located in New York City) is impacted by this regulation.

Rural Area Participation:

Currently, one nursing home which is not located in the jurisdictions described above (it is located in New York City) is impacted by this regulation.

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 not expected that the proposed rule to establish a per diem rate adjustment for AIDS Scatter Beds under the new nursing home pricing methodology will have any material impact on jobs or employment opportunities across the Nursing Home industry.

EMERGENCY RULE MAKING

Municipal Public Health Services Plan - Radioactive Material and Radiation Equipment

I.D. No. HLT-28-12-00006-E

Filing No. 622

Filing Date: 2012-06-25

Effective Date: 2012-06-25

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

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

Statutory authority: Public Health Law, sections 602 and 603

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

Specific reasons underlying the finding of necessity: On July 1, 2011, state funding for municipal programs to conduct inspections of x-ray facilities and regulate and control radioactive material use in New York City ceased to be available because the Legislature repealed the enabling statute. This emergency regulation moves these programs under a new basic State aid environmental health program. See Public Health Law § 602(3)(b)(5). The Commissioner has authority to issue regulations for basic State aid programs under Public Health Law § 602(3)(b).

If the City discontinues its radioactive materials program, the State must take over this work pursuant to its agreement with the federal Nuclear Regulatory Commission. If municipalities discontinue their x-ray inspection programs, the State will be required to take over this work pursuant to the Public Health Law. The fiscal impact to the State of taking over these programs would be significant.

In 2009, the cost to the State to continue to fund the municipalities that are conducting these programs was approximately $560,000. It is estimated that the cost to the Department to take over these programs would exceed $3,000,000. It would be fiscally inefficient for the State to take over programs that are already operational in these municipalities, considering the initial cost of transition and the continuous costs of travel for State employees. Thus, this regulation represents both good public health policy as well as sound fiscal policy.

It is imperative that these local governments continue to operate their radiation protection programs. The proposed regulation ensures that municipalities have the resources to protect the public from the environmental health threat posed by radioactive materials and radiation producing equipment.

Subject: Municipal Public Health Services Plan - Radioactive Material and Radiation Equipment.

Purpose: To establish funding for certified counties to inspect radiation equipment and the NYCDOHMH to conduct licensing and inspections.

Text of emergency rule: Subpart 40-3 is REPEALED, in its entirety. Subpart 40-2 is amended and new sections 40-2.240, 40-2.241, 40-2.250, and 40-2.251 are added to read as follows:

40-2.240. Radioactive materials licensing and inspection program; performance standard.

The municipal public health services plan shall include a radioactive materials licensing and inspection program containing those provisions set forth in section 40-2.241 of this Subpart, if the Department has authorized the municipality to conduct such a program.

40-2.241. Radioactive materials licensing and inspection program; authorization.

The department shall authorize a municipality's radioactive materials licensing and inspection program if such program includes, at a minimum, provisions for:

(a) regulating all facilities in the municipality's jurisdiction;

(b) ensuring the technical quality of licensing actions by the municipality;

(c) assessing licensee compliance with Part 16 of the State Sanitary Code and conditions of the license, and ensuring correction of violations; and

(d) inspecting regulated facilities at a frequency established by the department.

40-2.250. Radiation-producing equipment program; performance standard.

The municipal public health services plan shall include a radiation-producing equipment inspection program containing those provisions set forth in section 40-2.251 of this Subpart, if the department has certified such a program for the municipality.

40-2.251. Radiation-producing equipment program; authorization.

The department shall certify a municipality's radiation producing equipment inspection program if such program includes, at a minimum, provisions for:

(a) inspecting all facilities and equipment in the municipality's jurisdiction; and

(b) performing inspections and issuing reports in accordance with Part 16 of the State Sanitary Code and, in particular, reporting as described in section 16.10.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 22, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Article 6 of the Public Health Law (PHL) provides statutory authority to provide State aid to municipalities for general public health work (GPHW). PHL § 614(3) defines municipality to be a county or city. PHL § 602(3)(b)(5) provides that GPHW must include certain health services, including environmental health services. PHL § 602(3)(a) authorizes the Commissioner to adopt rules and regulations after consulting with the Public Health and Health Planning Council and county commissioners, boards, and the public health directors, to establish standards of performance for environmental health services delivered under the GPHW program.

Legislative Objectives:

The State Legislature recently amended PHL § 605 to eliminate ''optional services'' as a category of services eligible for State aid reimbursement. These optional services are still described in regulations of the Department of Health (Department) at 10 NYCRR subpart 40-3. Repealing subpart 40-3 will eliminate this superfluous language.

However, two of the optional services that are no longer eligible for State aid are regulation of radioactive materials and regulation of radiation producing equipment. The Department recognizes that ra-

dioactive materials and radiation producing equipment present significant environmental health hazards to the public. The Department should encourage counties to protect their citizens from the potentially harmful effects of radioactive materials and radiation producing equipment by providing State aid to offset the cost of these services.

The Department further recognizes that not every county has the technical capability to regulate radioactive materials and radiation producing equipment. Counties without such technical capability should not be precluded from receiving State aid for public health work. Accordingly, the proposed regulation provides that a county that wishes to receive State aid must regulate radioactive materials and equipment only if its programs have the technical capability to do so, as authorized or certified by the Department.

Needs and Benefits:

Pursuant to a New York State agreement with the federal Nuclear Regulatory Commission (NRC), radioactive materials must be regulated throughout the State. Currently, the New York City Department of Health and Mental Hygiene (DOHMH) is the only municipality certified by the Department to regulate radioactive materials; the State provides this service in all other counties. DOHMH licenses and inspects approximately 350 radioactive material facilities in New York City. By protecting the public from the environmental health hazards from these radioactive materials, DOHMH provides a substantial benefit to the public health.

Additionally, pursuant to Part 16 of the State Sanitary Code, the Department has certified DOHMH and four additional counties (Suffolk, Westchester, Dutchess and Niagara) to inspect radiation producing equipment. DOHMH and these additional counties license and inspect nearly 10,000 radiation equipment facilities. Like the radioactive materials program, these municipalities offer a substantial public health benefit by protecting their citizens from the environmental health hazards potentially created by radiation producing equipment.

Failure to conduct timely inspections of any of these facilities could result in equipment failure or technician errors going unnoticed and uncorrected for longer periods of time, resulting in radiation overexposure during diagnostic or therapeutic procedures or misadministration of nuclear medicine for patients who require these life-saving health services. Inspection of facilities that use radioactive materials ensures appropriate handling and minimizes exposure to workers, the public and the environment. A security check of high-risk radiation sources is also conducted during these inspections.

A recent series of New York Times articles indicate the public's concern over radiation medical events and malpractice has significantly and justifiably increased. Recent events in Japan further indicate that the public is highly concerned about radiation exposure. During the week of March 14, 2011, the Department's Bureau of Environmental Radiation Protection received approximately 40 calls every day from concerned citizens with concerns about exposure. The public rightfully expects a robust regulatory program, which DOHMH and other counties currently provide, through their partnership with the Department.

Due to the public health threat presented by radiation, it is imperative that these local governments continue to operate their radiation protection programs. The proposed regulation ensures that municipalities have the resources to protect the public from the environmental health threat posed by radioactive materials and radiation producing equipment.

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

Because the regulated municipalities are currently performing these programs, there will be no increase in their costs. Rather, regulated municipalities that wish to continue these programs will save money by continuing to receive State aid. However, without this regulatory change, the costs to municipalities that wish to continue these programs will increase substantially.

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

The municipalities that operate these programs and receive funding have indicated they would discontinue the programs if State aid is not provided. By encouraging counties to continue these programs, the Department will save money. As noted, pursuant to the State's agreement with the federal Nuclear Regulatory Commission, if DOHMH ceases to regulate radioactive materials, the State must do so. This will cost substantially more than the $370,000 in State aid that was paid to New York City in State aid in 2009, which represented only 26% of DOHMH's total costs for regulating radioactive materials. Although the NRC could theoretically take over regulation of radioactive materials, the burden on local businesses to pay federal fees would be more than five (5) times higher than the costs imposed by programs operated by State or local government. Similarly, and as a matter of sound public policy, if municipalities cease to regulate radiation producing equipment the Department would take over these programs.

In 2009, the cost to the State to fund the municipalities that conduct these programs was approximately $560,000. Specifically, New York City was reimbursed $370,000 for its radioactive materials inspection and licensing program and $119,000 for the radiation producing equipment program, for a total of $489,000. Two other counties were reimbursed approximately $71,000 for their radiation producing equipment programs. The remaining two counties recovered enough in fees that year that they exceeded their expenses for their radiation producing equipment programs and did not receive State aid. These costs are not expected to change if the proposed regulations are adopted.

It would be fiscally inefficient for the State to take over programs that are already operational in these municipalities, considering the initial cost of transition and the continuous costs of travel for State employees. Thus, this regulation represents both good public health policy as well as sound fiscal policy.

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

The cost analysis is based on calendar year 2009 State Aid claims provided by municipalities, as currently required by PHL § 618 and 10 NYCRR § 40-1.20(b). An annual summary of State aid is routinely prepared by the Department.

Local Government Mandates:

This proposed rule does not impose any program, service, duty or responsibility upon the municipalities that has not already been agreed to and certified by the Department.

Paperwork:

The requirements for reporting will remain unchanged.

Duplication:

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

Alternatives:

The alternative is for the Department to take over regulation of radioactive materials as well as regulation of radiation producing equipment in those municipalities that discontinue these programs because they are ineligible for State aid. It is estimated that this alternative would cost the State over $3,000,000, based on the cost of funding the 22 FTEs currently employed by the municipalities to operate these programs. This number does not include clerical, administrative, and management positions that support the municipal programs.

Federal Standards:

There is no federal minimum standard that determines whether the State must supply State aid to municipalities that choose to provide these services. However, the federal government does require that these programs be provided throughout the State.

Compliance Schedule:

The regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect on Small Business:

This rule will apply to county radiation programs that are certified or become certified in the future. Currently only Dutchess, Niagara, Westchester, Suffolk counties and New York City have such programs. The proposed regulatory change will result in no additional cost to these local governments.

However, without this change, the fees that registered facilities must pay are likely to increase. 10 NYCRR 16.41(c) and (d) indicate the fees for State inspection programs and county inspection programs, respectively. In all cases, the State fees are higher. Thus, if the State is required to take over these programs, the fee costs will increase. This will result in an increase in costs to small businesses. Further, if the federal NRC were to take over regulation of radioactive materials, the cost to small business would be at least five (5) times higher than it is now.

Compliance Requirements:

The certified county programs already meet the requirements and comply with the regulations. Facilities inspected will still be required to meet the requirements of Part 16, regardless of whether they are inspected by county inspectors or State inspectors.

Professional Services:

Certified counties do not need professional services to establish or maintain certification.

Capital Costs and Annual Costs of Compliance:

There are no capital costs associated with this regulation.

Economic and Technological Feasibility:

The proposed regulatory change will result in no additional cost to local governments or impose any new technology requirements or costs.

However, without this change, the fees that registered facilities must pay are likely to increase. 10 NYCRR 16.41(c) and (d) indicate the fees for State inspection programs and county inspection programs, respectively. In all cases, the State fees are higher. Thus, if the State is required to take over these programs, the fee costs will increase. This will result in an increase in costs to small businesses. Further, if the federal NRC were to take over regulation of radioactive materials, the economic cost to small business would be at least five (5) times higher than it is now.

Minimizing Adverse Impact:

No adverse impact of implementation has been identified. Failure to implement may result in some county programs dropping certification, which will then require the State DOH to implement these programs.

Small Business Input:

No small businesses were surveyed. The proposed changes do not have any direct effect on small business. Failure to implement these changes may result in fee increases for small business.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

No affected county programs are classified as rural areas (18 counties with less than 200,000 population and 9 counties with certain townships with a population density less than 150 persons/square mile).

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no new reporting requirements contained in the proposed regulations. No additional professional service costs are anticipated.

Costs:

No rural counties affected.

Minimizing Adverse Impact:

No rural counties are affected by this regulation.

Rural Area Participation:

No communications were made with rural counties.

Job Impact Statement

Nature of Impact:

No jobs will be adversely affected by adoption of these regulations. The proposal does not change the regulatory requirements on regulated entities.

Categories and Numbers Affected:

The certified counties include Dutchess, Niagara, Westchester, Suffolk and New York City.

Regions of Adverse Impact:

No regions will be adversely impacted by the adoption of these regulations.

Minimizing Adverse Impact:

As stated, no jobs will be adversely affected by the adoption of the proposed changes in the regulations.

Division of Housing and Community Renewal

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Regulations Govern the Implementation of the Rent Stabilization Laws

I.D. No. HCR-28-12-00002-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 2520.11(l)(1)(i)(*c*)(*1*); (iv)(*a*), (r), (s), 2522.4(a)(4), 2522.8(a)(3), 2526.2(c), 2531.2, 2531.3, 2531.4 and 2531.5 of Title 9 NYCRR.

Statutory authority: L. 1974, ch. 576, section 10a; NYC Admin Code section 26-511(b), as recodified by L. 1985, ch. 907, section 1 as added by L. 1985, ch. 888, section 8; and L. 2011, ch. 97, section 44, part B

Subject: Regulations govern the implementation of the Rent Stabilization Laws.

Purpose: To comply with the Laws of 2011, section 44, ch. 97, part B and the Laws of 2009, ch. 480.

Public hearing(s) will be held at: 10:00 a.m. and 2:00 p.m., Aug. 28, 2012 at NYC Department of City Planning, Spector Hall, 22 Reade St., New York, 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: 9 NYCRR § 2520.11(l)(1)(i)(c)(1) is amended to read as follows:

(1) Where the rent, as agreed upon by the parties and paid by the tenant [is $ 2,000 or more per month,] *equals or exceeds the applicable amount qualifying for deregulation* pursuant to subdivision (r) of this section, such accommodation and the rent therefor shall not revert to regulation under this Code.

9 NYCRR § 2520.11(l)(1)(iv)(a) is amended to read as follows:

(a) Where it determines that the owner taking title at deconversion caused, in whole or in part, the deconversion to occur, the initial legal regulated rent shall be established by the DHCR pursuant to sections 2522.6 and 2522.7 of this Title. In such cases, [if the rent so established and paid is $ 2,000 or more per month,] subdivision (r) of this section shall not apply.

9 NYCRR § 2520.11(r)(4) is amended to read as follows and (5), (6), (7), (8), (9), (10) are renumbered (7), (8), (9), (10), (11) and (12) and new paragraphs (5) and (6) are added and renumbered paragraphs (9), (10), (11) and (12) are further amended to read as follows:

(4) became or become vacant on or after June 19 1997 *but before June 24, 2011,* with a legal regulated rent of $2,000 or more per month;

(5) became or become vacant on or after June 24, 2011, with a legal regulated rent of $2,500 or more per month;

(6) exemption pursuant to this subdivision shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than the applicable amount qualifying for deregulation as provided in this subdivision;

[5] *(7)* [renumbered only - the text remains the same]

[6] *(8)* [renumbered only - the text remains the same]

[7] *(9)* during the period of effectiveness of an order issued pursuant to section 2523.4 of this Title for failure to maintain required services, which lowers the legal regulated rent below [$ 2,000 per month] *the applicable amount qualifying for deregulation as provided in this subdivi-*

sion, during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

[8] *(10)*(i) where an owner installs new equipment or makes improvements to the individual housing accommodation qualifying for a rent increase pursuant to section 2522.4(a)(1) of this Title, while such housing accommodation is vacant, and where the legal regulated rent is raised on the basis of such rent increase, or as a result of any rent increase permitted upon vacancy or succession as provided in section 2522.8 of this Title, or by a combination of rent increases, as applicable, to [a level of $ 2,000 per month or more,] *the applicable amount qualifying for deregulation, as provided in this subdivision,* whether or not the next tenant in occupancy actually is charged or pays [$2000 per month or more]*, the applicable amount qualifying for deregulation, as provided in this subdivision,* for rental of the housing accommodation, the housing accommodation will qualify for exemption under this subdivision;

[9] *(11)* where, pursuant to section 2521.2 of this Title, a legal regulated rent is established by record within four years before a rent lower than such legal regulated rent is charged and paid by the tenant, and where, pursuant to such section, upon the vacancy of such tenant, a legal regulated rent previously established by record within four years prior thereto, as lawfully adjusted pursuant to the RSL or this Code, may be charged, and where such previously established legal regulated rent, as so adjusted,[is $2,000 or more per month] *equals or exceeds the applicable amount qualifying for deregulation, as provided in this subdivision,* such vacancy shall qualify the housing accommodation for exemption under this subdivision;

[10] *(12)* where an owner substantially alters the outer dimensions of a vacant housing accommodation, which qualifies for a first rent [of $2,000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation, as provided in this subdivision,* exemption pursuant to this subdivision shall apply.

9 NYCRR § 2520.11(s)(1) is amended to read as follows, paragraphs (2) and (3) are renumbered (3) and (4) and a new paragraph (2) is added:

(1) have a legal regulated rent of $ 2,000 or more per month as of October 1, 1993, or as of any date on or after April 1, 1994, and which are occupied by persons who had a total annual income in excess of $ 250,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of $ 175,000, where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive*, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title;

(2) have a legal regulated rent of $2,500 or more per month as of July 1, 2011 or after, and which are occupied by persons who had a total annual income in excess of $200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2531 of this Title;

[2] *(3)* [renumbered only - the text remains the same]

[3] *(4)* in determining whether the legal regulated rent for a housing accommodation is [$2,000 per month or more,] *the applicable amount qualifying for deregulation,* the standards set forth in subdivision (r) of this section shall be applicable; to be eligible for exemption under this subdivision, the legal regulated rent must continuously be [$2,000 more per month] *the applicable amount qualifying for deregulation pursuant to subdivision (r),* from the owner's service of the income certification form provided for in section 2531.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

9 NYCRR § 2522.4(a)(4) is amended to read as follows:

(4) *Prior to September 24, 2011,* [T]*t*he increase in the monthly stabilization rent for the affected housing accommodations when authorized pursuant to paragraph (1) of this subdivision shall *be 1/40th of the total cost, including installation but excluding finance charges; on or after September 24, 2011, the increase in the monthly stabilization rent for the affected housing accommodations when authorized pursuant to paragraph (1) of this subdivision shall for buildings and complexes containing 35 or fewer housing accommodations* be 1/40th of the total cost, including installation but excluding finance charges*, and for buildings and complexes containing more than 35 housing accommodations be 1/60th of the total cost, including installation but excluding finance charges;* and any increase pursuant to paragraph (2) of this subdivision shall be 1/84th of the total cost, including installation but excluding finance charges as allocated in accordance with paragraph (12) of this subdivision. For increases pursuant to subparagraphs (2)(iii) and (iv) of this subdivision, in the discretion of the DHCR, an appropriate charge may be imposed in lieu of an amortization charge when an amortization charge is insignificant or inappropriate.

9 NYCRR § 2522.8(a)(3) is added as follows:

(3) Effective June 24, 2011, the increase authorized in this paragraph may not be implemented more than one time in any calendar year, notwithstanding the number of vacancy leases entered into in such year.

9 NYCRR § 2526.2(c) is amended as follows and subparagraphs (c)(2)(i) and (ii) are repealed:

(c) If the owner is found by the DHCR:

(1) to have violated an order of the DHCR, the DHCR may impose, by administrative order after holding a hearing, a penalty in the amount of $ [250] *1,000* for the first such offense and $ [1] *2*,000 for each subsequent offense; or

(2) to have harassed a tenant to obtain a vacancy of a housing accommodation, the DHCR may impose, by administrative order after holding a hearing, a penalty in the amount of[:] *$2,000 for the first such offense and up to $10,000 for each subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation.*

9 NYCRR § 2531.2 intro paragraph and (a)(2) is amended to read as follows:

On or before the first day in May in each calendar year, commencing with May 1, 1994 *through May 1, 2011*, the owner of each housing accommodation for which the legal regulated rent is $ 2,000 or more per month *and commencing with May 1, 2012, for which the legal regulated rent is $2,500 or more per* month may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the DHCR on which such tenant or tenants shall identify all persons referred to in section 2531.1(b) of this Part, and shall certify whether the total annual income is in excess of $ 250,000 in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and $ 175,000 where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive, and $200,000 where the first of such two preceding calendar years is 2010 or later*. Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(2) only tenants residing in housing accommodations which have a legal regulated rent [of $2000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation, as provided in this section* are required to complete the certification form;

9 NYCRR § 2531.3 is amended to read as follows:

In the event that the total annual income as certified is in excess of $ 250,000, [or] $ 175,000*, or $200,000* in each such year, whichever applies, as provided in section 2531.2 of this Part, the owner may file an owner's petition for deregulation (OPD), accompanied by the ICF, with the DHCR on or before June 30 of such year. [the rest remains the same]

9 NYCRR § 2531.4 is amended to read as follows:

(a) In the event that the tenant or tenants either fail to return the completed ICF to the owner on or before the date required by subdivision (d) of section 2531.2 of this Part or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the DHCR to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds $ 250,000, [or] $ 175,000*, or $200,000* in each of the two preceding calendar years, whichever applies, as provided in section 2531.2 of this Part.

(b) Within 20 days after the filing of such request with the DHCR, the DHCR shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the DHCR with such information as the DHCR and the DTF shall require to verify whether the total annual income exceeds $ 250,000, [or] $ 175,000*, or $200,000* whichever applies, in each such year.

9 NYCRR § 2531.5 is amended to read as follows:

If the DTF determines that the total annual income is in excess of $ 250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies as provided in section 2531.2 of this Part, the DHCR shall, on or before November 15th of the year in which DTF makes such determination, notify the owner and tenants of the results of such verification. [the rest of the section remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 26-511(b) of the Administrative Code of the City of New York, as recodified by the Laws of 1985, chap. 907, section 1, as amended by the Laws of 1985, chap. 888, section 2, and section 26-518(a) of such Code, as recodified by the Laws of 1985, Chap. 907, section 1 provide authority

to the Division of Housing and Community Renewal (''DHCR'') to amend the Rent Stabilization Code (''RSC''); Section 44 of Chap. 97, Part B of the Laws of 2011 enables DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by that act which includes the Rent Stabilization Law (''RSL'') which is implemented through the RSC.

2. LEGISLATIVE OBJECTIVES

The RSL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health, safety and general welfare. The RSL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See RSL § 26-501, 502. DHCR is specifically authorized to promulgate regulations to protect tenants and the public interest by RSL § 26-511(c)(1), and by Chapter 97 of the Laws of 2011 was further empowered to promulgate regulations to implement and enforce the provisions of that chapter and any law continued or renewed by that chapter. The proposed rule making is to implement those changes specifically mandated by Chapter 97, Part B of the Laws of 2011: the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income); the modification of the apartment improvement increase formula for all buildings except those with 35 or fewer units; and permitting only one allowable vacancy rent increase per year. The proposed rule making further implements those changes specifically mandated by Chapter 480 of the Laws of 2009: increasing the fines for harassment and violations of orders of DHCR.

3. NEEDS AND BENEFITS

The rule making will implement provisions of Chapters 97 and 480 mentioned above. Specifically, the RSC amendments reflect the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income) that were increased by that law. As set forth in the legislative memorandum (McKinney's Session Laws 2011 A-111 through A-116), the thresholds for deregulation have not increased in seventeen years although basic stabilized rents increase each year. In addition, in accord with legislative directive, the apartment improvement increase formula has been modified for all buildings except those with 35 or fewer units. Additionally, permitting only one allowable vacancy rent increase per year as also set forth in the memorandum in support, is consistent with assuring fair compensation to owners without overcompensating them for fortuitous vacancies not already contemplated by the rent regulatory system. Chapter 480 of the Laws of 2009 increased the fines for harassment and violations of orders of DHCR, and the provisions in the regulations regarding DHCR's fining authority are to be amended consistent therewith.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the Rent Stabilization Law generally or through these amended statutory provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. The increased administrative fines are based on lack of compliance and are not an additional compliance cost. In addition, the fines are mandated and consistent with statutory amendments. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations but would be best served by being aware of these changes.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will not increase the paperwork burden on either regulated parties or the agency as the statutory amendments implemented here simply change substantive thresholds for existing applications and methodologies for increasing rent.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, city or federal housing program. In those instances there may be a need to comply with the Rent Stabilization Code requirements as well as the mandates of that city, state or federal program.

8. ALTERNATIVES

The proposed amendments implement statutory provisions not yet reflected in the regulations. An area that may facially seem to provide a choice of alternative is that the maintenance of the present apartment improvement compensation formula for smaller properties is defined both in terms of complexes as well as buildings. However a distinction based on both is simply a recognition of what constitutes a ''building'' for rent regulation purposes. In part through statute, and in part through long term usage, as upheld judicially, rent regulation treats ostensibly separate structures as a single building where the common factors that unite them into a single entity, outweigh those that divide them. Applying this same standard here is the only reasonable alternative in keeping with the statutory distinction for using a different apartment improvement compensation formula that is in fact based on the number of units.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Rent Stabilization Code (''RSC'') applies only to rent stabilized housing units in New York City. The class of small businesses affected by these proposed amendments would be limited to certain small property owners, who own limited numbers of rent stabilized units. The amended regulations, required by or consistent with statutory amendments, are expected to have no burdensome impact on such businesses. These amendments to the RSC, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require small business that own regulated residential housing units to perform any additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes. Fines for harassment and violations of orders have been increased as a requirement of statutory amendments; but these are not considered compliance costs. With respect to recognizing curative activity undertaken by a small business, these fines are already by law imposed only after a proceeding that would either give such owner a formal hearing, or written notice and an opportunity to be heard. There is also an investigation by DHCR prior to such proceeding where DHCR often looks to resolve these matters through requiring certain remedial steps. In any case, an owner is given the opportunity to interpose such defenses and mitigating circumstances as appropriate, including any claim of a cure of the conduct or condition that led to the administrative proceeding. DHCR will take such remedial action into account in most circumstances. However since these fines involve violations of prior DHCR orders or harassment, creating a mandatory cure period by regulation could endanger the public health, safety and welfare of those affected by such conduct.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small business to obtain any new or additional professional services.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small business or local governments. It is expected that the cost of compliance with the new rules will not differ in any significant fashion from the cost of compliance with existing rules.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments, required by statute, do not impair the rights of small business owners, and they have no other adverse economic impact on such parties or any local government. In fact the regulations, with respect to the modifications to the apartment improvement compensation formula, in accordance with law, create an exception that will be advantageous to small businesses. Otherwise, the statutes being implemented do not create different regulatory standards for small businesses. However, the highly individualized investigative and enforcement process leading to the statutory fines will serve to minimize impact on small businesses where it should. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Since the passage of the statutes on which these regulations are based, DHCR's Office of Rent Administration held over fifty meetings with community groups, owner and tenant advocacy organizations and local of-

ficials where the implementation of those provisions was one of the matters under discussion. In addition, the Rent Stabilization Law specifically provides for review by the New York City Department of Housing Preservation and Development prior to promulgation.

Rural Area Flexibility Analysis

The Rent Stabilization Code applies exclusively to New York City, and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Regulations Govern the Implementation of the New York City Rent Control Laws

I.D. No. HCR-28-12-00005-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 2200.2(f)(19), (20), 2202.4(a)(2), 2206.3, 2211.2, 2211.3, 2211.4 and 2211.5 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act, L. 1983, ch. 403, section 28 (not subdivided); Administrative Code of the City of New York, section 26-405g(1); L. 2011, ch. 97, section 44, part B

Subject: Regulations govern the implementation of the New York City Rent Control Laws.

Purpose: To comply with the Laws of 2011, ch. 97, part B and the Laws of 2009, ch. 480.

Public hearing(s) will be held at: 10:00 a.m. and 2:00 p.m., Aug. 28, 2012 at NYC Department of City Planning, Spector Hall, 22 Reade St., New York, 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: 9 NYCRR § 2200.2(f)(19)(iv) is amended to read as follows and paragraphs (v), (vi), (vii), and (viii) are renumbered (vii), (viii), (ix), and (x) and new paragraphs (v) and (vi) are added and renumbered paragraph (ix) is further amended to read as follows:

(iv) became or become vacant on or after June 19, 1997 *but before June 24, 2011*, with a maximum rent of $2,000 or more per month;

(v) became or become vacant on or after June 24, 2011, with a maximum rent of $2,500 or more per month;

(vi) exemption pursuant to this paragraph shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than the applicable amount qualifying for deregulation as provided in this paragraph;

[(v)] *(vii)* [renumbered only - the text remains the same]

[(vi)] *(viii)* [renumbered only - the text remains the same]

[(vii)] *(ix)* during the period of effectiveness of an order issued pursuant to section 2202.16 of this Title for failure to maintain required services, which lowers the maximum rent below [$2,000 per month] *the applicable amount qualifying for deregulation as provided in this paragraph,* during the time period specified in this paragraph, a vacancy shall not qualify the housing accommodation for exemption under this paragraph;

[(viii)] *(x)* [renumbered only - the text remains the same]

9 NYCRR § 2200.2(f)(20)(i) is amended to read as follows and paragraphs (ii) and (iii) are renumbered (iii) and (iv) and new paragraph (ii) is added and renumbered paragraph(iv) is further amended as follows:

(i) have a maximum rent of $2,000 or more per month as of October 1, 1993 or as of any date on or after April 1, 1994, and which are occupied by persons who had a total annual income in excess of $250,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of $175,000, where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive,* with total annual income being defined in and subject to the limitations and process set forth in Part 2211 of this Title;

(ii) have a maximum rent of $2,500 or more per month as of July 1, 2011 and which are occupied by persons who had a total annual income in excess of $200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2211 of this Title;

[(ii)] *(iii)* [renumbered only - text remains the same]

[(iii)] *(iv)* in determining whether the maximum rent for a housing accommodation is [$2,000 per month or more] *the applicable amount qualifying for deregulation,* the standards set forth in paragraph (19) of this subdivision shall be applicable; to be eligible for exemption under this paragraph, the maximum rent must continuously be [$2,000 or more per month] *the applicable amount qualifying for deregulation as provided in paragraph (19) of this subdivision,* from the landlord's service of the income certification form provided for in section 2211.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

9 NYCRR § 2202.4(a)(2) is amended to read as follows:

On or after July 7, 1993, the landlord and tenant may, by mutual voluntary written agreement, agree to a substantial increase in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodation; or the tenant has accepted and is obtaining the benefit of increased services, furniture, furnishings or equipment. In such case, an adjustment of the maximum rent shall be available without the approval of the administrator, and shall *include* [be equal to 1/40th of] the total cost incurred by the landlord in providing such modification or increase, including the cost of installation, but excluding finance charges. *Prior to September twenty-fourth two thousand eleven, the rent adjustment shall be 1/40th of the costs of the improvement and on or after September twenty-fourth two thousand eleven the rent adjustment shall be 1/40th of the costs of the improvement in buildings and complexes containing 35 or fewer housing accommodations and 1/60th of the cost in buildings and complexes of more than 35 housing accommodations.* [the rest remains the same]

9 NYCRR § 2206.3 is amended to read as follows:

The administrator may, whenever any person has engaged in acts or practices which constitute a violation of any provision of section 26-412 of the Rent Law or Part 2205 of this Title, or where more than six months have elapsed since the landlord's failure to use a certificate of eviction for the purpose for which it was issued, and either the administrator has not waived such failure to use such certificate for the designated purpose or the tenant has not commenced civil action against the landlord as provided in section 2206.7 of this Part, impose civil penalty by order after a hearing by reason of such violation and bring an action to recover same in any court of competent jurisdiction. Such penalty, in the case of a violation of subdivision d of section 26-412 of the Rent Law or section 2206.5 of this Part, shall be in the amount of not less than $[1]*2*,000 nor more than $[5]*10*,000 for each such offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation; and in the case of any other violation of such provisions of the Rent Law or this Subchapter, in the amount of [$100] *$1,000* for the first offense and [$500] *$2,000* for each subsequent offense. [the rest remains the same]

9 NYCRR § 2211.2 intro paragraph and (a)(2) is amended to read as follows:

On or before the first day in May in each calendar year, commencing with May 1, 1994 *but before May 1, 2011*, the landlord of each housing accommodation for which the maximum rent is $2,000 or more per month *or commencing with May 1, 2012, for which the maximum rent is $2,500 or more per month,* may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the city rent agency on which such tenant or tenants shall identify all persons referred to in subdivision (b) of section 2211.1 of this Part, and shall certify whether the total annual income is in excess of $250,000 in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, [and] $175,000 where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive, and $200,000 where the first of such two preceding calendar years is 2010 or later.* Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(2) only tenants residing in housing accommodations which have a maximum rent [of $2,000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation, as provided in this section,* are required to complete the certification form;

9 NYCRR § 2211.3 is amended to read as follows:

In the event that the total annual income as certified is in excess of $250,000*,* [or] $175,000*, or $200,000* in each such year, whichever applies, as provided in section 2211.2 of this Part, the landlord may file an owner's petition for deregulation (OPD), accompanied by the ICF, with

the city rent agency on or before June 30 of such year. [the rest remains the same]

9 NYCRR § 2211.4(a) and (b) are amended to read as follows:

(a) In the event that the tenant or tenants either fail to return the completed ICF to the landlord on or before the date required by subdivision (d) of section 2211.2 of this Part or the landlord disputes the certification returned by the tenant or tenants, the landlord may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the city rent agency to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds $250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies, as provided in section 2211.2 of this Part.

(b) Within 20 days after the filing of such request with the city rent agency, the city rent agency shall notify the tenant or tenants that such tenant or tenants must provide the city rent agency with such information as the city rent agency and the DTF shall require to verify whether the total annual income exceeds $250,000*,* [or] $175,000*, or $200,000,* whichever applies, in each such year.

9 NYCRR § 2211.5 is amended to read as follows:

If the DTF determines that the total annual income is in excess of $250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies as provided in section 2211.2 of this Part, the city rent agency shall, on or before November 15 of the year in which DTF makes such determination, notify the landlord and tenants of the results of such verification. [the rest remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Omnibus Housing Act, Laws of 1983, Chap. 403, section 28, (not subdivided), and section 26-405g(1) of the Administrative Code of the City of New York provide authority to the Division of Housing and Community Renewal (DHCR) to amend the City Rent and Eviction Regulations (CRER) and Section 44 of Chap. 97, Part B of the Laws of 2011 enables DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by that act which includes the City Rent and Rehabilitation Law (CRRL) which is implemented through the CRER.

2. LEGISLATIVE OBJECTIVES

The CRRL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health safety and general welfare. The CRRL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See CRRL § 26-401(a). DHCR is specifically authorized to promulgate regulations by CRRL § 26-405(g)(1), and by Chapter 97 of the Laws of 2011 was further empowered to promulgate regulations to implement and enforce provisions of that chapter and any law continued or renewed by that chapter. The proposed rule making is to implement those changes specifically mandated by Chapter 97, Part B of the Laws of 2011: the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income); the modification of the apartment improvement increase formula for all buildings except those with 35 or fewer units. The proposed rule making further implements those changes specifically mandated by Chapter 480 of the Laws of 2009: increasing the fines for harassment and violations of orders of DHCR.

3. NEEDS AND BENEFITS

The rule making will implement provisions of Chapters 97 and 480 mentioned above. Specifically, the CRER amendments reflect the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income) that were increased by that law. As set forth in the legislative memorandum (McKinney's Session Laws 2011 A-111 through A-116), the thresholds for deregulation have not increased in seventeen years. In addition, in accord with legislative directive, the apartment improvement increase formula has been modified for all buildings except those with 35 or fewer units. Chapter 480 of the Laws of 2009 increased the fines for harassment and violations of orders of DHCR, and the provisions in the regulations regarding DHCR's fining authority are to be amended consistent therewith.

4. COSTS

The regulated parties are residential tenants and the owners of the rent controlled housing accommodations in which such tenants reside. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the CRRL generally or through these amended provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. The increased administrative fines are based on lack of compliance and are not an additional compliance cost. In addition, the fines are mandated and consistent with statutory amendments. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations but would be best served by being aware of these changes.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will not increase the paperwork burden on either regulated parties or the agency as the statutory amendments implemented here simply change substantive thresholds for existing applications and methodologies for increasing rent.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or federal requirements except to the extent required by law. There are instances where a rent controlled property participates in another State, city or federal housing program. In those instances there may be a need to comply with the City Rent and Eviction Regulation requirements as well as the mandates of that city, state or federal program.

8. ALTERNATIVES

The proposed amendments implement statutory provisions not yet reflected in the regulations. An area that may facially seem to provide a choice of alternative is that the maintenance of the present apartment improvement compensation formula for smaller properties is defined both in terms of complexes as well as buildings. However a distinction based on both is simply a recognition of what constitutes a ''building'' for rent regulation purposes. In part through statute, and in part through long term usage, as upheld judicially, rent regulation treats ostensibly separate structures as a single building where the common factors that unite them into a single entity, outweigh those that divide them. Applying this same standard here is the only reasonable alternative in keeping with the statutory distinction for using a different apartment improvement compensation formula that is in fact based on the number of units.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The City Rent and Eviction Regulations (CRER) apply only to housing units located in New York City that are subject to the City Rent and Rehabilitation Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled. These amendments to the CRER, which apply exclusively in New York City, are expected to have no impact on the local government thereof.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require small business that own regulated residential housing units to perform any additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes. Fines for harassment and violations of orders have been increased as a requirement of statutory amendments; but these are not considered compliance costs. With respect to recognizing curative activity undertaken by a small business, these fines are already by law imposed only after a proceeding that would either give such owner a formal hearing, or written notice and an opportunity to be heard. There is also an investigation by DHCR prior to such proceeding where DHCR often looks to resolve these matters through requiring certain remedial steps. In any case, an owner is given the opportunity to interpose such defenses and mitigating circumstances as appropriate including any claim of a cure of the conduct or condition that led to the administrative proceeding. DHCR will take such remedial action into account in most circumstances. However since these fines involve violations of prior DHCR orders or harassment, creating a mandatory cure

period by regulation could endanger the public health, safety and welfare of those affected by such conduct.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small business to obtain any new or additional professional services.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small business or local governments. It is expected that the cost of compliance with the new rules will be no different than the cost of compliance with existing rules.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments, required by statute, do not impair the rights of small business owners, and they have no other adverse economic impact on such parties or any local government. In fact the regulations, with respect to the modifications to the apartment improvement compensation formula, in accordance with law, create an exception that will be advantageous to small businesses. Otherwise, the statutes being implemented do not create different regulatory standards for small businesses. However, the highly individualized investigative and enforcement process leading to the statutory fines will serve to minimize impact on small businesses where it should. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Since the passage of the statutes on which these regulations are based, DHCR's Office of Rent Administration held over fifty meetings with community groups, owner and tenant advocacy organizations and local officials where the implementation of those provisions was one of the matters under discussion.

Rural Area Flexibility Analysis

The City Rent and Eviction Regulations apply exclusively to New York City, and therefore the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulations Govern the Implementation of the State Rent Control Laws

I.D. No. HCR-28-12-00003-P

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

Proposed Action: Amendment of sections 2100.9(v), (w), 2102.3(b)(1)(i)(*b*), 2110.2, 2110.3, 2110.4 and 2110.5 of Title 9 NYCRR.

Statutory authority: Emergency Housing Rent Control Law, L. 1946, ch. 274, subd. 4(a), as amd. by L. 1950, ch. 250, as amd., as transferred to the Division of Housing and Community Renewal by L. 1964, ch. 244 and L. 2011, ch. 97, part B, section 44

Subject: Regulations govern the implementation of the State Rent Control Laws.

Purpose: To comply with the L. 2011, ch. 97, part B.

Text of proposed rule: 9 NYCRR § 2100.9(v)(2) is amended to read as follows and paragraphs (3), (4) and (5) are renumbered (5), (6) and (7) and new paragraphs (3) and (4) are added and renumbered paragraph (6) is further amended to read as follows:

(2) became or become vacant on or after June 19, 1997 *but before June 24, 2011*, with a maximum rent of $2,000 or more per month;

(3) became or become vacant on or after June 24, 2011, with a maximum rent of $2,500 or more per month;

(4) exemption pursuant to this subdivision shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than the applicable amount qualifying for deregulation as provided in this subdivision;

[(3)]*(5)* [renumbered only - text remains the same]

[(4)]*(6)* during the period of effectiveness of an order issued pursuant to section 2102.4 of this Title for failure to maintain essential services, which lowers the maximum rent below [$2,000 per month] *the applicable amount qualifying for deregulation as provided in this subdivision,* during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

[(5)]*(7)* [renumbered only - text remains the same]

9 NYCRR § 2100.9(w)(1) is amended to read as follows and paragraph (2) is renumbered (3) and new paragraph (2) is added as follows:

(1) Upon the issuance of an order by the commission, pursuant to the procedures set forth in Part 2110 of this Title, including orders resulting from default, housing accommodations which have a maximum rent of $2,000 or more per month as of October 1, 1993 or as of any date on or after January 1, 1998, and which are occupied by persons who had a total annual income in excess of $250,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of $175,000, when the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive,* with total annual income being defined in and subject to the limitations and process set forth in Part 2110 of this Title.

(2) Upon the issuance of an order by the commission, pursuant to the procedures set forth in Part 2110 of this Title, including orders resulting from default, housing accommodations which have a maximum rent of $2,500 or more per month as of July 1, 2011 or later and which are occupied by persons who had a total annual income in excess of $200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2110 of this Title.

[(2)]*(3)* In determining whether the maximum rent for a housing accommodation is [$2,000 per month or more,] *the applicable amount qualifying for deregulation,* the standards set forth in subdivision (v) of this section shall be applicable; to be eligible for exemption under this subdivision, the maximum rent must continuously be [$2,000 or more per month] *the applicable amount qualifying for deregulation pursuant to subdivision (v),* from the landlord's service of the income certification form provided for in section 2110.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

9 NYCRR § 2102.3(b)(1)(i)(b)is amended to read as follows:

(b) on or after July 7, 1993, the landlord and tenant may, by mutual voluntary written agreement, agree to a substantial increase in dwelling space or a change in the services, furniture, furnishings or equipment provided in the housing accommodation; or the tenant has accepted and is obtaining the benefit of increased services, furniture, furnishings or equipment. In such case, an adjustment of the maximum rent shall be available without the approval of the Administrator, and shall *include* [be equal to 1/40th of] the total cost incurred by the landlord in providing such modification or increase, including the cost of installation, but excluding finance charges. *Prior to September twenty-fourth, two thousand eleven, the rent adjustment shall be 1/40th of the cost of the improvement and on or after September twenty-fourth, two thousand eleven, the rent adjustment shall be 1/40th of the cost of the improvement in buildings and complexes containing 35 or fewer housing accommodations and 1/60th of the cost of the improvement in buildings and complexes of more than 35 housing accommodations.* A landlord who is entitled to a rent adjustment pursuant to this paragraph, shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings. The landlord shall give written notice to the Commission of any such adjustment; or

9 NYCRR § 2110.2 intro paragraph and (a)(2) are amended to read as follows:

On or before the first day of May in each calendar year commencing with May 1, 1994 *through May 1, 2011,* the landlord of each hous-

ing accommodation for which the maximum rent is $2,000 or more per month *or commencing with May 1, 2012, for which the maximum rent is $2,500 or more per month* may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the commission on which such tenant or tenants shall identify all persons referred to in section 2110.1(b) of this Title, and shall certify whether the total annual income is in excess of $250,000 in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and 175,000 where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive, and $200,000, where the first of such two preceding calendar years is 2010 or later.* Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(a)(2) only tenants residing in housing accommodations which have a maximum rent [of $2,000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation, provided in this section* are required to complete the certification form;

9 NYCRR § 2110.3 is amended to read as follows:

In the event that the total annual income as certified is in excess of $250,000*,* [or] $175,000*, or $200,000* in each such year, whichever applies, as provided in section 2110.2 of this Part, the landlord may file an owner's petition for deregulation (OPD), accompanied by the ICF, with the commission on or before June 30 of such year. [the rest remains the same]

9 NYCRR § 2110.4(a) and (b) are amended to read as follows:

(a) In the event that the tenant or tenants either fail to return the completed ICF to the landlord on or before the date required by subdivision (d) of section 2110.2 of this Part, or the landlord disputes the certification returned by the tenant or tenants, the landlord may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the commission to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds $250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies, as provided in section 2110.2 of this Part.

(b) Within 20 days after the filing of such request with the commission, the commission shall notify the tenant or tenants that such tenant or tenants must provide the commission with such information as the commission and the DTF shall require to verify whether the total annual income exceeds $250,000*,* [or] $175,000*, or $200,000,* whichever applies, in each such year.

9 NYCRR § 2110.5 is amended to read as follows:

If the DTF determines that the total annual income is in excess of $250,000*,* [or] $175,000 *or $200,000* in each of the two preceding calendar years, whichever applies as provided in section 2110.2 of this Part, the commission shall, on or before November 15 of the year in which DTF makes such determination, notify the landlord and tenants of the results of such verification. [the rest remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.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.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Housing Rent Control Law, Laws of 1946, Chap 274, subdivision 4(a), as amended by the Laws of 1950, Chap. 250, as amended, as transferred to the Division of Housing and Community Renewal (DHCR) by the Laws of 1964, Chap. 244, provides the authority to the DHCR to amend the State Rent and Eviction Regulations (SRER) and Section 44 of Chap. 97, Par B of the Laws of 2011 enables DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by that act which includes the Emergency Housing Rent Control Law (RCL) which is implemented through the SRER.

2. LEGISLATIVE OBJECTIVES

The RCL requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health, safety and general health. The RCL is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See RCL § 8581(1). DHCR is specifically authorized to promulgate regulations by RCL § 8584(4)(a), and by Chapter 97 of the Laws of 2011 was further empowered to promulgate regulations to implement and enforce the provisions of that chapter and any law continued or renewed by that chapter. The proposed rule making is to implement those changes specifically mandated by Chapter 97, Part B of the Laws of 2011: the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income); the modification of the apartment improvement increase formula for all buildings except those with 35 or fewer units.

3. NEEDS AND BENEFITS

The rule making will implement provisions of Chapter 97 mentioned above. Specifically, the SRER amendments reflect the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income) that were increased by that law. As set forth in the legislative memorandum (McKinney's Session Laws 2011 A-111 through A-116), the thresholds for deregulation have not increased in seventeen years. In addition, in accord with legislative directive, the apartment improvement increase formula has been modified for all buildings except those with 35 or fewer units.

4. COSTS

The regulated parties are residential tenants and the owners of the rent controlled housing accommodations in which such tenants reside. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the RCL generally or through these amended statutory provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations but would be best served by being aware of these changes.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will not increase the paperwork burden on either regulated parties or the agency as the statutory amendments implemented here simply change substantive thresholds for existing applications and methodologies for increasing rent.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or federal requirements except to the extent required by law. There are instances where a rent controlled property participates in another State, city or federal housing program. In those instances there may be a need to comply with the State Rent and Eviction Regulation as well as the mandates of that city, state or federal program.

8. ALTERNATIVES

The proposed amendments implement statutory provisions not yet reflected in the regulations. An area that may facially seem to provide a choice of alternative is that the maintenance of the present apartment improvement compensation formula for smaller properties is defined both in terms of complexes as well as buildings. However a distinction based on both is simply a recognition of what constitutes a ''build-

ing'' for rent regulation purposes. In part through statute, and in part through long term usage, as upheld judicially, rent regulation treats ostensibly separate structures as a dingle building where the common factors that unite them into a single entity, outweigh those that divide them. Applying this same standard here is the only reasonable alternative in keeping with the statutory distinction for using a different apartment improvement compensation formula that is in fact based on the number of units.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The State Rent and Eviction Regulations (SRER) apply only to housing units located in those communities outside New York City that are subject to the Emergency Housing Rent Control Law. The small businesses that would be affected by these proposed amendments are the owners of small numbers of regulated housing units, at least one of which is rent controlled.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require small business that own regulated residential housing units to perform any additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small business to obtain any new or additional professional services.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small business or local governments. It is expected that the cost of compliance with the new rules will be no different than the cost of compliance with existing rules.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments, required by statute, do not impair the rights of small business owners, and they have no adverse economic impact on such parties or any local government. In fact the regulations, with respect to the modifications to the apartment improvement compensation formula, in accordance with law, create an exception that will be advantageous to small businesses. Otherwise, the statutes being implemented do not create different regulatory standards for small businesses. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Since the passage of the statutes on which these regulations are based, DHCR's Office of Rent Administration held over fifty meetings with community groups, owner and tenant advocacy organizations and local officials where the implementation of those provisions was one of the matters under discussion.

Rural Area Flexibility Analysis

The proposed rules are not anticipated to impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulations Govern the Implementation of the Emergency Tenant Protection Act

I.D. No. HCR-28-12-00004-P

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

Proposed Action: Amendment of sections 2500.9(l)(1)(i)(*a*)(*3*)(*i*), (*d*)(*1*), (m), (n), 2502.4(a)(4), 2502.7(a), 2506.2(c), 2511.2, 2511.3, 2511.4 and 2511.5 of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act of 1974, L. 1974, ch. 576, section 10a; and L. 2011, ch. 97, part B, section 44

Subject: Regulations govern the implementation of the Emergency Tenant Protection Act.

Purpose: To comply with the Laws of 2011, ch. 97, part B and the Laws of 2009, ch. 480.

Text of proposed rule: 9 NYCRR § 2500.9(l)(1)(i)(a)(3)(i) is amended to read as follows:

(i) where the rent, as agreed upon by the parties and paid by the tenant [is $2,000 or more per month,] e*quals or exceeds the applicable amount qualifying for deregulation,* pursuant to subdivision (m) of this section, such accommodation and the rent therefor shall not revert to regulation under this Subchapter;

9 NYCRR § 2500.9(l)(1)(i)(d)(1) is amended to read as follows:

(1) Where it determines that the owner taking title at deconversion caused, in whole or in part, the deconversion to occur, the initial legal regulated rent shall be established by the division pursuant to sections 2502.3(b) and 2502.6 of this Title. In such cases, [if the rent so established and paid is $ 2,000 or more per month,] subdivision (m) of this section shall not apply.

9 NYCRR § 2500.9(m)(2) is amended to read as follows and paragraphs (3), (4), (5), (6), (7), and (8) are renumbered (5), (6), (7), (8), (9), and (10) and new paragraphs (3) and (4) are added and renumbered paragraphs (7), (8), (9) and (10) are further amended to read as follows:

(2) became or become vacant on or after June 19, 1997 *but before June 24, 2011,* with a legal regulated rent of $2,000 or more per month;

(3) became or become vacant on or after June 24, 2011, with a legal regulated rent of $2,500 or more per month;

(4) exemption pursuant to this subdivision shall apply regardless of whether the next tenant in occupancy or any subsequent tenant in occupancy is charged or pays less than the applicable amount qualifying for deregulation as provided in this subdivision;

[(3)] *(5)* [renumbered only - the text remains the same]

[(4)] *(6)* [renumbered only - the text remains the same]

[(5)] *(7)* during the period of effectiveness of an order issued pursuant to section 2503.4 of this Title for failure to maintain essential services, which lowers the legal regulated rent below [$2,000 per month] *the applicable amount qualifying for deregulation as provided in this subdivision, during the time period specified in this subdivision,* a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

[(6)] *(8)* where an owner installs new equipment or makes improvements to the individual housing accommodation qualifying for a rent increase pursuant to subparagraph (i) of paragraph (3) of subdivision (a) of section 2502.4 of this Title, while such housing accommodation is vacant, and where the legal regulated rent is raised on the basis of such rent increase, or as a result of any rent increase permitted upon vacancy or succession as provided in section 2502.7 of this Title, or by a combination of rent increases, as applicable, [to a level of $2,000 per month or more], *the applicable amount qualifying for deregulation as provided in this subdivision,* whether or not the next tenant in occupancy actually is charged or pays [$2,000 per month or more] *the applicable amount qualifying for deregulation as provided in this subdivision,* for rental of the housing accommodation, the housing accommodation will qualify for exemption under this subdivision;

[(7)] *(9)* where, pursuant to section 2501.2 of this Title, a legal regulated rent is established by record within four years prior thereto, and a rent lower than such legal regulated rent is charged and paid by the tenant, and where, pursuant to such section, upon the vacancy of such tenant, a legal regulated rent previously established by record within four years prior thereto, as lawfully adjusted pursuant to the act or this Subchapter, may be charged, and where such previously established legal regulated rent, as so adjusted, [is $2,000 or more per month] *equals or exceeds the applicable amount qualifying for deregulation as provided in this subdivision,* such vacancy shall qualify the housing accommodation for exemption under this subdivision;

[(8)] *(10)* where an owner substantially alters the outer dimensions of a vacant housing accommodation which qualifies for a first rent [of $2,000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation as provided in this subdivision,* exemption pursuant to this subdivision shall apply.

9 NYCRR § 2500.9(n)(1) is amended to read as follows, paragraphs (2) and (3) are renumbered (3) and (4) and a new paragraph (2) is added:

(1) have a legal regulated rent of $2,000 or more per month as of October 1, 1993, or as of any date on or after June 19, 1997 and which are occupied by persons who had a total annual income in excess of $250,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of $175,000, where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive,* with total annual income being defined in and subject to the limitations and process set forth in Part 2511 of this Title;

(2) have a legal regulated rent of $2,500 or more per month as of July 1, 2011 or after, and which are occupied by persons who had a total annual income in excess of $200,000 per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 2010 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2511 of this Title;

[(2)] *(3)* [renumbered only - text remains the same]

[(3)] *(4)* in determining whether the legal regulated rent for a housing accommodation is [$2,000 per month or more] *the applicable amount qualifying for deregulation,* the standards set forth in subdivision (m) shall be applicable; to be eligible for exemption under this subdivision, the legal regulated rent must continuously be [$2,000 or more per month] *the applicable amount qualifying for deregulation pursuant to subdivision (m),* from the owner's service of the income certification form provided for in section 2511.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

9 NYCRR § 2502.4(a)(4) is amended to read as follows:

(4) An owner is entitled to a rent increase without the prior approval of the division where the owner and tenant by mutual voluntary agreement, agree to a substantial increase of dwelling space or an increase in the services, furniture, furnishings or equipment provided in or to a tenant's housing accommodation, on written tenant consent to the rent increase. In the case of a vacant housing accommodation, tenant consent shall not be required. *In calculating* [T]*t*he permanent increase in the legal regulated rent for the affected housing accommodation [shall be in 1/40th of] the total cost incurred by the owner in providing such increase in dwelling space, services, furniture, furnishings or equipment, including the cost of installation, but excluding finance charges *shall be considered. Prior to September 24, 2011, the increase shall be 1/40th of the cost. On or after September 24,2011, the increase shall be 1/40th of the cost for buildings or complexes with 35 or fewer housing accommodations and 1/60th of the cost for buildings or complexes containing more than 35 housing accommodations.* Provided further that an owner who is entitled to a rent increase pursuant to this paragraph shall not be entitled to a further rent increase based upon the installation of similar equipment, or new furniture or furnishings within the useful life of such new equipment, or new furniture or furnishings.

9 NYCRR § 2502.7(a) is amended by adding a subparagraph (3) as follows:

(3) Effective June 24, 2011, the increase authorized in this paragraph may not be implemented more than one time in any calendar year, notwithstanding the number of vacancy leases entered into in such year.

9 NYCRR 2506.2(c) is amended as follows and subparagrpahs (c)(2)(i) and (ii) are repealed:

(c) If a landlord is found by the division:

(1) to have violated an order of the division, the division may impose by administrative order after hearing, a civil penalty in the amount of $ [250] *1,000* for the first such offense and $ [1]*2*,000 for each subsequent offense; or

(2) to have harassed a tenant to obtain vacancy of a housing accommodation, the division may impose by administrative order after hearing, a civil penalty in the amount of [:] *$2,000 for the first such offense and up to $10,000 for each subsequent offense or for a violation consisting of conduct directed at the tenant of more than one housing accommodation.*

9 NYCRR § 2511.2 intro paragraph and (a)(2) is amended to read as follows:

On or before the first day in May in each calendar year, commencing with May 1, 1994 *through May 1, 2011*, the owner of each housing accommodation for which the legal regulated rent is $2,000 or more per month *or commencing with May 1, 2012, for which the legal regulated rent is $2,500 or more per month* may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the division on which such tenant or tenants shall identify all persons referred to in subdivision (b) of section 2511.1 of this Part and shall certify whether the total annual income is in excess of $250,000 in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, [and] $175,000 where the first of such two preceding calendar years is 1996 [or later] *through 2009 inclusive, and $200,000, where the first of such two preceding calendar years is 2010 or later.* Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(2) only tenants residing in housing accommodations which have a legal regulated rent [of $2,000 or more per month] *equal to or exceeding the applicable amount qualifying for deregulation, as provided in this section* are required to complete the certification form;

9 NYCRR § 2511.3 is amended to read as follows:

In the event that the total annual income as certified is in excess of $250,000*,* [or] $175,000*, or $200,000* in each such year, whichever applies, as provided in section 2511.2 of this Part, the owner may file an owner's petition for deregulation (OPD), accompanied by the ICF, with the division on or before June 30 of such year. [the rest remains the same]

9 NYCRR § 2511.4 is amended to read as follows:

(a) In the event that the tenant or tenants either fail to return the completed ICF to the owner on or before the date required by subdivision (d) of section 2511.2 of this Part or the owner disputes the certification returned by the tenant or tenants, the landlord may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the division to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds $250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies, as provided in section 2511.2 of this Part.

(b) Within 20 days after the filing of such request with the division, the division shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the division with such information as the division and the DTF shall require to verify whether the total annual income exceeds $250,000*,* [or] $175,000*, or $250,000* whichever applies, in each such year.

9 NYCRR § 2511.5 is amended to read as follows:

If the DTF determines that the total annual income is in excess of $250,000*,* [or] $175,000*, or $200,000* in each of the two preceding calendar years, whichever applies as provided in section 2511.2 of this Part, the division shall, on or before November 15 of the year in which DTF makes such determination, notify the landlord and tenants of the results of such verification. [the rest remains the same]

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.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.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

The Emergency Tenant Protection Act of 1974 (ETPA), Laws of 1974 Chap. 576, section 10a provides authority to the Division of Housing and Community Renewal (DHCR) to amend the Tenant Protection Regulations (TPR) and Section 44 of Chap. 97, Part B of the Laws of 2011 enables DHCR to promulgate rules and regulations to implement and enforce all provisions of such law and any law renewed or continued by that act which includes the ETPA which is implemented through the TPR.

2. LEGISLATIVE OBJECTIVES

The ETPA requires, because of a serious public emergency, the regulation of residential rents and evictions to prevent the exaction of unreasonable rents and rent increases and to forestall other disruptive practices to produce threats to public health, safety and general welfare. The ETPA is further designed to assure that any transition from regulation to normal market bargaining with respect to such landlords and tenants is administered with due regard to these emergency conditions. See ETPA § 8622. DHCR is specifically authorized to promulgate regulations by McKinney's Unconsol. Laws 8630, and by Chapter 97 of the Laws of 2011 was further empowered to promulgate regulations to implement and enforce provisions of that chapter and any law continued or renewed by that chapter. The proposed rule making is to implement those changes specifically mandated by Chapter 97, Part B of the Laws of 2011: the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income); the modification of the apartment improvement increase formula for all buildings except those with 35 or fewer units; and permitting only one allowable vacancy rent increase per year. The proposed rule making further implements those changes specifically mandated by Chapter 480 of the Laws of 2009: increasing the fines for harassment and violations of orders of DHCR.

3. NEEDS AND BENEFITS

The rule making will implement provisions of Chapters 97 and 480 mentioned above. Specifically, the TPR amendments reflect the raising of the threshold amount for deregulation based on vacancies, as well as raising of the thresholds for high rent/high income deregulation (both monthly rental amounts and household annual income) that were increased by that law. As set forth in the legislative memorandum (McKinney's Session Laws 2011 A-111 through A-116), the thresholds for deregulation have not increased in seventeen years although basic stabilized rents increase each year. In addition, in accord with legislative directive, the apartment improvement increase formula has been modified for all buildings except those with 35 or fewer units. Additionally, permitting only one allowable vacancy rent increase per year as also set forth in the memorandum in support, is consistent with assuring fair compensation to owners without overcompensating them for fortuitous vacancies not already contemplated by the rent regulatory system. Chapter 480 of the Laws of 2009 increased the fines for harassment and violations of orders of DHCR, and the provisions in the regulations regarding DHCR's fining authority are to be amended consistent therewith.

4. COSTS

The regulated parties are residential tenants and the owners of the rent stabilized housing accommodations in which such tenants reside. The amended regulations do not impose any new program, service, duty or responsibility upon any state agency or instrumentality thereof, local government or business, and therefore impose no costs on those entities which are not already required through the enactment of the ETPA generally or through these amended statutory provisions referenced above. For the owners of regulated housing accommodations, who may need to be initially more vigilant to assure their compliance with these new statutory requirements, costs should be relatively minimal. In fact, compliance costs are already a generally-accepted expense of owning regulated housing. The increased administrative fines are based on lack of compliance and are not an additional compliance cost. In addition, the fines are mandated and consistent with statutory amendments. Similarly, tenants will not incur any additional costs through implementation of the proposed regulations but would be best served by being aware of these changes.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will not increase the paperwork burden on either regulated parties or the agency as the statutory amendments implemented here simply change substantive thresholds for existing applications and methodologies for increasing rent.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or federal requirements except to the extent required by law. There are instances where a rent stabilized property participates in another State, city or federal housing program. In those instances there may be a need to comply with the Rent Stabilization Code requirements as well as the mandates of that city, state or federal program.

8. ALTERNATIVES

The proposed amendments implement statutory provisions not yet reflected in the regulations. An area that may facially seem to provide a choice of alternative is that the maintenance of the present apartment improvement compensation formula for smaller properties is defined both in terms of complexes as well as buildings. However a distinction based on both is simply a recognition of what constitutes a ''building'' for rent regulation purposes. In part through statute, and in part through long term usage, as upheld judicially, rent regulation treats ostensibly separate structures as a single building where the common factors that unite them into a single entity, outweigh those that divide them. Applying this same standard here is the only reasonable alternative in keeping with the statutory distinction for using a different apartment improvement compensation formula that is in fact based on the number of units.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

The Emergency Tenant Protection Regulations (TPR) apply only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act. The class of small businesses affected by these proposed amendments would be limited to small building owners, those who own small numbers of rent stabilized units. The amended regulations are expected to have no burdensome impact on such small businesses. These amendments to the TPR apply only in the aforementioned communities, and are expected to have no impact on the local governments thereof.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require small business that own regulated residential housing units to perform any additional recordkeeping or reporting. Such businesses will continue to need to keep records of rent increases and improvements made to the properties in order to qualify for rent increases authorized under the proposed changes. Fines for harassment and violations of orders have been increased as a requirement of statutory amendments; but these are not

considered compliance costs. With respect to recognizing curative activity undertaken by a small business, these fines are already by law imposed only after a proceeding that would either give such owner a formal hearing, or written notice and an opportunity to be heard. There is also an investigation by DHCR prior to such proceeding where DHCR often looks to resolve these matters through requiring certain remedial steps. In any case, an owner is given the opportunity to interpose such defenses and mitigating circumstances as appropriate including any claim of a cure of the conduct or condition that led to the administrative proceeding. DHCR will take such remedial action into account in most circumstances. However since these fines involve violations of prior DHCR orders or harassment, creating a mandatory cure period by regulation could endanger the public health, safety and welfare of those affected by such conduct.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small business to obtain any new or additional professional services.

4. COMPLIANCE COSTS

There is no indication that the proposed amendments will impose any significant, initial costs upon small business or local governments. It is expected that the cost of compliance with the new rules will be no different than the cost of compliance with existing rules.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments, required by statute, do not impair the rights of small business owners, and they have no other adverse economic impact on such parties or any local government. In fact the regulations, with respect to the modifications to the apartment improvement compensation formula, in accordance with law, create an exception that will be advantageous to small businesses. Otherwise, the statutes being implemented do not create different regulatory standards for small businesses. However, the highly individualized investigative and enforcement process leading to the statutory fines will serve to minimize impact on small businesses where it should. To the extent the approaches suggested in SAPA section 202-b are otherwise appropriate, present procedures take these into account.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Since the passage of the statutes on which these regulations are based, DHCR's Office of Rent Administration held over fifty meetings with community groups, owner and tenant advocacy organizations and local officials where the implementation of those provisions was one of the matters under discussion.

Rural Area Flexibility Analysis

The Emergency Tenant Protection Act applies only to rent stabilized housing units located in those communities in Westchester, Rockland and Nassau Counties that are subject to the Emergency Tenant Protection Act and therefore, the proposed rules will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102.

Job Impact Statement

It is apparent from the text of the rules, required by statutory amendment, that there will be no adverse impact on jobs and employment opportunities by the promulgation of these regulations.

New York State Joint Commission on Public Ethics

NOTICE OF ADOPTION

Adjudicatory Proceedings and Appeals Procedure

I.D. No. JPE-18-12-00003-A
Filing No. 627
Filing Date: 2012-06-26
Effective Date: 2012-07-11

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

Action taken: Amendment of Part 941 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9) and (14)

Subject: Adjudicatory proceedings and appeals procedure.

Purpose: To provide due process and a fair and just procedure for the Commission's decision making on alleged violations of law.

Text or summary was published in the May 2, 2012 issue of the Register, I.D. No. JPE-18-12-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Joint Commission in Public Integrity, 540 Broadway Albany NY 12207, (518) 408-3976, email: scalnero@jcope.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Submeter Electricity at 1125 Banner Avenue and 2750 East 12th Street, Brooklyn, New York

I.D. No. PSC-05-12-00008-A
Filing Date: 2012-06-20
Effective Date: 2012-06-20

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

Action taken: On 6/14/12, the PSC adopted an order approving the petition of Banner Apartments LLC to submeter electricity at 1125 Banner Avenue and 2750 East 12th Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: To submeter electricity at 1125 Banner Avenue and 2750 East 12th Street, Brooklyn, New York.

Purpose: To approve Banner Apartments LLC to submeter electricity at 1125 Banner Avenue and 2750 East 12th Street, Brooklyn, NY.

Substance of final rule: The Commission, on June 14, 2012 adopted an order approving the petition of Banner Apartments LLC to submeter electricity at 1125 Banner Avenue and 2750 East 12th Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0009SA1)

NOTICE OF ADOPTION

Submeter Electricity at 107 Washington Avenue, Schenectady, New York

I.D. No. PSC-05-12-00009-A
Filing Date: 2012-06-20
Effective Date: 2012-06-20

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

Action taken: On 6/14/12, the PSC adopted an order approving the petition of United Suites at Washington Square, LLC to submeter electricity at 107 Washington Ave., Schenectady, New York, located in the territory of Niagara Mohawk Power Corporation, d/b/a National Grid.

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

Subject: To submeter electricity at 107 Washington Avenue, Schenectady, New York.

Purpose: To approve United Suites at Washington Square, LLC to submeter electricity at 107 Washington Ave., Schenectady, New York.

Substance of final rule: The Commission, on June 14, 2012 adopted an order approving the petition of United Suites at Washington Square, LLC to submeter electricity at 107 Washington Avenue, Schenectady, New York, located in the territory of Niagara Mohawk Power Corporation, d/b/a National Grid.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0709SA1)

NOTICE OF ADOPTION

Submeter Electricity at 124 Ferry Street, Troy, New York

I.D. No. PSC-06-12-00009-A
Filing Date: 2012-06-20
Effective Date: 2012-06-20

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

Action taken: On 6/14/12, the PSC adopted an order approving the petition of CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, New York, located in the territory of Niagara Mohawk Power Corporation, d/b/a National Grid.

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

Subject: To submeter electricity at 124 Ferry Street, Troy, New York.

Purpose: To approve the petition of CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, New York.

Substance of final rule: The Commission, on June 14, 2012 adopted an order approving the petition of CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, New York, located in the territory of Niagara Mohawk Power Corporation, d/b/a National Grid.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0021SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-28-12-00008-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 tariff filing by the Hamilton Municipal Utilities Commission, requesting approval to increase its annual revenues by approximately $239,362 or 8.0% in P.S.C. No. 1—Electricity, to become effective November 1, 2012.

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

Subject: Minor electric rate filing.

Purpose: To approve an increase in annual revenues by approximately $239,362 or 8.0%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Hamilton Municipal Utilities Commission, requesting approval to increase its annual revenues by approximately $239,362 or 8.0% to P.S.C. No. 1 - Electricity. The proposed filing has an effective date of November 1, 2012. The Commission may resolve related matters and may take this action for 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.ny.gov

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

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.

(12-E-0286SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Weighted Average Cost of Capacity Pricing

I.D. No. PSC-28-12-00009-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 filing by Central Hudson Gas & Electric Corporation to propose revisions to the Company's rules and regulations contained in P.S.C. No. 12—Gas to become effective November 1, 2012.

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

Subject: Weighted Average Cost of Capacity Pricing.

Purpose: To implement the weighted average cost of capacity pricing for capacity releases to retail suppliers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, Central Hudson Gas & Electric Corporation's filing to implement the weighted average cost of capacity pricing for capacity releases to retail suppliers pursuant to Commission Order issued March 19, 2012 in Case 11-G-0697. The filing has an effective date of November 1, 2012. The Commission may resolve related matters and may apply its decision here to other companies.

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.ny.gov

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

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-0697SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of the Issuance of Long-Term Debt Securities

I.D. No. PSC-28-12-00011-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 whether to approve, modify or deny a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid for authorization to issue securities up to $1.6 billion, for the period November 1, 2012 – March 31, 2016.

Statutory authority: Public Service Law, section 69

Subject: Approval of the issuance of long-term debt securities.

Purpose: Consideration of approval of the Niagara Mohawk Power Corporation petition to issue long-term debt securities.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, the petition of Niagara Mohawk Power Corporation d/b/a National Grid for authority to issue up to $1.6 billion of long-term debt securities, pursuant to Public Service Law, Section 69 and all other related matters. Niagara Mohawk Power Corporation also requests authorization to execute instruments in connection with the issuance of the debt, including but not limited to indentures, supplemental indentures, promissory notes, etc. Niagara Mohawk Power Corporation proposes to use net proceeds for various purposes including: financing construction of utility plant, refinancing debt, refinancing short-term debt with long-term debt, financing its capital needs and other general corporate purposes.

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.ny.gov

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

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.
(12-M-0264SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Newspaper Publication Requirement for Authorized Rate Increases

I.D. No. PSC-28-12-00012-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify the petition of United Water Owego-Nichols, Inc. to waive the publication requirement for authorized rate increases in 2013 and 2014.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Newspaper publication requirement for authorized rate increases.

Purpose: Consideration of a waiver of the publication requirement.

Substance of proposed rule: On March 21, 2012, the Commission approved a three-year rate plan for United Water Owego-Nichols, Inc. (UWON), which required UWON to publish notice of each year's rate increase in a local newspaper once a week for four weeks before the increase went into effect. On May 1, 2012, UWON filed a request that the Commission waive the publication requirement in subsequent years because of the cost of such publication and the fact that publication was not required in past rate proceedings. The Commission is considering whether to grant, deny or modify UWON's petition.

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.ny.gov

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

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-0082SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Exemption of Reliability Reporting Statistics for the Purpose of the 2012 Reliability Performance Mechanism

I.D. No. PSC-28-12-00013-P

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

Proposed Action: The Commission is considering a request for exemption of reliability reporting statistics from a January 16, 2012 gas explosion event that affected Orange and Rockland Utilities electric customers for the purpose of the Reliability Performance Mechanism.

Statutory authority: Public Service Law, section 66

Subject: Exemption of reliability reporting statistics for the purpose of the 2012 Reliability Performance Mechanism.

Purpose: Consideration of Orange and Rockland Utilities request for exemption of the 2012 reliability reporting statistics.

Substance of proposed rule: In accordance with the New York Public Service Commission's Order Establishing Electric Rate Plan for Orange and Rockland Utilities, Inc. issued June 14, 2012 in the above-referenced proceeding, Orange and Rockland Utilities, Inc. (ORU) is subject to a Service Reliability Performance Mechanism. By petition dated February 28, 2012, ORU sought a Request for Exemption from Reliability Reporting for a gas explosion event that occurred on January 16, 2012 and affected electric customers. Specifically, ORU is seeking the Commission's authorization to exclude from its 2012 service reliability reporting statistics, used for purposes of the Service Reliability Performance Mechanism, the outage statistics relating to this storm event. The Commission is considering whether to grant, deny or modify, in whole or in part, approval of the exception as requested.

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.ny.gov

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

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-0408SP2)