

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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Correctional Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Telephone Calls

I.D. No. COR-38-07-00004-P

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

Proposed action: Repeal of section 723.3(d)(2)-(4) and addition of new section 723.3(d)(2)-(4); amendment of sections 723.3(e)(2), (3) and (8), 723.5(b)(6), (c)(2) and (d); and repeal of section 723.5(d)(1)-(6) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate telephone calls.

Purpose: To better document public requests not to be contacted by specific inmates, prohibit inmates from contacting their victims or people with court orders of protection.

Text of proposed rule: Section 723.3(d)(2)-(4) of 7 NYCRR is repealed and a new section 723.3(d)(2)-(4) is adopted to read as follows:

(2) *Whenever the recipient of an inmate's correspondence or telephone calls indicates, in any manner, that he or she does not wish to receive further correspondence or phone calls from the inmate, the correspondence unit, the package room, the Deputy Superintendent for Security, the Senior Correction Counselor, the facility Parole Office and the inmate*

shall be notified. Departmental Form 3402 shall be used for notification. A copy will be filed.

(3) *Negative Correspondence and Telephone List: The Negative Correspondence and Telephone List shall contain the name of any person or business that has indicated, in any manner, that further correspondence from the inmate is not desired. If a request to be removed from an inmate's telephone or correspondence list is received, a letter of confirmation shall be sent to the person making the request. If such a person or business indicates, at a later time, that further correspondence is not objectionable, the Superintendent or his designee may, but need not, direct the name of the person or business be removed from the Negative Correspondence and Telephone List.*

(4) *No inmate shall continue to submit mail to or make telephone calls to any person or business that currently appears on his or her Negative Correspondence and Telephone List. Any inmate continuing to do so may be subject to disciplinary action and/or monitoring of outgoing mail for a specific period of time.*

Section 723.3(e)(2)(3) and (8) of 7 NYCRR is amended as follows:

(2) *No inmate may place a telephone call to the residence of a victim of the crime(s) for which the inmate has been convicted or is presently under indictment regardless of whether immediate family members maintain the same residence, unless prior written authorization has been received from the Superintendent. The name of the person(s) will be added to the Negative Correspondence and Telephone List. Departmental Form 3402 will be completed and used for notification. A copy will be filed.*

(3) *No inmate may call the phone number of any person listed on a court order of protection which prohibits telephone communication, unless the order specifically states that the inmate is not prohibited from communicating by phone with another person at that same phone number. The name of the person(s) will be added to the Negative Correspondence and Telephone List. Departmental Form 3402 will be completed and used for notification. A copy will be filed.*

(8) *Inmates are prohibited from making toll-free telephone calls. [, including toll-free 800 numbers.] Inmates are prohibited from making telephone calls to order goods and services from private vendors or to conduct business-related activities.*

Section 723.5(b)(6) of 7 NYCRR is amended as follows:

(6) *Call should be limited in duration based on facility needs and will automatically terminate when the specified time limit has been reached [, preceded by a warning buzz]. No call shall exceed 30 minutes. When other inmates are waiting to place calls, a 10-minute limit may be imposed.*

Section 723.5(c)(2) of 7 NYCRR is amended as follows:

(2) *To establish the permanent telephone list, the inmate must fill out a "telephone form" and give it to his/her correction counselor for approval. No inmate may add any person who is listed on an active court order of protection which prohibits such contacts.*

Section 723.5(d)(1)-(6) of 7 NYCRR is repealed and section 723.5(d) is amended as follows:

(d) *Calling procedure. The inmate shall access the system by utilization of an individual PIN number which is the inmate DIN number modified so that the alpha letter is converted to corresponding numeral. The detailed procedures for inmate self-dial calling are set forth in the departmental directive on inmate telephone calls which are located in inmate libraries and may be viewed by the public at www.docs.state.ny.us, under the "Directives" menu options, titled: "Inmate Telephone Calls (Directive 4423)."*

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and

Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibilities to make rules and regulations for the government and discipline of correctional facilities.

Legislative Objective

By vesting the commissioner with this rule making authority, the legislature intended the commissioner to establish and publish rules and procedures to allow members of the public to request not to be contacted by individual inmates, restrict inmates from making toll-free telephone calls or ordering goods and services by telephone, restrict inmates from calling people who have an active court order of protection against them, and develop a procedure on how inmates are to access the telephone system and limit the amount of time an inmate is allowed to use the telephone.

Needs and Benefits

It is the policy of DOCS to help protect the public from unwanted contact from inmates who may be abusing their correspondence and telephone privileges. The repeal of section 723.3(d)(2)-(4) and adoption of a new section 723.3(d)(2)-(4) references a revised Departmental Form 3402 which better documents a request by a member of the public not to be contacted by a specific inmate through correspondence or by telephone. A copy of the form is maintained in the inmate's file.

Amendment of 723.3(e)(2) requires victims of an inmate to be placed on the negative correspondence and telephone list and Departmental Form 3402 to be completed and filed.

Amendments of sections 723.3(e)(3) and 723.5(c)(2) prohibits an inmate from contacting any person who is listed on an active court order of protection against the inmate, requires the inmate to be added to the negative correspondence and telephone list, and Departmental Form 3402 to be completed and filed.

Amendment of section 723.3(e)(8) is a technical change since toll-free telephone numbers are no longer just 800 numbers. Inmates are still prohibited from ordering goods and services from private vendors and conducting business-related activities by telephone.

Amendment of section 723.5(b)(6), the repeal of section 723.5(d)(1)-(6), and amendment of section 723.5(d) are technical changes that correct the current telephone access and warning system available to inmates. The time warning system and inmate access and dialing procedure may change occasionally based upon the vendor providing telephone services and their program. Inmates are provided this information upon their admission into DOCS and the current written procedure is available for review in the departmental directive on inmate telephone calls which inmates may access through inmate libraries and the public may access on the DOCS website listed in the amended section 723.5(d).

Costs

- a. To regulated parties: None.
- b. To agency, the state and local governments: None.
- c. Source of information: Department Budget staff.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules. Departmental Form 3402, as cited in these rules, already exists and was revised to be more efficient. The referral to the DOCS website and departmental directive referenced in amended section 723.5(d) already exists and is currently available to the public at this time.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are considered feasible. Utilizing the revised form as prescribed better documents that the inmate was directed not to contact the requestor and continued attempts may result in disciplinary actions.

Federal Standards

There are no minimum standards of the Federal government for this or similar subject area.

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. These proposals merely improves the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, prohibit inmates from contacting their victims or people who have active court orders of protection, and update the phone access procedures for inmates.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. These proposals merely improves the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, prohibits inmates from contacting their victims or people who have active court orders of protection, and updates the phone access procedures for inmates.

Job Impact Statement

A job impact statement is not submitted because these proposed rules will have no adverse impact on jobs or employment opportunities. These proposals merely improve the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, provides information about the Office of Victim Services to individuals requesting to be placed on an inmate's negative correspondence and telephone list, better identifies contraband and its disposition, and more clearly specifies the amount of personal postage that will be advanced to an inmate.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Correspondence Program

I.D. No. COR-38-07-00005-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 720.3(a), (b), 720.4(a), (d), 720.7(e) and 720.8(d) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Correspondence Program.

Purpose: To improve recording of requests from the public not to be contacted by specific inmates; refer requestors to the Office of Victim Services; and better define contraband mail.

Text of proposed rule: Section 720.3(a)(1), (3), (4) of 7 NYCRR is amended as follows:

(a) Negative correspondence and telephone list. Whenever the recipient of inmate correspondence indicates, in any manner, that he or she does not wish to receive further correspondence from the inmate, [both] the correspondence unit, *the package room, the Deputy Superintendent for Security, the Senior Correction Counselor, the facility Parole Office* and the inmate shall be notified. [An appropriate entry shall be made in the inmate's folder to document this notification.] *Departmental Form 3402 shall be used for notification. A copy will be filed.*

(1) The negative correspondence and telephone list shall contain the name of any person or business that has indicated, in any manner, that further correspondence from the inmate is not desired. If a request to be removed from an inmate's telephone or correspondence list is [not] received [in writing], a confirmation letter shall be sent to the person making the request. If such a person indicates, at a later time, that further correspondence is not objectionable, the superintendent or his/her designee may, but need not, direct [that] the name of that person or business be removed from the negative correspondence and telephone list. *Upon receipt of a request to be placed on an inmate's negative correspondence and telephone list, the requester is to be informed of the toll-free telephone number for the Office of Victim Services. The requester should also be told that the Office of Victim Services is available to explain release notification options and access to Crime Victim Compensation funds, and when appropriate, to make referrals to support groups or community services such as those assisting victims of domestic violence or sexual assault.*

(3) No inmate shall continue to submit mail to be sent to a person or business which currently appears on the inmate’s negative correspondence and telephone list. Any inmate who continues to submit mail to such a person or business may be subject to disciplinary action and/or monitoring of outgoing mail for a specified period of time.

(4) No inmate may correspond or make telephone calls to [with] any person who is listed on an active court order of protection which prohibits such [correspondence] contacts. The name of the person(s) will be added to the negative correspondence and telephone list. Departmental Form 3402 will be completed and used for notification. A copy will be filed.

Section 720.3(b)(5) of 7 NYCRR is amended as follows:

(5) Victims. Authorization from the superintendent must be obtained before an inmate may correspond with any victim of a crime for which the inmate has been convicted or is presently under indictment, or with any member of said victim’s household who is not an immediate family member of the inmate. The name of the person(s) will be added to the negative correspondence and telephone list. Departmental Form 3402 will be completed and used for notification. A copy will be filed.

Section 720.4(a)(1) of 7 NYCRR is amended as follows:

(1) Before opening, incoming mail should be checked to make sure that the addressee can be accurately identified and is currently at the facility. [If the addressee cannot be identified, the mail should be stamped “Return to Sender – Addressee Cannot be Identified.”] If the addressee is no longer at the facility, the mail shall be forwarded in accordance with Part 722 of this Title. All incoming general correspondence must have a clearly identifiable name of sender and return address. A letter which does not have a return address will not be delivered to the inmate. It will be considered contraband and handled in accordance with departmental directive.

Section 720.4(d)(5) of 7 NYCRR is amended as follows:

(5) Illegal items. Illegal items, e.g., drugs, weapons, etc., shall be forwarded to the security office, with appropriate chain-of-custody documentation. When appropriate, the State Police or other police agency shall be notified.

Section 720.7(e) of 7 NYCRR is amended as follows:

(e) All business mail addressed to the media may be submitted sealed. Such business mail shall not be subject to opening, inspection, or confiscation, except in accordance with the provisions of section 720.3[(a)(8)] (c) of this Part.

Section 720.8(d) of 7 NYCRR is amended as follows:

(d) Advances for personal postage. Funds may be advanced to an inmate for one domestic first class one ounce letter per month in the following circumstances:

(1) The inmate has been confined to SHU for disciplinary or administrative segregation for 30 days or more, and has a zero or negative account balance.

(2) The inmate has been in keeplock status for 30 days or more, has lost telephone privileges, and has a zero or negative account balance.

(3) The inmate has lost telephone privileges, has a zero or negative account balance, and has not refused to accept available program assignments.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority

Section 112 of Correction Law assigns to the commissioner of correction the powers and duties of management and control of correctional facilities and inmates, and the responsibilities to make rules and regulations for the government and discipline of correctional facilities.

Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended the commissioner to establish and publish rules and procedures to allow members of the public to request not to be contacted by individual inmates, direct potential victims of inmates to the Office of Victim Services, require incoming mail to inmates to have an appropriate return address, define the amount of personal postage to be advanced to an inmate, and which police agency may be contacted if illegal contraband is found.

Needs and Benefits

It is the policy of DOCS to help protect the public from unwanted contact from inmates who may be abusing their correspondence and telephone privileges. The amendment of 720.3(a) introduces a revised Form 3402 which better documents a request by a member of the public not to be contacted by a specific inmate through correspondence or by telephone. The form is used to advise the inmate and appropriate correctional staff that the requestor does not wish to receive correspondence or telephone calls from the identified inmate. A copy of the form is maintained in the inmate’s file.

Amendments of 720.3(a)(4) and 720.3(b)(5) identifies any person listed on an active court order of protection or any victim of a crime which the inmate was involved in to be added to the negative correspondence and telephone list through the revised Form 3402.

Amendment of 720.3(a)(3) is technical as it renames the prior negative correspondence list to the revised negative correspondence and telephone list.

Amendment of 720.3(a)(1) requires that people who request to be placed on an inmate’s negative correspondence and telephone list be informed that there is an Office of Victim Services available to them through a toll-free telephone number. It also provides some information as to what services it offers.

Amendment of 720.4(a)(1) requires that mail being sent to inmates have a clearly identifiable name of sender and return address, otherwise, it will not be delivered to the inmate and considered contraband. This proposed rule for a clearly identifiable name of sender and return address facilitates the return of mail to the sender if necessary, and allows the correctional facility to inform the sender of prison mail requirements. Secondly, this proposed rule would assist correctional staff and the Inspector General’s office in gathering intelligence and conducting investigations when necessary. An influx of controlled substances into the correctional facilities is a likely result of not requiring inmate mail to bear a proper return address. Increased drug usage and trafficking would be a threat to the good order, safety and security of the facilities. Finally, there is a concern by correctional staff when handling correspondence for an inmate from an unknown source. The event of 9/11 and the use of mail to conduct terrorist acts has increased security awareness, and DOCS has increased the level of risk unidentifiable mail may bear and treats it as a security concern.

Amendment of 720.4(d)(5) allows DOCS the discretion to contact any other police agency, besides the State Police, if illegal items are found through the mail. Other police agencies may be better suited in taking custody of illegal contraband which may be received.

Amendment of 720.7(e) is a technical correction of a referral to section 720.3(a)(8) which no longer exists. The correct citation is section 720.3(c) of this Part.

Amendment of 720.8(d) better defines how much an inmate will be advanced for personal postage once they become eligible under this section. Some facilities were allowing international first class postage while some were not due to cost variations when compared to domestic rates. It should be noted that inmates are allowed to receive free postage and advances for privileged correspondence as defined under Part 721 of Title 7, NYCRR.

Costs

- a. To regulated parties: None.
- b. To agency, the state and local governments: None.
- c. Source of information: Department Budget staff.

Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

Paperwork

There are no new reports, forms or paperwork that would be required as a result of amending these rules. Departmental Form 3402, as cited in these rules, already existed and was revised to be more efficient.

Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

Alternatives

No alternatives are considered feasible. Utilizing the revised form as prescribed better documents that the inmate was directed not to contact the requestor and continued attempts may result in disciplinary actions.

Federal Standards

There are no minimum standards of the Federal government for this or similar subject area.

Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rules immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. These proposals merely improve the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, provides information about the Office of Victim Services to individuals requesting to be placed on an inmate's negative correspondence and telephone list, better identifies contraband and its disposition, and more clearly specifies the amount of personal postage that will be advanced to an inmate.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. These proposals merely improve the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, provides information about the Office of Victim Services to individuals requesting to be placed on an inmate's negative correspondence and telephone list, better identifies contraband and its disposition, and more clearly specifies the amount of personal postage that will be advanced to an inmate.

Job Impact Statement

A job impact statement is not submitted because these proposed rules will have no adverse impact on jobs or employment opportunities. These proposals merely improve the recording and documentation by DOCS staff of requests from the public not to be contacted by specific inmates, provides information about the Office of Victim Services to individuals requesting to be placed on an inmate's negative correspondence and telephone list, better identifies contraband and its disposition, and more clearly specifies the amount of personal postage that will be advanced to an inmate.

Crime Victims Board

NOTICE OF ADOPTION

Reimbursement of Claim Indebtedness

I.D. No. CVB-28-07-00002-A

Filing No. 925

Filing date: Aug. 30, 2007

Effective date: Sept. 19, 2007

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

Action taken: Addition of section 525.12(g)(1)(i) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 626 and 631

Subject: Reimbursement of claimant indebtedness.

Purpose: To establish the process through which such third party payers may be reimbursed by the board and allow claimants or potential claimants to be aware of what indebtedness the board would consider reimbursable under its statutory authority.

Text or summary was published in the notice of proposed rule making, I.D. No. CVB-28-07-00002-P, Issue of July 11, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Crime Victims Board, One Columbia Circle, Suite 200, Albany, NY 12203, (518) 457-8066, e-mail: johnwatson@cvb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless Department of Environmental Conservation publishes a new notice of proposed rule making in the *NYS Register*.

Remediation Stipulation Program

I.D. No.	Proposed	Expiration Date
ENV-28-06-00023-P	July 12, 2006	August 31, 2007

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Volunteer Recruitment Service Scholarships Program

I.D. No. ESC-38-07-00001-P

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

Proposed action: Addition of section 2201.11 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 669(c)

Subject: Volunteer Recruitment Service Scholarships Program.

Purpose: To implement the program.

Text of proposed rule: New section 2201.11 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.11 Volunteer Recruitment Service Scholarships Program

(a) *Definitions:*

(1) "Corporation" means the New York State Higher Education Services Corporation.

(2) "Home company" means the volunteer organization which submits the initial application nominating one of their active members for a volunteer recruitment service scholarship.

(3) "Host company" means the volunteer fire or ambulance company which allows a scholarship recipient to volunteer at their organization upon written agreement with the home company.

(4) "Scholarship" means the tuition benefit awarded under the Volunteer Recruitment Service Scholarships as codified in section 669-c of the education law.

(b) *Eligibility:* In addition to those requirements provided in sections 661 and 669-c of the Education Law, the following requirements shall apply in the selection of the scholarship recipients:

(1) Applications for the volunteer recruitment service scholarships shall be postmarked or electronically transmitted no later than August 1st of each year, provided that this deadline may be extended at the discretion of the corporation;

(2) Applications shall be filed annually on forms prescribed by the corporation; and

(3) The pool of applicants shall be those who have successfully met the filing deadline.

(c) *Amounts:*

(1) The amount of the scholarship award shall be determined in accordance with section 669-c of the Education Law.

(2) Disbursements shall be made each semester and pro-rated by credit hour.

(3) Scholarship awards shall be reduced by the value of any other scholarships and grants, except that nothing shall require the value of such scholarships and grants applicable to the costs of attendance, other than tuition to reduce the amount of the Volunteer Service Scholarship.

(d) *Priorities:* If there are more applicants than award funds appropriated or available in any fiscal year, the following provisions shall apply:

(1) returning applicants shall be given priority pursuant to paragraph (e) of subdivision (3) of section 669 -c of the education law;

(2) remaining applicants shall be chosen by random selection. Random selection shall be conducted by lottery which shall be the preferred manner of tie breaking.

(e) *Out of Area Service: If an applicant for, or recipient of, a volunteer recruitment scholarship is enrolled at an eligible institution of higher education outside the fifty mile radius of the volunteer organization of which he or she is a member, the following provisions shall apply:*

(1) *The applicant, or recipient, shall offer his services to a host company whose service area includes the school where the student is enrolled.*

(2) *If the offer is accepted by the host company, the eligible applicant or recipient may be entitled to award payments for attendance at that school only if the home company, the host company, and the recipient enter into an agreement on forms prescribed by the corporation.*

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Supervising Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 473-1581, e-mail: regcomments@hesc.org

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

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

Regulatory Impact Statement

Statutory authority:

Pursuant to section 652(2) of the Education Law, the New York State Higher Education Services Corporation ("HESC") was established for the purpose of improving post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, section 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of HESC including the promulgation of rules and regulations.

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

Pursuant to section 669-c of the Education Law, HESC is authorized to administer the provisions of the New York State Volunteer Recruitment Service Scholarships Program ("Program") in which HESC awards scholarships to qualified volunteer firemen and ambulance workers throughout New York State. Education Law section 669-c was created via Chapter 83 of the Laws of 2002 (Part G). Paragraph d of subdivision 4 of section 669-c states that recipients of the scholarship must attend an institution of higher education within a fifty mile radius of their volunteer organization.

Chapter 125 of the Laws of 2006 amended section 669-c of the Education Law by adding new subdivision 9. This new subdivision allows scholarship recipients to attend institutions of higher education outside the aforementioned fifty mile radius on certain conditions. This includes, requiring that the volunteer organization where the recipient is a member and the volunteer organization outside the fifty mile radius to agree on the conditions of the voluntary service agreement and to comply with Education Law section 669-c(9).

Legislative objectives:

The Legislature enacted the New York State Volunteer Recruitment Service Scholarships Program to increase the number of volunteer firemen and ambulance workers throughout New York State. The amount of the scholarship provides volunteer service organizations with a recruiting and retention tool. New subdivision 9 increases the flexibility of the Program by extending its benefits to emergency fireman and ambulance workers wishing to attend college outside the fifty mile radius of their original volunteer organization. Other objectives include: increasing access to a college education by providing volunteers with their choice of schools located within New York State; addressing the critical need for volunteer

emergency personnel; and maintaining the services of such volunteers while they pursue their education.

Needs and benefits:

When the Volunteer Recruitment Service Scholarship Program was created, the Legislature had determined that the ranks of volunteer firemen and ambulance workers in New York State were diminishing. In an effort to increase volunteer membership, the legislature passed a host of bills providing them with benefits tangential to their service, such as the Volunteer Recruitment Service Scholarship. The Program, however, originally limited recipients who wanted to keep their scholarship to choosing an institution of higher education located within a fifty mile radius of their volunteer organization. Subsequent legislation removed the fifty mile radius limitation.

This proposed rule making will provide benefits to the scholarship recipients, the volunteer organizations, and New York State by making it possible for volunteer emergency responders to attend institutions of higher education outside the fifty mile radius of their volunteer organizations. Scholarship recipients will benefit by being able to keep their scholarships and by having a greater choice of educational institutions; volunteer organizations will benefit by being able to offer this enhanced incentive for volunteers to join their organizations; and the people of New York State will benefit because emergency firefighters and ambulance workers will be further enticed to continue to provide volunteer services in New York State.

In general, interested students request an application from their volunteer company. Upon request, HESC mails applications and supplements to the volunteer company. A volunteer organization must develop a policy to be used to select a candidate and forward a copy of such policy with HESC. A volunteer organization can select one eligible candidate per year and applications must be postmarked by August 1st.

Scholarship recipients wishing to attend a school outside of the fifty mile radius of their home company must enter into a joint service agreement with their Home Company and Host Company (provided the college is located within the Host Company's service area). Among other things, the joint service agreement sets forth the volunteer service to be provided for both volunteer organizations by the recipient. Additionally, the Home Company agrees to assume all responsibility for certifying the student's active status each year and the Host Company agrees to notify HESC and the Home Company if the student fails to meet the requirements necessary to maintain active status with the Host Company. Finally, the student agrees to abide by the terms and conditions of the Program and that the award could be revoked or refunded due to the student's failure to comply.

Awards are equal to the amount of tuition, reduced by any tuition-based grant, but can not exceed the amount of tuition charged by the State University of New York ("SUNY"). Recipients will continue to receive benefits as long as they are continuously enrolled, meet the eligibility requirements and funding is available. Payment is made to the college on behalf of students upon verification of eligibility. Information concerning the Volunteer Recruitment Service Scholarship Program is contained on HESC website.

Costs:

a. It is anticipated that there will be no costs to regulated parties for the implementation of, or continuing compliance with this rule, except for programmatic administration costs to HESC.

b. The cost of the program to the State shall be limited to monies appropriated for the program in any given year. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

c. The source of the cost data in (b) is derived from sections 669-c(2)(g) and 669-c(7) of the Education Law which limit an annual scholarship to an amount equal to or lesser than annual SUNY tuition; and from section 669-c(3)(d) which prohibits awards from exceeding the funding appropriated by the Legislature. Currently the annual SUNY tuition for in-state residents is \$4350. The most recent New York State budget included a four million dollar appropriation for this program. From 2002 - 2006 over 1660 awards have been made to eligible students.

Local government mandates:

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

Paperwork:

Under this proposal, each year the Home Company and their nominee will complete an application for this Program. The Home Company will also complete a member certification form each year validating the continued service for their prior award recipients. The student, the Home Com-

pany and the Host Company will enter into a Joint Service Agreement, if required. Volunteer organizations will be required to develop a policy for selecting applicants. No additional paperwork will be required.

Duplication:

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

Alternatives:

With the recent addition of Education Law section 669-c(9), HESC is required to adopt regulations regarding the administration of the Volunteer Recruitment Service Scholarship as it relates to recipients seeking to enroll in schools located outside of the fifty mile radius of their current volunteer organization. However, given the knowledge and experience gained through prior outreach and administration of the Volunteer Recruitment Service Scholarship, HESC is promulgating comprehensive regulations to govern the Program.

Under this proposal, HESC created and defined the terms "home" and "host" companies so that the regulated parties could easily refer to the volunteer organizations both inside and outside of the fifty mile radius and, so that they could easily understand the necessary HESC forms, including the service agreement that must be signed by the home and host companies, as well as the scholarship recipient. In addition, the rule will notify recipients that they must initiate the process of volunteering at a host company, which is consistent with the provisions of section 209-i of the General Municipal Law, and other requirements as set forth in subdivision 9 of the Education Law.

The August 1st deadline and lottery language included is standard in many of HESC's other scholarship programs and is based upon existing practice and experience. In addition, this will allow students and schools to finalize financial aid prior to the start of the fall term.

No other alternatives were considered. Given the statutory language, a "no action" alternative was not an option for consideration.

Federal standards:

This rule does not exceed any minimum standards of the Federal Government.

Compliance schedule:

The regulated parties will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to add new section 2201.11 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. This agency finds that this rule will not impose any compliance requirements or adverse economic impact on small businesses or local governments.

The proposal implements a post-secondary educational scholarship for volunteer emergency responders funded by New York State and administered by HESC.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to add new section 2201.11 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. The proposal could have a positive impact on rural communities. The proposal implements a post-secondary educational scholarship for volunteer emergency responders funded by New York State and administered by HESC. Emergency responders in every part of New York State are eligible, including rural areas where volunteers, rather than paid employees, make up the fire and ambulance organizations.

HESC finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (HESC) Notice of Proposed Rule Making seeking to add new section 2201.11 of Title 8 of the

Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any adverse impact on jobs or employment opportunities. The proposal implements a post-secondary educational scholarship for volunteer emergency responders funded by New York State and administered by HESC.

Department of Labor

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Public Employee Workplace Violence Prevention Programs

I.D. No. LAB-38-07-00003-P

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

Proposed action: Addition of section 800.16 to Title 12 NYCRR.

Statutory authority: Labor Law, section 27-b(6)(f)

Subject: Public employee workplace violence prevention programs.

Purpose: To ensure that the risk of workplace assaults and homicides is evaluated by affected public employers and their employees and that such employers design and implement workplace violence protection programs to prevent and minimize the hazard of workplace violence to public employees.

Public hearing(s) will be held at: 10:00 a.m., Nov. 20, 2007 at Department of Labor, State Campus, Bldg. 12, Training Rms. D and E, Albany, NY.

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

Interpreter Service: Interpreter services will be made available to deaf 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.

Text of proposed rule: 12 NYCRR SECTION 800.16

**PUBLIC EMPLOYER WORKPLACE VIOLENCE
PREVENTION PROGRAMS**

800.16-1

1.1 Title and Citation: Within and for the purposes of the Department of Labor, this part may be known as Code Rule 800.16 Public Employer Workplace Violence Prevention Program, relating to requirements of public employers to develop and implement programs to prevent and minimize workplace violence; allows any employee or representative of employees who believes that a serious violation of this safety or health standard exists, or an imminent danger exists, to request an inspection by the Department of Labor; and provides for the enforcement of such requirement by the Commissioner of Labor. It may be cited as Code Rule 800.16 "Public Employer Workplace Violence Prevention Programs" as an alternative and without prejudice to its designation and citation established by the Secretary of State.

1.2 Purpose and Intent: It is the purpose of this Part to ensure that the risk of workplace violence is evaluated by affected public employers and their employees and that such public employers design and implement protection programs to minimize the hazard of workplace violence to employees.

1.3 Application: This Part shall apply throughout the State of New York to the State, any political subdivision of the State, public authorities, public benefit corporations or any other governmental agency or instrumentality thereof.

This part shall not apply to any employer as defined in Section twenty-eight hundred one-a of the Education Law.

800.16-2

DEFINITIONS

Terms: As used in or in connection with this Part, the following terms mean:

a) Authorized Employee Representative. An employee selected by the employees or the designated representative of an employee organization

recognized or certified to represent the employees pursuant to Article 14 of the Civil Service Law.

b) Commissioner. The Commissioner of Labor of the State of New York or his or her duly authorized representative for the purposes of implementing this Part.

c) Employee. A public employee working for an employer.

d) Employer. The State, any political subdivision of the State, public authorities, public benefit corporations and any other governmental agency of instrumentality thereof, and does not apply to any employer as defined in Section twenty-eight hundred one-a (2801a) of the Education Law.

e) Imminent Danger: Any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided for by this Part.

f) Participation of the Authorized Employee Representative. The Authorized Employee Representative is given an opportunity to contribute information, assist with analyzing statistics and conducting the workplace risk evaluation and determination and participate in incident reviews. The responsibility for preparing, determining the content of, and implementing the requirements of this part remain with the employer.

g) Retaliatory Action. The discharge, suspension, demotion, penalization or discrimination against any employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

h) Risk Evaluation and Determination. An employer's inspection or examination of their workplace to determine if existing or potential hazards exist that might place employees at risk of workplace violence. A risk evaluation shall include, but is not limited to, a review of previous workplace incidents, review of the Log of Work-Related Injuries and Illnesses, a survey of employees asking what conditions could be contributing to potential incidents, site security and inspection surveys.

i) Serious physical harm. Impairment of the body so as to render the body part affected functionally useless or substantially reduced in efficiency.

j) Serious Violation: A serious violation shall be deemed to exist in a place of employment if there is substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or process which have been adopted or are in use, in such place of employment.

k) Supervisor. Any person within the employer's organization who has the authority to direct and control the work performance of an employee, or who has the authority to take corrective action regarding the violation of a law, rule or regulation to which an employee submits written notice.

l) Workplace. Any location away from an employee's domicile, permanent or temporary, where an employee performs any work-related duty in the course of his or her employment by an employer.

m) Workplace Violence. Any physical assault, threatening behavior, or verbal abuse occurring where a public employee performs any work related duty in the course of his or her employment.

n) Workplace Violence Incident. A workplace violence incident is defined as one or more of the following:

- (1) An attempt or threat whether verbal or physical to inflict injury upon another employee;
- (2) Any intentional display of force which would give an employee reason to fear or expect bodily harm;
- (3) Intentional and wrongful physical contact with a person without his or her consent that entails some injury or offensive touching;
- (4) Harassment of a nature that would give an employee reason to fear escalation or make it difficult to pursue his or her usual activities when the harassment arises out of or in the course of employment; and
- (5) Stalking an employee with the intent of causing fear when such stalking has arisen through or in the course of employment.

o) Workplace Violence Prevention Program. An employer program designed to prevent, minimize and respond to any physical assault, threatening behavior or verbal abuse occurring in the workplace. Article 2 Section 27-b of the New York State Labor Law requires that employers must develop and implement a Workplace Violence Prevention Program. The Workplace Violence Prevention Program shall be in writing if the public employer has 20 or more full time permanent employees.

800.16-3

MANAGEMENT COMMITMENT AND EMPLOYEE INVOLVEMENT

3-1 Workplace Violence Policy Statement:

"The employer shall develop and implement a written policy statement on the employers' "Workplace Violence Prevention Program" goals and objectives and provide for full employee and employee representative participation."

The Workplace Violence Policy Statement shall be posted where notices to employees are normally posted. The policy statement shall briefly indicate the employer's workplace violence prevention policy and alert and notification policies for employees to follow in the event of a workplace violence incident.

3-2 The responsibility for preparing and implementing the requirements of this Part remains with the employer. Local governments and all other public employers may elect to share resources in the development and implementation of their workplace violence prevention programs.

800.16-4

WORKPLACE EXAMINATION

4-1 Record Examination:

The employer shall examine any injury, illness, accident, incident or statistical record in their possession to identify patterns in the type and cause of injuries. The examination shall look to identify patterns of injuries in particular areas of the work place or incidents which involve specific operations or specific individuals.

4-2 Workplace Evaluation and Determination

The employer, with the participation of the Authorized Employee Representative shall evaluate the workplace to determine the presence of factors or situations which may place employees at risk of workplace violence. The Department of Labor has tools to aid employers in performing this evaluation which will be posted on the Departments internet site.

Factors which might place an employee at risk include but are not limited to:

- 1) Working in public settings (e.g. Social Service Workers, Police Officers, Firefighters, Teachers, Public Transportation Drivers, Health Care Workers, other Governmental Workers or Service Workers.
- 2) Working late night or early morning hours;
- 3) Exchanging money with the public;
- 4) Working alone or in small numbers;
- 5) Uncontrolled access to the workplace; or
- 6) Areas of previous security problems.

800.16-5

THE WORKPLACE VIOLENCE PREVENTION PROGRAM

5-1 Employers with 20 or more full time permanent employees, with the participation of the Authorized Employee Representative, shall develop a written workplace violence prevention program.

5-2 The workplace violence prevention program shall include the following:

- a) A list of the risk factors identified in the workplace examination;
- b) The methods the employer will use to prevent the incidence of workplace violence incidents at such workplace or workplaces, including but not limited to:
 - 1) Making high risk areas more visible to more people;
 - 2) Installing good external lighting;
 - 3) Using drop safe's or other methods to limit cash on hand;
 - 4) Posting signs stating that limited cash is on hand;
 - 5) Providing training in conflict resolution and non violent self defense responses; and
 - 6) Establishing and implementing reporting systems for incidents of aggressive behavior.

c) The Program shall adhere to a hierarchy of controls as follows: engineering controls, work practice controls, and finally personal protective equipment;

d) The employer shall address the methods and means to address each specific hazard identified in the workplace evaluation and determination;

e) The employer shall address when crisis counseling will be provided, following generally accepted practices, after a work place violence incident for employees.

f) The employer shall design and implement a workplace violence reporting system for any workplace violence incidents that occur in the workplace. The reports must be in writing and maintained for the annual program review; and

g) An outline or lesson plan of employee training shall be made part of the written program.

h) The program shall be reviewed and updated as necessary at least annually.

800.16-6

EMPLOYEE INFORMATION AND TRAINING

6-1 Upon completion of the Workplace Violence Prevention Program every employer shall provide each employee with information and training on the risks of workplace violence in their workplace or workplaces at the time of the employees' initial assignment and at least annually thereafter. Retraining shall be provided whenever significant changes are made to the Workplace Violence Protection Program. At a minimum training shall address the following:

a) Employers shall inform employees of the requirements of this Part and the risk factors in their workplace that were identified in the risk evaluation and determination;

b) The measures that employees can take to protect themselves from the identified risks including specific procedures that the employer has implemented to protect employees such as incident alert and notification procedures, appropriate work practices, emergency procedures, use of security alarms and other devices;

c) Employers with 20 or more full time permanent employees shall inform employees of the location of the written Workplace Violence Protection Program and how to obtain a copy.

d) A review of procedures for providing crisis counseling to affected employees after an incident and the protocol developed to determine when such counseling should be made available.

800.16-7

RECORDKEEPING AND RECORDING OF WORKPLACE VIOLENCE INCIDENTS

7-1 Employers shall develop and implement protocols for the reporting of workplace violence incidents which includes procedures for reporting incidents that may be of a criminal nature to the appropriate police agency. An employee's right to pursue a criminal complaint shall not be infringed upon.

7-2 Employers at sites where there is a developing pattern of workplace violence incidents which may involve criminal conduct or a serious injury shall attempt to develop a protocol with the District Attorney or Police to insure that violent crimes committed against employees in the workplace are promptly investigated and appropriately prosecuted. The employer shall provide information on such protocols and contact information to employees who wish to file a criminal complaint after a workplace violence incident.

7-3 Workplace violence reports and recordkeeping:

The employer shall develop and maintain a workplace violence incident report that can be in any format but at a minimum contains the following information:

- a) Workplace location;
- b) Time of day/ shift;
- c) Incident description including what happened immediately prior to the incident and how the incident ended;
- d) Names and job titles of involved employees;
- e) Name or other identifier of individuals involved;
- f) Extent of injuries;
- g) Names of witnesses; and
- h) An explanation of the actions the employer has or is in the process of taking to mitigate future incidents with a time table for correction where appropriate. Interim protective measures shall also be listed. The employer shall address global (all similar worksites) enhancements which become apparent are necessary to protect all employees.

7-4 The workplace violence incident reports must be maintained for use in annual program review and updates.

7-5 This Requirement does not relieve an employer of the recordkeeping requirements of 12 NYCRR Part 801.

7-6 The employer with the participation of the authorized employee representative shall conduct a review of the workplace violence incident reports at least annually to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken.

800.16-8

EMPLOYEE ACCESS TO INFORMATION

8-1 Every employer with at least 20 permanent full time employees shall make the written Workplace Violence Prevention Program available to Employees, Authorized Employee Representatives and the Commissioner, for reference in the work area during the regularly scheduled shift.

800.16-9

EMPLOYEE REPORTING OF WORKPLACE VIOLENCE PREVENTION CONCERNS OR INCIDENTS

9-1 An employee or their representative who believes that a violation of the employer's Workplace Violence Protection Program exists, or that an workplace violence imminent danger exists, shall bring such matter to the attention of a supervisor in the form of a written notice and shall afford

the employer a reasonable opportunity to correct such activity, policy or practice.

9-2 Written notice to an employer shall not be required where workplace violence imminent danger exists to the safety of a specific employee or to the general health of a specific patient and the employee reasonably believes in good faith that reporting to a supervisor would not result in corrective action.

9-3 If following a referral of such matter to the employee's supervisor's attention and after a reasonable opportunity to correct such activity, policy or practice the matter has not been resolved and the employee or the employee representative still believes that a Violation of a Workplace Violence Prevention Program remains, or that an imminent danger exists, such employee may request an inspection by giving notice to the Commissioner of Labor of an alleged violation of this Part. Such notice and request shall be in writing, shall set forth with reasonable particularity the grounds for the notice and shall be signed by such employee or their representative. A copy of the written notice shall be provided by the Commissioner to the employer or the person in charge no later than the time of inspection, except that at the request of the person giving such notice, such person's name and the names of individual employees or representatives of employees shall be withheld. Such inspection shall be made forthwith by the Commissioner.

9-4 No employer shall take retaliatory action against any employee because the employee exercises any right accorded him or her by this Part.

800.16-10

EFFECTIVE DATES

10-1 The Employers Policy Statement required by section 3-1 shall be complete 30 days after the effective date of this Part.

10-2 The workplace examination required by '800.16-4 of this Part shall be completed within 60 days of the effective date of this Part.

10-3 The workplace violence prevention program required by '800.16-5 shall be complete within 75 days of the effective date of this Part.

10-4 Employers shall be in compliance with the entire Part within 120 days of the effective date of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: David Ruppert, Department of Labor, State Campus, Bldg. 12, Rm. 522, Albany, NY 12240, (518) 457-3518, e-mail: USADIR@labor.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority: Article 2, Section 27-b of the Labor Law requires public employers to develop and implement programs to prevent workplace violence. The law also requires the Commissioner of Labor to promulgate rules and regulations to implement the law within 120 days of its effective date, March 4, 2007.

The Commissioner is given broad authority to promulgate safety and health rules and regulations in sections 27-a and 27-b of the Labor Law. Broader authority is granted in Sections 200, 211 and 215 of the Labor Law.

Legislative Objectives: Article 2, Section 27-b of the Labor Law requires public employers to implement programs to minimize the hazard of workplace violence. The proposed rule will clarify the methods employers must utilize to meet the intent of the law. The Legislative findings for chapter 82 provide that the legislature finds and declares that workplace assaults and homicides are a serious public health problem that demands the attention of the State of New York. During the last decade, homicide was the third leading cause of death for all workers and the leading cause of occupational death for women workers.

Justification provided in the Bill Sponsor's Memo stated: Workplace violence is an increasingly visible element in today's workplaces. This Bill would assist both employers and employees in ensuring a safe work environment. Workplace violence is now one of the leading causes of death on the job in the United States.

Needs and Benefits: The purpose as expressed in the Legislative finding states that workplace homicides and assaults are a serious public health problem that demands the attention of the State of New York. The Legislative finding further states that, over the last decade, homicides are the third leading cause of death for all workers and the leading cause of occupational death for women.

The National Institute of Occupational Safety and Health indicates that hospital workers are at a high risk of violence. They report in their publication Occupational Hazards in Hospitals, DHHS (NIOSH) Pub No. 2002-101, that according to the Bureau of Labor Statistics (BLS) 2,637 Non

Fatal workplace assaults on hospital workers occurred in 1999 at a rate of 8.3 assaults per 10,000 workers. This rate is much higher than the rate for non fatal assaults for all private sector industries, which is 2 per 10,000 workers.

A large number of New York public sector employees are employed in the health care or mental health fields.

The National Institute of Occupational Safety and Health presented study results in their report "Violence In The Workplace, Risk Factors and Prevention Strategies" DHHS (NIOSH) Publication Number 96-100.

The subject was again studied and an advisory document was published by the Department of Justice, Federal Bureau of Investigation, National Center for the Analysis of Violent Crime. Entitled "Workplace Violence, Issues in Response". Many of the recommendations of this study were incorporated into the proposed rule and regulation.

The implementation of workplace violence prevention programs will decrease the number of violent incidents in the workplace with the corresponding reduction of lost time and the expense of replacing injured employees during the time necessary to recover, and related workers compensation benefits.

Costs: Cost is restricted to State and local government; there is no cost to private industry. Currently all state facilities and in particular those in corrections and mental health have comprehensive programs of one form or another which deal with the protection of employees from assault. The modification of these policies can be accomplished at a minimal cost and those of many larger state facilities will need no changes at all.

The cost to counties may also be minimal in that most have implemented safety policies, particularly in their higher risk facilities (Nursing facilities, Jails, Social Service Offices, legislative facilities). Many local governments may incur costs in developing a compliant plan but the hazards are not as great and many local governments do not provide the high risk services such as corrections social and mental health services provided by county governments.

Cost is mitigated by the lowering of injury rates in many of the high risk facilities covered. This is translated into less workers' compensation benefits and leave, less overtime to cover shifts of injured employees and fewer disability benefits distributed.

The costs incurred by the Department in responding to complaints and injuries or homicides will be reduced as employers develop compliant plans.

The annual training requirement, while adding to the cost of implementation was required by the legislation. Annual training would be necessary to insure that employees are updated on any changes made to the plan as a result of reported incidents.

Government agencies may elect to share resources in the development of the plan and employee training where risks and abatement methods are the same.

Local Government Mandates: The entire law is applied only to the state and local governments. It would be classified as an unfunded obligation of public employers.

The act does not apply to public schools as defined in Section 2801a of the Education Law.

Local governments who operate higher risk facilities such as Social Services Offices, Jails, and Police Departments will eventually see savings through reduced injuries and compensation costs if an effective program is developed and implemented.

Relief was provided to small government entities as no written program is required if the employer employs less than 20 employees. The rule is written so that the smaller the employer and the lower the risk, the less an employer has to do to conform to the rule.

Local governments and all other public employers may elect to share resources in the development and implementation of their workplace violence prevention program.

Paperwork: The proposed rule will require the employer to develop and post a short Policy Statement. The statement is designed for the employer to state the workplace violence policy that is expected to be followed in the workplace, the degree and method of employee involvement in the process, the means for employees to report concerns and the individuals responsible to assure implementation. It was designed to establish management commitment and assign duties, which is the recognized first step in any successful safety and health program.

The proposed rule would require that employers develop a written prevention program which includes a method for tracking workplace violence incidents. The information required is specified, the employer may provide it in any format chosen or utilize current forms or electronic data. Collection of data on the types, frequency and severity of workplace

violence incidents is necessary to understand the nature of the workplace violence problem in the particular workplace so that adequate measures can be taken to mitigate the hazards and the written program updated to reflect those changes. The written program must be a living document, updated when necessary to remain effective. The workplace violence incident report is a tool to assist in that endeavor.

The rule requires that employees must report violations in writing to a supervisor first and then to the Commissioner after a reasonable period has passed without remediation. The Legislature placed the reporting requirement to the supervisor and all public employee complaints to the Commissioner are required to be in writing. The burden of this additional step is minimal.

Duplication: The law specifically requires the development and implementation of a workplace violence prevention program. Triggers to recognize the presence of a harmful situation may include harassment, sexual or otherwise, and stalking. Both harassment and stalking are defined in the Penal Law and both carry the weight of individual legislation dedicated solely to the recognition and consideration of unique elements associated with both crimes. The workplace violence prevention program act does not duplicate the penal code; simply it states harassment and or stalking as triggers to identify a potential violent situation.

Alternatives: The Agency has incorporated procedures which are nationally recognized as effective in preventing or reducing the incidence of workplace violence.

The incident reporting system the employer is required to develop and implement does not have an alternative which will accomplish the desired ability to identify the types of incidents occurring in the workplace, trends that are developing and timely information required to intervene when possible before an injury or fatality occurs.

The Department had posted a draft of the regulation and received a number of comments. The original draft had reporting requirement which a number of employers objected to. The department modified the draft to eliminate those external reporting requirements.

The rule also included reference to the safety of patients which a number of commenters objected to. The Department was unable to remove that provision as it was provided for in the legislation.

Another concern that was reviewed was the requirement that employees must file a notice with the employer and allow a reasonable amount of time for the employer to correct the hazard before they may file a complaint with the Commissioner. Employee representatives were strongly opposed to this requirement. However, the provision was provided for in the legislation and could not be removed from the rule.

Federal Standards: There are no mandatory federal standards which cover workplace violence. There are a number of national consensus documents prepared by the NIOSH, OSHA, FBI and others which were used to develop the rule into an effective tool in preventing workplace violence.

Compliance Schedule: Compliance should take no more than 120 days and that time frame has been built into the Rule. A stepped abatement period is provided for which will allow employers to be in compliance in that time frame.

The Policy statement should be developed within 30 days, the workplace examination should be completed within 60 days, the written program should be completed within 75 days, and the employer should reasonably be able to meet all requirements in 120 days.

Different, shorter and longer compliance periods were examined and rejected. The present recommended compliance periods are a compromise between those who advocated for shorter or longer dates.

In situations of practical difficulties or unnecessary hardship, an employer may seek a variance from these requirements as per Labor Law § 30.

Regulatory Flexibility Analysis

1. Effect of rule:

The Law as enacted does not apply to private sector businesses. The Law applies to State and local government employers except School Districts, BOCES, other cooperative vocational schools and the NYC schools are exempted. Compliance with this rule and regulation would duplicate the antiviolence planning required under Section 2801-a of the Education Law and the Legislature exempted those Public employers.

The Department believes that compliance with the proposed rule will bring about safer workplaces and reduce the number of assaults on employees. This reduction will translate into a reduction in compensation claims and the associated uninsured costs of replacing an injured employee.

2. Compliance requirements:

Compliance with this rule would first require the employer to develop and post a written policy statement stating the goals and objectives expected from the workplace violence program. This statement would establish employer commitment to the process. This commitment is provided for in all the national consensus information reviewed including NIOSH and the FBI. The employer is then expected to review injury and incident records and inspect the workplace and determine what risk factors employees are exposed to and design a prevention program and train employees.

The Department of Labor (DOL) expects the whole process to be conducted with the involvement of the employees or their authorized representatives. Labor Law, Article 2, Section 27-b became effective on March 4, 2007. The agency is required to promulgate the rule and regulation for enforcement by July 17, 2007. DOL feels that a stepped abatement policy would provide the greatest amount of flexibility for the employers. The policy statement should be complete in 30 days from the effective date, the risk assessment and workplace examination in 60 days, the written program in 75 days and full compliance in 120 days. DOL feels that 120 days from the adopted date of the rule would be adequate to make the rule fully effective. With good cause, the employer can also ask for a variance to extend the date.

The Labor Law in Section 27-a provides for a temporary variance when there are difficulties in timely compliance with a new requirement. There is no fee for the variance.

3. Professional services:

Most public employers have access to law enforcement officers and security personnel. Larger local agencies have full time safety and health officers or individuals who can implement a violence prevention program. The rule is written so that the smaller the entity, the less complicated the program need be. Employers with less than 20 employees are not required to have a written program. Some employers may elect to hire private consultants, attorneys or human resource professionals to develop their plan and train employees. Some employers may elect to share resources with other entities to develop their plans.

4. Compliance costs:

Compliance costs would be minimal and those would diminish as the employers get smaller in size. In most instances it will be hard to calculate cost for smaller local government employees. Many will be helped through the Department's Public Employee Safety and Health Bureau consultation programs. Smaller employers can expect to be given assistance in the risk assessment and provided with training assistance. Model programs will be made available. Most local agencies already have the resources to meet the requirements in a timely manner. Employers may elect to share resources with other entities in the development of their program.

5. Economic and technological feasibility:

Compliance is economically feasible using proven technology where necessary. Most employers will have no technology involved.

6. Minimizing adverse impact:

The rule was developed from the requirements set forth in Labor Law Section 27-b, with definitions added to clarify intent. Additional language was developed from national consensus standards or reports which provide the least work intensive means to implement an effective and compliant program. The Department intends to minimize the impact on smaller governments by providing outreach to these governments through our consultative service and through employer organizations such as the Association of Counties and others. Employers may elect to share services in and resources with other entities in developing their programs.

7. Small business and local government participation:

This Law will have no effect on small businesses. In all cases, the paperwork requirements for local government may be made using existing documents required by other laws or electronic storage methods.

The Department posted a copy of a proposed rule on the web site. Employers and employees were encouraged to comment. The posting was available on the web from March 5, 2007 to April 15, 2007. The responses were read and where appropriate incorporated into the document.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Labor (DOL) is proposing to promulgate 12 NYCRR Part 800.16 which implements programs to minimize the hazard of workplace violence for public sector employees. The New York State Department of Labor is unaware of any adverse impact to rural areas as a result of the proposed regulation.

Local government entities consisting of county, city and village offices, school districts fire districts and other special districts exist in rural areas of the state as designated by Executive Law section 481(7).

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

Rural public sector employers must develop and maintain workplace violence incident reporting and recordkeeping. Annual review of the workplace violence incident reports to identify trends in the types of incidents in the workplace and review of the effectiveness of the mitigating actions taken is required. The employer is currently required to keep injury and illness records under the PESH act and would only need to expand on them slightly.

There is the possibility that employers would opt to hire a consultant firm to prepare the workplace violence prevention plan or retain the service of an attorney.

Local governments and other entities may elect to share resources in the development of the plan and training of employees.

3. Costs:

Compliance costs would be minimal and those would diminish as the employers get smaller in size. In most instances it will be hard to calculate cost for rural public employers. Many will be helped through DOL's Public Employee Safety and Health Bureau consultation programs. PESH will be available to provide model plans and to assist with training.

Costs for annual training and evaluation of the program are variable based on each employer plan. Employers with like workplaces and similar risks may elect to share resources in developing the plan and training employees.

4. Minimizing adverse impact:

The proposed rule will not adversely impact rural areas. Implementation would translate into a smaller amount of worker compensation benefits and leave, less overtime to cover shifts of injured employees and fewer disability benefits distributed.

The Public Employee Safety and Health Bureaus consultation serve will be available to assist in identifying risks and advising in the practices to mitigate those risks. Model programs and training will be made available.

5. Rural area participation:

A draft copy of the proposed rule was available during an informal public comment period. One rural county (Tioga) commented on the draft. That county had a program which was near compliant.

During the formal comment period the Department will provide copies of the proposed rule to public employer organizations such as the Association of Counties and the like for their comments.

Job Impact Statement

This rule concerns the development and implementation of workplace violence prevention programs for public sector employers. It is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

Public Service Commission

NOTICE OF ADOPTION

Waiver of Franchise Procedures by the Town of Angelica

I.D. No. PSC-43-03-00004-A

Filing date: Aug. 29, 2007

Effective date: Aug. 29, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order granting the Town of Angelica, Allegany County, a waiver of 16 NYCRR, sections 894.1, 894.2, 894.3 and 894.4.

Statutory authority: Public Service Law, section 216(1) and (5)

Subject: Waiver of 16 NYCRR sections 894.1, 894.2, 894.3 and 894.4, franchising procedures.

Purpose: To grant the Town of Angelica, Allegany County a waiver of rules to expedite the franchising process with Time Warner Entertainment-Advance/NewHouse Partnership.

Substance of final rule: The Commission adopted an order granting the Town of Angelica, Allegany County, a waiver of 16 NYCRR, Sections

894.1, 894.2, 894.3, 894.4, to expedite the franchising process, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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. (03-V-1412SA1)

NOTICE OF ADOPTION

Utility Tariffs and Requirements for Natural Gas Pipeline Capacity Intended to Serve the Customers of Marketers and Energy Service Companies

I.D. No. PSC-15-07-00011-A
Filing date: Aug. 30, 2007
Effective date: Aug. 30, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order on capacity release programs for local distribution companies.

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

Subject: The requirements for natural gas pipeline capacity intended to serve the customers of marketers and energy service companies.

Purpose: To determine the requirements for natural gas pipeline capacity intended to serve the customers of marketers and ESCOs.

Substance of final rule: The Commission adopted an order on capacity release programs for local distribution companies (LDC) and directed the LDC's to file the necessary tariff revisions, to become effective November 1, 2007, on a temporary basis, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-G-0299SA1)

NOTICE OF ADOPTION

Submetering of Electricity by Bay City Metering Company, Inc. on behalf of Affirmative Arco Management Group, LLC

I.D. No. PSC-24-07-00011-A
Filing date: Aug. 30, 2007
Effective date: Aug. 30, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted an order in Case 07-E-0609 approving the petition filed by Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Group, LLC to submeter electricity at 2538 Valentine Ave., Bronx, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Group, LLC to submeter electricity at 2538 Valentine Ave., Bronx, NY.

Substance of final rule: The Commission approved a petition by Bay City Metering Company, Inc., on behalf of Affirmative Arco Management Group, LLC to Submeter Electricity at 2538 Valentine Avenue, Bronx,

New York, located in the territory of Consolidated Edison Company of New York, Inc., filed in C26998.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0609SA1)

NOTICE OF ADOPTION

Fixed Supply Service for 2008 by New York State Electric & Gas Corporation

I.D. No. PSC-25-07-00001-A
Filing date: Aug. 29, 2007
Effective date: Aug. 29, 2007

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

Action taken: The commission, on Aug. 22, 2007, adopted the terms and conditions of a joint proposal dated July 10, 2007 by New York State Electric & Gas Corporation (NYSEG), Department of Public Service staff and intervenor parties representing customers and energy service companies.

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

Subject: NYSEG commodity service and fixed price option.

Purpose: To adopt the terms of a joint proposal.

Substance of final rule: The Public Service Commission adopted the terms and conditions of a joint proposal dated July 10, 2007 by New York State Electric & Gas Corporation (NYSEG), Department of Public Service Staff and Intervenor Parties representing customers and energy service companies, regarding NYSEG's commodity service and an elective fixed price option, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (07-E-0479SA1)

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

Submetering of Electricity by 89 Murray Street Associates

I.D. No. PSC-38-07-00006-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 89 Murray Street Associates to submeter electricity at 89 Murray St. and 101 Warren St., New York, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 89 Murray Street Associates to submeter electricity at 89 Murray St. and 101 Warren St., New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 89 Murray Street Associates to submeter electricity at 89 Murray Street and 101 Warren Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-E-1015SA1)

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

Transfer of Water Supply Assets by Hopewell Gardens Apartments, LLC, et al.

I.D. No. PSC-38-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a joint petition filed by Hopewell Gardens Apartments, LLC; Hopewell Gardens, Inc.; and Hopewell 376 Water, LLC for approval to transfer the water supply assets of Hopewell Gardens, Inc. to Hopewell 376 Water, LLC.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and 89-h

Subject: Transfer of water supply assets.

Purpose: To transfer the water plant assets of Hopewell Gardens, Inc. to Hopewell 376 Water, LLC.

Substance of proposed rule: On August 6, 2007, Hopewell Gardens Apartments, LLC; Hopewell Gardens, Inc.; and Hopewell 376 Water, LLC (Hopewell 376) filed a joint petition requesting approval to transfer the water supply assets of Hopewell Gardens, Inc. to Hopewell 376. Hopewell Gardens, Inc. currently provides water service to 69 apartment units and 19 residential homes in the Town of East Fishkill, Dutchess County. The Commission may approve or reject, in whole or in part, or modify the 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: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-W-0923SA1)

State University of New York

**EMERGENCY
RULE MAKING**

State Basic Financial Assistance for Operating Expenses of Community Colleges

I.D. No. SUN-38-07-00008-E

Filing No. 928

Filing date: Sept. 4, 2007

Effective date: Sept. 4, 2007

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

Action taken: Amendment of section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2007, ch. 53

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

Specific reasons underlying the finding of necessity: The State University of New York finds that immediate adoption of amendments to the Code of Standards and Procedure of for the Administration and Operation of Community Colleges (the Code) is necessary for the preservation of the general welfare and that compliance with the requirements of subdivision 1 section 202 of the State Administrative Procedure Act would be contrary to the public interest. The 2007-2008 Education, Labor and Social Services Budget Bill (the Budget) requires amendments to the existing funding formula for State financial assistance for operating expenses of community colleges of the State and City Universities of New York. The funding formula is to be developed jointly with the City University of New York, subject to the approval of the Director of the Budget. Although negotiations between the State University, City University and the Division of the Budget were concluded in March 2007, the State University Trustees were unable to take the action necessary to invoke the rule making process until May 31, 2007. Amendments to the Code on an emergency basis for the 2007-2008 fiscal year are necessary to:

1. provide timely State operating assistance to public community colleges of the State and City Universities of New York;
2. obtain the necessary revenue to maintain essential staffing levels, program quality, and accessibility.

Compliance with the provision of subdivision 1 of section 202(6) of the State Administrative Procedure Act would be contrary to the public interest. The requirements of subdivision (1) of section 202(6) of SAPA would not allow implementation of the State financial assistance provided in the Budget Bill in time for the 2007-2008 community college fiscal year.

Subject: Subject basic financial assistance for operating expenses of community colleges under the program of the State University of New York and the City University of New York.

Purpose: To modify existing limitations formula for basic State financial assistance for operating expenses of community colleges of the State University and City University of New York in order to conform to the provisions of the Education Law and the 2007-2008 budget bill.

Text of emergency rule: (c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

- (a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,525] \$2,675; and
- (b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2,105] \$2,230; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.

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 December 2, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Dona S. Bulluck, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Dona.Bulluck@suny.edu

Regulatory Impact Statement

This is a technical amendment to implement the provisions of the 2007-2008 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York.

Regulatory Flexibility Analysis

This is a technical amendment to implement the provisions of the 2007-2007 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. It will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

This is a technical amendment to implement the provisions of the 2007-2008 Budget Bill. The amendment provides for the provision of State financial assistance for operating expenses of community colleges operating under the program of the State University of New York and the City University of New York. This rule making will have no impact on rural areas or the recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

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

Policies of the Board of Trustees of the State University of New York

I.D. No. SUN-38-07-00002-P

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

Proposed action: Amendment of Part 341 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Proposed amendments to the policies of the board of trustees of the State University of New York governing the articles of organization of the student assembly of the State University of New York.

Purpose: To make changes to the requirements for eligibility for office in the student assembly in order to increase effectiveness of the university-wide student governance organization.

Text of proposed rule: Title B. Membership in Assembly, Section 341.7, Eligibility is amended to read as follows:

* * *

§ 341.7 Eligibility.

[A] Any representative from a member institution or organized student group or an alternate for a representative selected in accordance with § 341.5(d) above must be a student enrolled for credit who is included in a campus FTE base and meets the campus' requirements to stand for election and continues to be eligible to serve on the campus student government organization.

* * *

Title C. Officers is amended to read as follows:

§ 341.9 Officers.

The officers of the student assembly shall be the president, vice president, secretary and treasurer.

§ 341.10 Duties.

The duties of the officers shall be as follows:

(a) President. The president of the student assembly shall preside at all meetings of the student assembly and shall exercise such other powers and duties as may be vested in the president by this Part and the bylaws of the student assembly. The president shall be an official member of all student assembly committees, be responsible for a transition of officers between the time of election and June 1st, and serve as the student member of the State University of New York Board of Trustees.

(b) Vice president. The vice president shall perform such duties as prescribed by the president or the student assembly. In the absence of the president, the vice president shall perform all duties vested in the president by this Part and the bylaws of the student assembly, except serving as a member of the State University of New York Board of Trustees. *In the event the president resigns or is no longer eligible to serve, the vice president shall become the president for the remainder of the term.* The primary role of the vice president is to support the activities of the various committees of the student assembly.

(c) Treasurer. The treasurer shall perform such duties as prescribed by the president or the student assembly. The treasurer is the chief fiscal officer of the student assembly.

(d) Secretary. The secretary shall perform such duties as prescribed by the president or the student assembly. The secretary is the chief communications officer of the student assembly.

§ 341.11 Election of officers.

Officers shall be elected by the members of the student assembly at its annual business meeting. To stand for election [and serve] as an officer, an individual must be eligible to serve as a representative *from the institution, must have at least a 2.5 cumulative GPA, must be enrolled at a State University of New York campus and be nominated by a representative.*

Sections 341.12 through 341.22 are renumbered sections 341.13 through 341.23, and new section 341.12 to read as follows:

§ 341.12 Eligibility to serve.

In order to continue to serve as an officer, an individual must maintain eligibility to stand for election, in accordance with section 341.7, must maintain a 2.25 cumulative GPA or higher, and must be enrolled at a State University of New York campus. For the purposes of this section, eligibility to continue in service shall be determined at the end of each semester. Once eligibility is lost, it cannot be regained by transfer to a new institution.

* * *

TITLE D, Organization, Section 341.[17] 18, Executive Committee is amended to read as follows:

§ 341.[17] 18 Executive committee.

(a) There shall be an executive committee of the student assembly to conduct necessary business between meetings of the student assembly and other matters as prescribed by this Part or the bylaws. The executive committee shall include the officers of the student assembly and the designated number of representatives from the following: two representatives from the university centers (under-graduate division); three representatives from the university colleges; one representative from the health science centers; two representatives from the colleges of technology, agriculture and technology, and Specialized/Statutory colleges; one representative from the university centers (graduate division); six representatives from the community colleges and one nonvoting student representative from each standing committee. *In order to serve as a member of the executive committee, an individual must be a student at a State University of New York campus and must maintain a cumulative GPA of 2.0 or higher.*

* * *

Title E – BYLAWS OF THE STUDENT ASSEMBLY should appear before § 341.15.

Title F – AMENDMENTS should appear before § 341.23.

Text of proposed rule and any required statements and analyses may be obtained from: Marti Anne Ellermann, Senior Counsel, State University of New York, University Plaza, S-315, Albany, NY 12246, (518) 443-5400, e-mail: Marti.ellermann@suny.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Section 355(2)(b). Education Law, Section 355(2)(b) empowers the State University Board of Trustees to make regulations for the governance of the State University.

2. Legislative Objectives: The State University Trustees have created a number of University-wide organizations which participate in the government of the University. The Student Assembly is the structure created by the Trustees within which students participate in University-wide governance. The proposed regulations, therefore, implement the statutory authority by making improvements in the student governance organization.

3. Needs and Benefits: The State University Board of Trustees has broad statutory rule making authority covering the administration, coordination and government of the State University [Education Law, Section 355(2)(b)]. Implementing this authority, the State University Trustees have promulgated Part 341 of Title 8 of the Official Compilation of Codes, Rules and Regulations as part of the “Policies of the Board of Trustees of the State University of New York”. In Part 341, the State University Trustees created a mechanism through which State University students may participate in University-wide governance by providing information and views to the Chancellor and the Trustees, along with the University Faculty Senate (Part 331) and the Campus Councils (Part 332). The Student Assembly has identified an area of needed improvement in the governance process, specifically setting forth requirements relating to eligibility to serve as an officer of the organization. The proposed regulation will improve the effectiveness of the Student Assembly by ensuring that higher standards apply to individuals seeking election to office within the organization and for retaining an elected position. This is particularly important since the president of the Student Assembly serves as a Trustee of The State University of New York. The previous eligibility criteria were lacking in clarity and did not specifically address the academic standards (e.g., GPA) that officers needed to maintain to remain in office. This led to turnover in Student Assembly leadership. The proposed rule will provide greater clarification and accountability.

4. Costs: No costs are associated with the proposed revision.

5. Local Government Mandates: None.

6. Paperwork: No additional paperwork is required.

7. Duplication: This regulation is not redundant with other State requirements.

8. Alternatives: This regulation implements specific statutory responsibilities of the State University Trustees. Other alternatives were considered including making no changes in eligibility requirements, but the Student Assembly voted to approve the proposal under consideration here as the most beneficial.

9. Federal Standards: None.

10. Compliance Schedule: The amendments will be effective immediately upon final adoption.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs the structure of the University-wide student governance body for The State

University of New York and will not have any adverse impact on the number of jobs or employment.