

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.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tobacco Free Policy for All Certified or Funded Providers

I.D. No. ASA-11-08-00002-P

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

Proposed action: Addition of Part 856 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.21(b), (d), 32.01 and 32.07(a)

Subject: Tobacco free policy for all certified or funded providers.

Purpose: To prohibit tobacco use in or on the grounds of a certified or funded provider of chemical dependency services.

Text of proposed rule:

TITLE 14 NYCRR PART 856 TOBACCO-FREE SERVICES

Section 856.1 Background and intent

- (a) To reduce addiction, illness and death caused by tobacco products.
(b) To provide a healthy environment for staff, patients, volunteers and visitors to entities organized and operating pursuant to the provisions of this Title and certified and/or funded by the Office of Alcoholism and Substance Abuse Services (“the Office”) as a provider of prevention,

treatment or recovery services for alcoholism, substance abuse, chemical dependence and/or gambling.

(c) To establish tobacco-free services in a tobacco-free environment.

Section 856.2 Legal base

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.21(b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

(d) Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to assess alcoholism, substance abuse, and chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

Section 856.3 Applicability

(a) This Part applies to any entity (“the service”) organized and operating pursuant to the provisions of this Title and certified and/or funded by the Office of Alcoholism and Substance Abuse Services (“the Office”) as a provider of prevention, treatment or recovery services for chemical dependence and/or gambling.

Section 856.4 Definitions

(a) Tobacco-free means prohibiting the use of all tobacco products in facilities, on grounds and in vehicles owned or operated by the service subject to this Part.

(b) Facility means any part of the service that is utilized by patients, staff, volunteers or visitors. This shall include the service buildings and grounds which are under the direct control of the facility and vehicles that are owned and operated by the facility.

(c) Tobacco products include but are not limited to cigarettes, cigars, pipe tobacco, chewing or dipping tobacco.

(d) Patient means any recipient of services in a facility certified or funded by the Office.

Section 856.5 Policies and procedures

(a) The governing authority of the service shall determine and establish written policies, procedures and methods governing the provision of a tobacco-free environment. These policies, procedures and methods should at a minimum include the following:

- (1) Defines the facility, vehicles and grounds which are tobacco-free;
- (2) Prohibits patients, family members, and other visitors from bringing tobacco products and paraphernalia to the service;
- (3) Requires all patients, staff, volunteers and visitors be informed of the tobacco-free policy including posted notices and the provision of copies of the policy;

(4) Prohibits staff from using tobacco products while at work, during work hours;

(5) Establishes a tobacco-free policy for staff while they are on the site of the service;

(6) Establishes treatment modalities for patients who use tobacco;

(7) Describes training on tobacco use and nicotine dependence available to staff including clinical, non-clinical, administrative and volunteers;

(8) Describes tobacco and nicotine prevention and education programs made available by the service to patients, staff, volunteers and others;

(9) Establishes procedures, including a policy to address patients who relapse on tobacco products. This policy shall incorporate the policy and procedures contained in 816.5 (g), 817.4 (o), 818.4 (o), 819.4 (o), 820.7 (a), 821.4 (v), 822.4 (u), 828.14 (b),(c) & (d), and every effort shall be made to provide appropriate treatment services to all persons in need of alcohol and drug addiction services. Additionally, each facility shall address staff relapse consistent with the employment procedure of that facility.

Section 856.6 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of this Part which can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

Section 856.7 Effective Date

This regulation will be effective July 24, 2008.

Text of proposed rule and any required statements and analyses may be obtained from: Patricia Flaherty, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203-3526, (518) 485-2317, e-mail: Patricia.Flaherty@oasas.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

This proposed Tobacco Free Services regulation is being submitted for public review and comment. The proposed Part 856 - Tobacco Free Services will provide for concurrent treatment of chemical dependency, alcoholism and nicotine dependency.

1. Statutory Authority:

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services ("the Commissioner") to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction. In addition, the regulations were sent to the existing members of the Advisory Council on Alcoholism and Substance Abuse Services who were given an opportunity to comment.

Section 19.21 (b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for alcoholism, substance abuse, and chemical dependence facilities.

Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to assess alcoholism, substance abuse, and chemical dependence treatment effectiveness and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner the power to adopt regulations to effectuate the provisions and purposes of Article 32.

The relevant sections of the Mental Hygiene Law cited above, allow the Commissioner to regulate how alcoholism and chemical dependency services are administered. This regulation will alter the way those services are administered, in that, nicotine will be considered a chemical for purposes of addressing "chemical dependency". Nicotine addiction will be treated in the form that other drugs are already being treated and persons seeking treatment for their addictions will be provided the opportunity to become completely drug free, including nicotine. This objective is in line with the legislative intent of Sections 19 and 32 of the Mental Hygiene Law, allowing the Commissioner to certify, inspect, license and establish

treatment standards for all facilities that treat alcoholism and chemical dependency. Tobacco Free Services establishes a treatment standard for all facilities that is in the best interest of the client by providing better health care and a stronger basis of recovery from addiction.

2. Legislative Objectives: Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The proposed Part 856, Tobacco Free Services, will assure that patients receive the best care and treatment. Part 856 is based on the understanding that persons who are addicted to nicotine are more likely to suffer from health problems such as heart disease, pulmonary disease, and cancer. Treating the nicotine addiction along with other chemical dependency and alcoholism is within the Commissioner's jurisdiction and responsibilities under 19.07(e) of the Mental Hygiene Law. The legislature enacted section 19 enabling the Commissioner to establish best practices for treating chemical dependency.

3. Needs and Benefits: The health consequences and the rate of mortality caused by smoking are well known and documented.¹ Research supports that patients treated for alcoholism have an increased cumulative mortality due more to tobacco-related illness than alcohol-related illness.² Best clinical practice for chemically dependent people indicates that total abstinence, including abstinence from nicotine, is safe and beneficial to the addicted person.³ Total abstinence from all drugs is already being promoted within our treatment community. The chance to be nicotine free during treatment is consistent with the goal of recovery from all drugs. The health benefits to patients from addressing nicotine addiction during treatment for other chemical dependencies are expected to outweigh potential costs associated with implementing tobacco free services.

4. Costs: It is expected that costs incurred by providers and the State will be offset by better treatment outcomes and healthier patients which will result in lower costs for medical care.

a. Costs to regulated parties: Regulated parties include patients and providers of substance abuse services. Both may incur costs related to increased need to procure nicotine replacement therapy. Additionally, providers may incur staff costs necessary to develop policies and procedures required by the proposed rule and may see costs associated with training staff to deliver tobacco-related services. New York State will provide assistance to offset potential costs as follows:

- The Department of Health will provide 4 million dollars for compliance costs incurred by providers, including nicotine replacement therapy and educational materials to those persons who cannot procure these items through either private health insurance, Medicaid or Medicare. Compliance costs include related non personal service expenses and capital costs.
- The Department of Health will also provide educational and training resources to providers.
- OASAS will provide a link through the web to clearinghouses such as the US Department of Health and Human Services, and the NYS Department of Health, and www.NYSmokefree.com which provide educational material, guidance documents and general information necessary to develop a tobacco free policy, as well as information about free trial packages of nicotine replacement therapy.
- The NYS Quitline, will provide up to 4 weeks of nicotine replacement therapy to anyone who calls the hotline.

b. Costs to the agency, state and local governments: OASAS is expected to see only minimal costs related to administering the rule as the rule's requirements can be easily added to the survey tool the office currently uses to certify a program. It may also see minimal costs associated with increased need by providers for technical assistance. Costs to the Department of Health are described above. There will be no additional costs to counties, cities, towns or local districts.

5. Local Government Mandates: There are no new mandates or administrative requirements placed on local governments.

6. Paperwork: Part 856 will require some paperwork for certified and or funded providers in order to ensure that utilization review requirements are met. However, since utilization control is presently required and providers are already familiar with utilization control record keeping, it is not expected that new record keeping requirements will be excessive. In addition some providers who are approaching the excessive services threshold will have to justify, based upon good clinical practice and specific patient needs, that the amount of services they are providing to patients is appropriate.

7. Duplications: There is no duplication of other state or federal requirements.

8. Alternatives: The only other alternative is to keep the existing procedures in place. This would be harmful to patients who are currently addicted to nicotine or who are exposed to secondhand smoke. In an effort to elicit comments on the proposed regulations and possible alternatives, these amendments were shared with New York's treatment provider community and included a cross-section of upstate and downstate, as well as urban and rural programs. The Alcoholism and Substance Abuse Providers (ASAP) of NYS distributed this proposed regulation to all of its members and requested comment. The comments received were addressed and some changes were made. Additionally, these regulations were also discussed with the Council of Local Mental Hygiene Directors and the Advisory Council and a specific task force, the NYS Partnership for the Treatment and Prevention of Tobacco Dependence, was formed for the purpose of engaging all relevant agencies, persons and providers in developing this regulation. This task force met on a regular basis to discuss the implementation of this regulation, the impact and the costs involved. The task force was instrumental in bringing about a fair and balanced approach to becoming a smoke free service.

9. Federal Standards: There are no specific federal standards or regulations that apply to this amendment.

10. Compliance Schedule: It is expected that full implementation of Part 856 will be completed within nine months of the adoption of the regulation.

¹ See *The Health Consequences of Smoking* (2004), a report of the Surgeon General available at http://www.cdc.gov/tobacco/data_statistics/sgr/sgr_2004/index.htm

²Mortality Following Inpatient Addictions Treatment, Role of Tobacco Use in Community-Based Cohort, Hurt, Richard D., M.D.; Offord, Kenneth P. MS; Croghan, Ivana T. PhD; Gomez-Dahl, Leigh; Kottke, Thomas E., M.D.; Morse, Robert M., M.D.; Melton, L. Joseph III, M.D. *Journal of the American Medical Association*, April 10, 1996 - Vol. 275; 1097-1103.

³ Mortality Following Inpatient Addictions Treatment, Role of Tobacco Use in Community-Based Cohort, Hurt, Richard D., M.D.; Offord, Kenneth P. MS; Croghan, Ivana T. PhD; Gomez-Dahl, Leigh; Kottke, Thomas E., M.D.; Morse, Robert M., M.D.; Melton, L. Joseph III, M.D. *Journal of the American Medical Association*, April 10, 1996 - Vol. 275; 1097-1103.

Shiffman, S., and Balabanis, M. Associations between alcohol and tobacco. In: Fertig, J.B., and Allen, J.P. *Alcohol and Tobacco: From Basic Science to Clinical Practice*. NIAAA Research Monograph No. 30. NIH Pub. No. 95-3931. Washington, DC: Supt. of Docs., U.S. Govt. Print. Off., 1995. pp. 17-36.

Regulatory Flexibility Analysis

Effect of the Rule: The proposed Part 856 will impact certified and/or funded providers. It is expected that the development of Tobacco Free Services policy may require providers to incorporate new services into their treatment modality. These new services will not only result in better patient treatment, but more efficient and effective programs. Pharmacies and local stores that carry nicotine replacement therapy (NRT) may see an increased demand for these products. Larger businesses such as health insurance providers will see an increased demand for prescription medications that are used in conjunction with or instead of NRT such as Wellbutrin or Chantix. And local health care providers may see an increase in patients seeking medical assistance in obtaining these medications. Local governments and districts will not be affected because statewide agencies such as the Department of Health will provide NRT and educational material, rather than local districts. Federal programs such as the US Department of Health and Human Services and Medicaid will provide materials to providers and clients to aid in their smoking cessation. These programs are already in place and will not be adversely impacted by this rule.

Compliance Requirements: It is not expected that there will be significant changes in compliance requirements. Since providers are already required to provide utilization review, it is not expected that this regulation, which provides additional guidance on good utilization review practices, will have additional costs.

Professional Services: It is not expected that programs will need to utilize additional professional services.

Compliance Costs: Some programs may need additional staff to meet the proposed requirements; however, existing fees reimburse a sufficient staffing ratio to meet these requirements.

Economic and Technological Feasibility: Compliance with the record-keeping and reporting requirements of the proposed Part 856 is not expected to have an economic impact or require any changes to technology for small businesses and government.

Minimizing Adverse Impact: Part 856 has been carefully reviewed to ensure minimum adverse impact to providers. NYS Partnership for the Treatment and Prevention of Tobacco Dependency, the NYS Department of Health, Alcoholism and Substance Abuse Providers of NYS, Inc.. In addition the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services were briefed on this proposal. Monthly conference calls were made between these parties every month, beginning in 2003 in order to create a partnership of education between agency and provider. Any impact this rule may have on small businesses and the administration of State or local governments and agencies, will either be a positive impact or the minimal costs for materials and compliance are so small that they will be absorbed into the already existing economic structure. The positive impact on our health care system, the effects of second hand smoke, and our workforce far out weights any potentially minimal costs.

Small Business and Local Government Participation: These amendments were shared with New York's treatment provider community including, NYS Partnership for the Treatment and Prevention of Tobacco Dependency, the NYS Department of Health, Alcoholism and Substance Abuse Providers of NYS, Inc.. In addition the Council of Local Mental Hygiene Directors and the Advisory Council on Alcoholism and Substance Abuse Services were briefed on this proposal. Monthly conference calls were made between these parties every month, beginning in 2003 in order to create a partnership of education between agency and provider.

Rural Area Flexibility Analysis

A rural flexibility analysis is not provided since these proposed regulations would have no adverse impact on public or private entities in rural areas. The compliance, recordkeeping and paperwork requirements are the minimum needed to insure compliance with state and federal requirements and quality patient care.

Job Impact Statement

The implementation of Part 856 will have a small impact on jobs in that it will require additional staff time for nicotine dependency education and counseling. However, the same treatment modality will be used for nicotine dependency that already exists within the provider system for chemical dependency. Nicotine dependence is directly connected to chemical dependence and must be treated concurrently. The treatment providers will not need to hire additional staff. This regulation will not adversely impact jobs outside of the agency. Part 856 will not result in the loss of any jobs within New York State.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00011-A
Filing No. 165
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class in the Department of Family Assistance.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00011-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00012-A

Filing No. 167

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Taxation and Finance.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00012-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00013-A

Filing No. 169

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Law.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00013-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00014-A

Filing No. 170

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Law.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00014-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00015-A

Filing No. 178

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00015-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00016-A

Filing No. 180

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00016-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00017-A

Filing No. 185

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of State.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00017-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00018-A

Filing No. 183

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00018-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00019-A

Filing No. 166

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Taxation and Finance.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00019-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00020-A

Filing No. 168

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00020-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00021-A

Filing No. 172

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Correctional Services.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00021-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00022-A

Filing No. 179

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00022-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00023-A

Filing No. 181

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00023-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00024-A

Filing No. 182

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00024-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00025-A

Filing No. 171

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position in the non-competitive class in the Department of Civil Service.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00025-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00026-A

Filing No. 173

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete positions in the non-competitive class in the Department of Correctional Services.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00026-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00027-A

Filing No. 176

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00027-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00028-A

Filing No. 184

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00028-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00029-A

Filing No. 174

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a subheading from the exempt and non-competitive classes in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00029-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00030-A
Filing No. 177
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the exempt class and delete a position from the non-competitive class in the Department of Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00030-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-07-00031-A
Filing No. 175
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-44-07-00031-P, Issue of October 31, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00004-A
Filing No. 152
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00004-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00005-A
Filing No. 154
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Mental Hygiene.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00005-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00006-A
Filing No. 158
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Environmental Conservation.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00006-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00007-A
Filing No. 161
Filing date: Feb. 22, 2008
Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Department of Health.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00007-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00008-A

Filing No. 151

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00008-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00009-A

Filing No. 160

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Insurance Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00009-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00010-A

Filing No. 157

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00010-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00011-A

Filing No. 155

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00011-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00012-A

Filing No. 163

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00012-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00013-A

Filing No. 156

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department Audit and Control.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00013-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00014-A

Filing No. 162

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00014-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00015-A

Filing No. 164

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Transportation.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00015-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00016-A

Filing No. 153

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To delete a position from the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00016-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-47-07-00017-A

Filing No. 159

Filing date: Feb. 22, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt and non-competitive classes in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-47-07-00017-P, Issue of November 21, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

NOTICE OF ADOPTION

Urinalysis Testing

I.D. No. COR-48-07-00002-A

Filing No. 148

Filing date: Feb. 20, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of sections 1020.1, 1020.4(a)(1), (2), (c), (d)(2)-(4), (e)(1)(iv), (2)(iii), 1020.5(a)(1) and 1020.6 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Urinalysis testing.

Purpose: To improve clarity and readability and to refine procedures in response to field experience and new testing equipment.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-48-07-00002-P, Issue of November 28, 2007.

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

Text of 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) 457-4951, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

Since publication of a Notice of proposed Rule Making in the State Register on November 27, 2007, the Department of Correctional Services (DOCS) received the following comment on the proposed amendment.

COMMENT:

A letter was received to the proposed amendment concerning urinalysis testing (COR-48-07-00002-P).

The letter asks for clarification as to what procedures are to be followed if a false positive is the result of medication taken by the subject.

§ 1020.4(d)(2) of Title 7 does provide, as part of the testing procedure, that if an inmate claims to be on medication, "an inquiry shall be made to

medical personnel as to what medications the inmate has received in the past month which may lead to a positive result”.

Furthermore, if inmate disciplinary action is pursued as a result of a positive urinalysis test, an inmate can raise the possibility of a medication induced false positive in connection with the inmate disciplinary hearing process. If properly raised, the issue should be addressed as part of the hearing process.

RESPONSE:

No revision to the proposed regulation is necessary. The comment was to the existing regulation and not the amendment, and the clarification requested is contained therein.

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

Adirondack Correctional Facility

I.D. No. COR-11-08-00001-P

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

Proposed action: This is a consensus rule making to amend section 100.6 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Adirondack Correctional Facility.

Purpose: To expand the age range of inmates that can be assigned to the facility.

Text of proposed rule:

Amend 7 NYCRR, Section 100.6 as follows:

(a) There shall be in the department an institution to be known as Adirondack Correctional Facility, which shall be located in Essex County at Ray Brook, NY 12977, and which shall consist of the property under the jurisdiction of the department at that location.

(b) Such institution shall be a correctional facility for males 16[21] years of age or older.

(c) Adirondack Correctional Facility shall be classified as a medium security facility, to be used for general confinement purposes.

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) 457-4951, 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.

Consensus Rule Making Determination

The Department of Correctional Services has determined that no person is likely to object to the proposed amendment as it merely increases the age range of inmates that can be assigned to Adirondack Correctional Facility. Consistent with Correction Law Section 70(5)(c), the age range of persons who may be confined in a facility must be specified in the Department's rules. This amendment allows the Commissioner increased flexibility with regard to the internal management function of distributing the statewide inmate population in the best interest of the Public Safety and welfare and the rehabilitation of the inmate population.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities.

Education Department

**EMERGENCY
RULE MAKING**

Standing Committees of the Board of Regents

I.D. No. EDU-09-08-00009-E

Filing No. 193

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: Amendment of sections 3.2 and 4-1.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to reorganize the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The Committee on Higher Education and Professional Practice will be separated into two committees, the Committee on Higher Education and the Committee on Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities will be separated into two committees, the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities. The proposed amendment will establish the specific functions each newly formed committee will perform so that each committee may efficiently and effectively review items and priority issues, which will, in turn, assist the Board of Regents to efficiently carry out its statutory responsibilities.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to immediately separate the Committee on Higher Education and Professional Practice and the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services with Individuals with Disabilities, so that the new committees may efficiently assume their respective duties beginning with the next succeeding Regents meetings.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption/confirmation as a permanent rule at the Mary 19-20, 2008 meeting of the Board of Regents, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: Standing committees of the Board of Regents.

Purpose: To conform the rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which separated the Committee on Higher Education and Professional Practice into the Committee on Higher Education and the Committee on Professional Practice, and which separated the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

Text of emergency rule: 1. Subdivision (a) of section 3.2 of the Rules of the Board of Regents is amended, effective February 26, 2008, as follows:

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

- (1) Policy Integration and Innovation.
- (2) Higher Education [and Professional Practice].
- (3) Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities].
- (4) Cultural Education.
- (5) Ethics.
- (6) Professional Practice.
- (7) Vocational and Educational Services for Individuals with Disabilities.

2. Subdivision (d) of section 3.2 of the Rules of the Board of Regents is amended, effective February 26, 2008, as follows:

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

- (1) . . .

(2) Committee on Higher Education [and Professional Practice]:

(i) develops policy recommendations regarding postsecondary education and retraining programs, [and develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional assistance programs, and the disciplinary process,] and monitors implementation of such functions by the department;

(ii) oversees preparation of the statewide plan for the development of postsecondary education and reviews and approves amendments to institutional or sectorial master plans for new programs and facilities [,and amendments relating to professional practice and professional conduct];

(iii) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to postsecondary education issues, including academic and professional program approval, *and* student and institutional financial aid[, professional licensure requirements, and the administration of continuing professional competence requirements and amendments relating to professional practice and professional conduct];

(iv) oversees administration of continuing competence requirements for professional licensure and registration;

(v) develops policy recommendations concerning professional manpower, examination and licensure issues and requirements, including minority access to professional education and licensure;

(vi) reviews and approves appointments to the State boards for regular service (advising on licensure, examinations, practice and discipline) for the professions;

(vii) reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements];

[(viii)] (iv) monitors the financial conditions of the postsecondary institutions;

[(ix)] (v) develops legislative and budgetary proposals for higher and professional education[, professional practice and professional discipline,] and monitors advocacy of such proposals;

[(x)] (vi) recommends appointments to advisory councils and boards; [and]

[(xi)] (vii) seeks input from the public and the field concerning postsecondary education policies and practices; and

[(xii)] (viii) reviews and makes recommendations to the full board on incorporation and chartering of higher education institutions and organizations, professional organizations, and institutions offering professional education programs];

(xiii) reviews and approves appointments to the State Boards for the Professions for service on licensure/disciplinary panels;

(xiv) reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;

(xv) reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license; and

(xvi) seeks input from the public and the professions concerning professional practice and professional discipline policies and practices].

(3) Committee on Elementary, Middle, Secondary and Continuing Education [and Vocational and Educational Services for Individuals with Disabilities]:

(i) develops policy recommendations regarding elementary, middle and secondary education, workforce preparation and continuing education, [vocational rehabilitation and special education, overall coordination of vocational and educational services for individuals with disabilities,] and coordination of interagency agreements and activities;

(ii) . . .

(iii) . . .

(iv) . . .

(v) reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education pertaining to elementary, middle and secondary education and workforce preparation and continuing education[, and amendments relating to vocational rehabilitation, special education and related educational services for individuals with disabilities];

(vi) . . .

(vii) develops legislative and budgetary proposals for elementary, middle and secondary education and workforce preparation and continuing education[, vocational rehabilitation, special education and related educational services for individuals with disabilities,] *and* monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;

(viii) initiates studies and activities leading to the improvement of educational conditions and outcomes for children from birth through high school graduation and adults in workforce preparation and continuing education programs; *and*

(ix) reviews and makes recommendations to the full board on incorporation and chartering of institutions and organizations proposing to offer prekindergarten, kindergarten, elementary, middle or secondary education programs[.];

[(x) monitors the implementation of vocational rehabilitation and special education programs and services and of interagency agreements;

(xi) reviews the development and implementation of the Regents Comprehensive Plan for the Office of Vocational and Educational Services for Individuals with Disabilities; and

(xii) seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.]

(4) . . .

(5) . . .

(6) *Committee on Professional Practice:*

(i) *develops policy recommendations regarding standards of professional conduct, continuing competence standards, professional practice issues, professional manpower issues, professional licensure requirements including licensing examination requirements, which shall include issues concerning minority access to professional education, licensing examinations and licensure, professional assistance programs, and the professional disciplinary process, and monitors implementation of such functions by the department;*

(ii) *reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to professional licensure requirements, continuing professional competence requirements, professional practice, and professional conduct;*

(iii) *develops legislative and budgetary proposals relating to professional practice and professional discipline policies and practices, and monitors the advocacy of such proposals;*

(iv) *oversees administration of continuing competence requirements for professional licensure and registration;*

(v) *reviews Regents Review Committee recommendations and proposed consent orders and surrenders of license in professional discipline cases;*

(vi) *reviews Regents Review Committee recommendations in proceedings relating to the unauthorized practice of the professions or the unauthorized use of a professional title;*

(vii) *reviews the recommendations of the Staff Committee on the Professions on petitions for restoration of a professional license;*

(viii) *reviews and approves the recommendations of the Staff Committee on the Professions on application for waiver of licensure requirements;*

(ix) *seeks input from the public and professions concerning professional practice and professional discipline policies and practices; and*

(x) *reviews and approves appointments to the State board for the professions.*

(7) *Committee on Vocational and Educational Services for Individuals with Disabilities:*

(i) *develops policy recommendations regarding vocational rehabilitation and special education, overall coordination of vocational and educational services to individuals with disabilities, and coordination of interagency agreements and activities;*

(ii) *monitors the implementation of vocational rehabilitation and special education programs and services and interagency agreements;*

(iii) *develops legislative and budgetary proposals for vocational rehabilitation, special education and related educational services for individuals with disabilities, and monitors the advocacy of such proposals, and leads in pressing for legislative and budgetary priorities within the department and with the Legislature;*

(iv) *reviews and approves amendments to the Rules of the Board of Regents and Regulations of the Commissioner of Education relating to vocational rehabilitation, special education and related educational services for individuals with disabilities; and*

(v) *seeks input from the public and professional field on policies and practices concerning vocational rehabilitation; special education and related educational services for individuals with disabilities.*

3. Subparagraph (iv) of paragraph (11) of subdivision (a) of section 4-1.5 of the Rules of the Board of Regents is amended, effective February 26, 2008, as follows:

(iv) The commissioner shall transmit the appeal papers to a standing subcommittee on accreditation appeals of the committee on higher education [and professional practice] of the Board of Regents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. EDU-09-08-00009-P, Issue of February 27, 2008. The emergency rule will expire May 25, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment reorganizes the committee structure of the Board of Regents to assist the Board in meeting its statutory responsibility to determine the educational policies of the State and to carry out the laws and policies of the State relating to education.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The Committee on Higher Education and Professional Practice has been separated into the Committee on Higher Education and the Committee on Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities has been separated into the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

The Board of Regents has determined that the reorganization of the committee structure of the Board of Regents is necessary to assist the Board of Regents to effectively meet its statutory responsibility to determine the educational policies of the State and carry out the laws and policies of the State relating to education. In accordance with the recent changes made to the committee structure of the Board, the proposed amendment will establish the specific functions of each newly formed committee so that each committee may efficiently and effectively review items and priority issues, which will, in turn, assist the Board of Regents to efficiently carry out its statutory responsibilities.

4. COSTS:

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Health

EMERGENCY RULE MAKING

Physical Therapist Assistants and Occupational Therapy Assistants

I.D. No. HLT-11-08-00003-E

Filing No. 188

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: Amendment of section 505.11 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a

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

Specific reasons underlying the finding of necessity: We are proposing that this regulatory amendment be adopted on an emergency basis for the preservation of the public health as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Secretary of State.

This amendment is adopted as an emergency measure because time is of the essence and compliance with the proposal process would be contrary to the public interest. Title 18 NYCRR, Section 505.11 does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals that can provide physical therapy or occupational therapy services, as a billable service, to Medicaid recipients. However, provider organizations have demonstrated to the Department that without the continued employment of occupational therapy assistants and physical therapist assistants the Medicaid enrollee's access to rehabilitative care will be hampered. Therefore, the Department has decided to amend its regulations to specifically allow reimbursement for occupational and physical therapy services provided by occupational therapy assistants and physical therapist assistants. Also, the State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. The current standard of practice is to allow these professionals to provide services to patients under the supervision of physical and occupational therapists. Making revisions to the regulations

will allow Medicaid recipients continued access to physical and occupational therapy services utilizing occupational therapy assistants and physical therapist assistants as qualified professionals.

Subject: Physical therapist assistants and occupational therapy assistants.

Purpose: To include physical therapist assistants and occupational therapy assistants as qualified professionals that can provide physical and occupational therapy, respectively, as a billable service, to Medicaid recipients.

Text of emergency rule:

Paragraph (2) of subdivision (c) of Section 505.11 of Title 18 NYCRR is amended to read as follows:

(2) A qualified private practicing therapist, *therapist assistant* or speech pathologist. Paragraph (1) of subdivision (d) of Section 505.11 is amended to read as follows:

(d) Definitions. (1) Qualified professional shall mean:

(i) occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist who is licensed and currently registered with the New York State Education Department;

(ii) occupational therapist, *occupational therapy assistant*, [or] physical therapist, *physical therapist assistant* who possesses a limited permit and practice(s) under the supervision of the appropriate professional in accordance with requirements of the State Education Law;

(iii) speech pathologist who is in the process of obtaining a license and has on file a "Notification of approval of the Supervisory Plan" in accordance with requirements of the State Education Law; or

(iv) out-of-state occupational therapist, *occupational therapy assistant*, physical therapist, *physical therapist assistant* or speech pathologist meeting the certification requirements of the appropriate agency of the state in which they practice.

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 May 25, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the amendment of this regulation is contained in section 201 of the Public Health Law and sections 363-a and 365-a (2) of the Social Services Law (SSL). Section 365-a (2) of the SSL states that "the department shall be responsible for furnishing medical assistance to eligible individuals" and that "medical assistance includes payment for all medically necessary medical, dental, and remedial care, services and supplies" authorized under Title 11 of Article 5 of the SSL and the Department regulations. Section 365-a (2) (h) of the SSL specifically includes within these definitions the provision of physical and occupational therapy services.

Legislative Objective:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State and authorizes the Department to promulgate regulations which are consistent with federal and state law. The objective of the proposed regulatory amendment is to allow physical therapist assistants and occupational therapy assistants to provide services to Medicaid recipients under the supervision of physical and occupational therapists respectively.

Needs and Benefits:

Section 505.11 of Title 18 NYCRR does not include physical therapist assistants or occupational therapy assistants in the list of qualified professionals who are allowed to provide rehabilitative services to Medicaid recipients. The regulations must be revised to ensure that Medicaid recipients will have adequate access to medically needed occupational and physical therapy services. These services can then be provided by occupational therapy assistants and physical therapist assistants under the supervision of occupational and physical therapists, respectively.

Costs:

Costs for Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

There would be no increased costs to the clinics or private practices that employ physical therapist assistants or occupational therapy assistants.

Costs to State Government:

There would be no increased costs to State government as a result of the proposed rule which will bring Medicaid regulations into conformity with current clinical standards of care. The State Education Department has certified physical therapist assistants and occupational therapy assistants since 1981 and 1977, respectively. It is accepted standard of care to have these professionals provide services to patients.

Costs to Local Government:

There will be no cost to the local government.

Local Government Mandates:

The proposed regulatory amendment will not impose any program service, duty, or responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This regulatory amendment will have no effect on paperwork for medical providers.

Duplication:

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

Alternatives:

No other alternatives were considered. Conforming 18 NYCRR, Section 505.11 to current practice standards was necessary to insure that Medicaid enrollees continue to have access to quality care from qualified professionals.

Federal Standards:

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

Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

Job Impact Statement

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Market Stabilization Mechanisms for Individual and Small Group Market

I.D. No. INS-41-07-00005-E

Filing No. 191

Filing date: Feb. 22, 2008

Effective date: Feb. 22, 2008

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

Action taken: Amendment of sections 361.5 and 361.7(a), renumbering of sections 361.6-361.7 to sections 361.7-361.8 and addition of new section 361.6 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3233; and L. 1992, ch. 501; L. 1995, ch. 504

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

Specific reasons underlying the finding of necessity: The first filing for the new pooling methodology was November 10, 2006, and the second filing was January 31, 2007.

Subject: Market stabilization mechanisms for individual and small group market.

Purpose: To create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

Text of emergency rule: The title of Section 361.5 is amended to read as follows:

Section 361.5 Pooling of variations in costs attributable to variations in specified medical conditions (SMC) beginning in 1999 through 2006.

Section 361.5 is hereby amended to add a new subdivision (k) to read as follows:

(k) Reporting requirements, payments to the pools, or collections from the pools under this section shall not be required in 2005 or 2006.

Sections 361.6 and 361.7 are hereby renumbered 361.7 and 361.8 and a new section 361.6 is added to read as follows:

361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 for individual and small group policies, other than Medicare supplement and Healthy New York policies.

(a) In each pool area a risk adjustment pool is established in connection with individual and small group health insurance policies, other than Medicare supplement insurance policies and Healthy New York health insurance policies. Each pool shall operate independently; that is, all calculations and payments described below are made for each pool independently of any other pool.

(b) The annual funding amount for all pool areas combined is as follows:

- (1) \$80,000,000 for 2007;
- (2) \$120,000,000 for 2008; and
- (3) \$160,000,000 for 2009 and each calendar year thereafter.

(c) The annual funding amount for each pool area is in proportion to the annualized premiums in that pool area. For 2007 and each calendar year thereafter, each pool participant shall provide to the superintendent annualized premium information on or before February 28. The superintendent shall advise carriers of the funding amount for each pool area within sixty days of receipt of annualized premium information from all carriers.

(d)(1) Each carrier's share of the total funding payable to or from the pools shall be determined based on the carrier's high cost claims in its areas of operation.

(2) In order to implement the phase in of the new specified medical condition pooling process, on or before November 10, 2006 each carrier shall report to the superintendent its annualized premium amount as of December 31, 2005 and its cumulative calendar year claims paid in 2005 for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. The superintendent will provide carriers with an estimate of potential pool receivables or liabilities using this 2005 data for advisory purposes only.

(3) Each following year, beginning in 2007, on or before February 28, each carrier shall report to the superintendent its annualized premium amount as of December 31 of the preceding year and its cumulative calendar year claims paid in the preceding year for individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, using the form in subdivision (h) of this section for each pool area. In 2007, the superintendent provided carriers with a second estimate of potential pool receivables or liabilities using 2006 data, for advisory purposes. Payments to the pools, or collections from the pools, shall be required beginning in 2008 and shall be based upon the data from the preceding calendar year.

(4) Cumulative calendar year claims paid shall include the total of all claim payments on behalf of an insured individual from January 1 through December 31 of the preceding year, regardless of when the services were provided.

(5) Cumulative calendar year claims paid shall include payments for hospital and medical services, prescription drug payments, capitation payments, and regional covered lives assessments paid pursuant to section 2807-t of the Public Health Law or percentage surcharges paid pursuant to section 2807-j or section 2807-s of the Public Health Law. Carriers that include the covered lives assessments shall convert the family covered lives assessment into a per member assessment component in order to be included with claims expenses attributable to any one member.

(6) Cumulative calendar year claims paid shall not include amounts paid in satisfaction of the percentage surcharge requirement set forth in

section 2807-j(2)(b)(i)(B) of the Public Health Law or interest paid out by a carrier pursuant to section 3224-a(c) of the Insurance Law.

(7) Each carrier's submission shall be signed by an officer of the carrier certifying that the information is accurate.

(8) If a carrier makes a submission after February 28 and the carrier is a pool payer, the carrier's payment into the pool will be increased by one percent interest per month. If a carrier makes a submission after February 28 and the carrier is a pool receiver, the carrier's distribution will be reduced by one percent per month.

(e) The superintendent shall calculate each carrier's share of the total funding payable to or from the pools pursuant to the example in subdivision (i) of this section for each pool area as follows:

(1) Identify the total claims paid by each carrier for the following types of policies: individual standardized direct payment health maintenance organization policies, individual standardized direct payment point of service policies, all other individual health insurance policies, and small group health insurance policies, other than Medicare supplement and Healthy New York insurance policies.

(2) Identify the total claims paid in excess of \$20,000 for each insured by type of policy.

(3) For each carrier for each type of policy, divide the claims paid in excess of \$20,000 by the total claims paid (the amount specified in paragraph (2) of this subdivision divided by the amount specified in paragraph (1) of this subdivision) to determine the high cost claim ratio.

(4) Calculate the average high cost claim ratio for all carriers for all types of policies combined and multiply that ratio by the total claims paid for each carrier for each type of policy (a carrier's amount specified in paragraph (1) of this subdivision multiplied by the average high cost claim amount specified in paragraph (3) of this subdivision.)

(5) Subtract the amount calculated in paragraph (4) of this subdivision from the amount in paragraph (2) of this subdivision for each carrier for each type of policy to determine the adjustment needed to equalize high cost claims and determine if the carrier is a net contributor or receiver.

(6) Sum the net contributions of all carriers who are net contributors in the pool area to determine the total net contribution.

(7) Divide the pool area funding amount by the total of paragraph (6) of this subdivision and multiply by the amount identified for each carrier for each type of policy in paragraph (5) of this subdivision to determine the carrier's net pool contribution or distribution.

(f) Billings will be done by the superintendent beginning in 2008 within thirty days of receipt of submissions from all carriers, and payments will be due from carriers within five business days from the date billed. Payments made after the due date shall include interest at a rate of one percent per month. Subsequent to the billing date, but within the calendar year, carrier data that formed the basis of the billing will be audited. In the event audits necessitate post-billing adjustments, the adjustments will be charged or credited in the next year's billing or distribution. Additional payments due from any carrier whose data errors caused it to underpay, or refunds due back from any carrier whose data errors caused it to overpay shall include a one percent interest charge per month from the original due date or payment date.

(g) A carrier shall, with respect to distributions from the pools attributable to each type of policy, as determined in paragraph (7) of subdivision (e) of this section, without reduction for contributions owed on other types of policies:

(1) refund the distributions directly to insureds based upon the type of policy that caused the payments to be received without consideration of minimum loss ratio provisions; or

(2) submit a detailed plan to the superintendent for approval:

(i) demonstrating how the distribution will be applied to reduce future premium rates for the type of policy whose insureds caused the payments to be received, or

(ii) providing a detailed explanation as to how the distribution was considered in the development of premium rates for that year.

(h) Claim Submission Form.

Claims Paid From January 1 – December 31, ()

Carrier: _____

Pool Area: _____

Total annualized premium for individual standardized direct payment health maintenance organization (HMO) policies, individual standardized direct payment point of service (POS) policies, other individual health insurance policies, and small group policies _____.

Cumulative Total Claims Paid Above Listed Amounts (Attachment Point) ZERO	Direct Payment HMO	Direct Payment POS	Direct Payment Other	Small Group	Total
\$10,000					
\$15,000					
\$20,000					
\$25,000					
\$30,000					
\$35,000					
\$40,000					
\$45,000					
\$50,000					
\$60,000					
\$70,000					
\$80,000					
\$90,000					
\$100,000					

Instructions:

- * Do not include Medicare Supplement Policies or Healthy New York Policies.
 - ** For each insured determine the cumulative claims paid from January 1 through December 31 and report the total claims paid for all insureds for each type of policy listed above.
 - ***At each dollar level (Attachment Point), report all claims paid over that attachment point level amount from January 1 through December 31 for any insured. Cumulative total claims paid above the ZERO attachment point level would equal the total claims paid by the carrier for all insureds for the period.
- (i) Chart for calculation of pool amounts.

	1	2	3	4	5	6
Albany Region Total	Claims Paid	High Cost Claim Ratio (Column 2 Divided by Column 1)	High Cost Claims Paid Multiplied by Average High Cost Ratio (Column 3 Multiplied by Column 1)	Adjustment to Equalize High Cost Claims (Column 4 Minus Column 3)	Pool Amount Owed or Receivable (Pre-determined Total Pool Minus Column 5 Total Contributions of All Net Contributors Multiplied by Column 5)	

Carrier A
Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier A
Net
Contribution
or
Distribution
Carrier B
Dir Pay HMO
Dir Pay POS
Dir Pay Other
Small Group
Carrier B
Net
Contribution
or
Distribution
Total Net
Contributions
All Net
Contributors
Total Net
Distributions
All Net
Receivers

Section 361.6 is renumbered to be 361.7 and the opening paragraph of subdivision (a) is amended to read as follows:

361.7(a) The pools shall be administered *either directly* by the superintendent, *or in conjunction with a firm*, performing at least the following functions:

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. INS-41-07-00005-P, Issue of October 10, 2007. The emergency rule will expire April 21, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: Amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The superintendent's authority for the fifth amendment to 11 NYCRR 361 is derived from Sections 201, 301, 1109, 3233 and Chapter 501 of the Laws of 1992 and Chapter 504 of the Laws of 1995.

Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law, as well as effectuate any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise make regulations.

Section 1109 authorizes the superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3233 authorizes the superintendent to promulgate regulations to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims with respect to individual and small group health insurance.

Chapter 501 of the Laws of 1992 amended the insurance law and public health law to require that individual and small group health insurance be made available on an open enrollment basis; community rating of individual and small group health insurance policies; portability of health insurance coverage; continuation of hospital, surgical or medical expense insurance; and that the superintendent promulgate regulations to assure an orderly implementation and ongoing operation of open enrollment and community rating.

Chapter 504 of the Laws of 1995 amended the insurance law and the public health law to establish standardized direct payment contracts for individual health insurance and to provide that regulations promulgated by the superintendent shall include only reinsurance or a pooling process involving insurer or health maintenance organization contributions to, or receipts from, a fund which shall be designed to share the risk of high cost claims or the claims of high cost persons.

2. Legislative objectives: The statutory sections cited above provide a framework for the establishment of a market stabilization process in the individual and small group health insurance markets. The proposed amendment to Regulation 146 is consistent with legislative objectives in that it would effectuate the Legislature's direction in Section 3233 to establish a pooling process involving health maintenance organization and insurer contributions to, or receipts from, a fund that shall be designed to share the risk of or equalize high cost claims or claims of high cost persons, and to protect insurers and health maintenance organizations from disproportionate adverse risks of offering coverage to all applicants.

3. Needs and benefits: The proposed amendment will modify the pooling methodology established in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5) to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and should help insurers and health maintenance organizations avoid reporting errors. The proposed amendment is needed because of the widely differing methodologies used by insurers and health maintenance organizations, and the inconsistencies and resulting confusion as to how to apply the distributions and/or contributions to premium rates. This amendment also simplifies and makes more straightforward the eligibility criteria for reporting claims data to the pools, which pool participants indicated was very complicated, difficult to ascertain, and time consuming under the Fourth Amendment to Regulation 146.

This amendment is the result of comments and suggestions received by the Department from health maintenance organizations and insurers with regard to the current market stabilization pools. As a result of the comments and suggestions, the current market stabilization pools are being phased-out. Payments, collections and data reports were not required in 2005 or 2006, and the new pooling methodology will be transitioned into operation over a three year period. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical

condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million, and in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million. This phase-in will ensure that health maintenance organizations and insurers have sufficient time to account for the impact of this amendment. In addition, modeling of the pool calculations using 2006 claims data indicates that, at the \$20,000 high cost claim threshold established in this amendment, and with consideration for estimated medical cost and health insurance claim inflation, the phase-in amounts above are the approximate amounts that the pool calculations are expected to produce over the three-year period.

Comparable to all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies in order share the risk of, or equalize, high cost claims or high cost persons. The pooling of individual and small group policies is necessary to provide meaningful distribution of high cost persons and claims across the community rated markets.

4. **Costs:** This amendment imposes no compliance costs upon state or local governments. The amendment does not impose any significant additional compliance costs to insurers or health maintenance organizations. Insurers and health maintenance organizations may have to modify their internal policies and procedures for compliance with the new pooling methodology, and if insurers or health maintenance organizations fail to comply with statutory or regulatory pooling requirements, a penalty could be imposed. In addition, similar to the previous pooling methodology, insurers and health maintenance organizations with healthier lives will have to pay money into the market stabilization pools, and those with unhealthy lives will receive money from the pools. There will be a cost to insurers and health maintenance organizations with healthier lives; however, the purpose of any market stabilization mechanism is to share risk and equalize claim costs. There should be no additional costs to the Insurance Department, as existing personnel are available to assist insurers and health maintenance organizations with the transition to the new market stabilization process.

5. **Local government mandates:** The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. **Paperwork:** The proposed amendment imposes new reporting requirements. However, insurers and health maintenance organizations are currently reporting similar information to the superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Insurers and health maintenance organizations will report annually to the superintendent under this amendment, while under the Fourth Amendment to Regulation 146 they were required to report biannually. Therefore, this proposed amendment will decrease the amount of paperwork for the insurers and health maintenance organizations compared to the amount required under the Fourth Amendment to Regulation 146.

7. **Duplication:** Section 3233 directs the superintendent to promulgate regulations to create a pooling process to establish stabilization in the individual and small group markets. There is no duplication with federal or state laws.

8. **Alternatives:** The Insurance Department has met extensively with the Health Plan Association and the Conference of BlueCross BlueShield Plans to discuss this amendment. A suggestion was made to take payments from the Direct Payment Stop Loss Funds into consideration when determining amounts owed or received under the new pooling methodology. The Direct Payment Stop Loss Funds were established in 1999 pursuant to Sections 4321-a and 4322-a of the Insurance Law, which establishes a separate statutory mandate from Section 3233 of the Insurance Law, which first provided for the establishment of the market stabilization pools in 1992. The Direct Payment Stop Loss Funds were created to provide additional state subsidies to the individual direct payment market, and were not meant to replace the market stabilization pools. Although the previous market stabilization pools did not take the direct payment stop loss recoveries into consideration, the Department reviewed the suggestion of taking the payments from the Direct Payment Stop Loss Funds into consideration under this proposed amendment. The Department determined that if the stop loss recoveries were taken into consideration, the standardized individual HMO policies could become payors, which would undermine the intent of Section 3233 of the Insurance Law. That statute is meant to equalize the risk of high cost persons throughout the individual and small group markets by encouraging each HMO and insurer to insure high cost persons (who are mostly found in the individual direct payment market). If direct payment policies become payers, HMOs could be discouraged from

insuring high cost persons – a circumstance that would run counter to the statutory intent.

Another suggestion was made to increase the claim threshold from \$20,000 to \$100,000. The Insurance Department found that the risk sharing and market stabilization would be significantly diminished, by up to 80%, if the claim threshold were increased. If this were to occur, the risk adjustment would be so nominal that the statutory requirement for risk adjustment could not be accomplished.

Interested parties also expressed concern that when the individual and small group policies are pooled together, that the market stabilization pools could involve the small group market subsidizing the individual market. The Department has previously pooled individual and small group policies together under all prior pooling methodologies established pursuant to Section 3233 of the Insurance Law in order to accomplish the legislative goals. Moreover, if individual and small group coverage were not pooled, there would not be appropriate risk adjustment in the individual market.

9. **Federal standards:** There are no minimum standards of the federal government for the same or similar subject areas.

10. **Compliance schedule:** The provisions of this amendment will take effect immediately. However, implementation will be gradual, with the market stabilization pools reaching full funding only after three years. Insurers and health maintenance organizations were required to submit initial reports to the superintendent by November 10, 2006 and January 31, 2007 for advisory purposes only, and payments under the new pooling process will begin in 2008. The Insurance Department has had several meetings with representatives of insurers and health maintenance organizations to discuss this amendment, and insurers and health maintenance organizations should be aware of the requirements established by this amendment.

Regulatory Flexibility Analysis

1. **Effect of the rule:** This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Based upon information provided by these companies in annual statements filed with the Insurance Department, HMOs and insurers licensed to do business in New York do not fall within the definition of "small business" found in Section 102(8) of the State Administrative Procedures Act because none of them are both independently owned and have under 100 employees.

Some of the small businesses in New York purchase health insurance from HMOs and insurers. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million. This amendment does not apply to or affect local governments.

2. **Compliance requirements:** This amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

3. **Professional services:** Small businesses or local governments should not need professional services to comply with the amendment.

4. **Compliance costs:** This amendment will not impose any compliance costs upon small businesses or local governments.

5. **Economic and technological feasibility:** Small businesses or local governments should not incur an economic or technological impact as a result of the amendment.

6. **Minimizing adverse impact:** This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance cover-

age offered by HMOs and insurers, similar to the Fourth Amendment to Regulation 146, and should not impose any adverse or disparate impact. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. The amendment also is being transitioned into full effect over three years in order to moderate any impact.

7. Small business and local government participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, none of which fall within the definition of "small business" as found in Section 102(8) of the State Administrative Act. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. That notice was intended to provide small businesses with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Rural Area Flexibility Analysis

1. Effect of the rule: This amendment will affect all health maintenance organizations (HMOs) and insurers licensed to do business in New York State. Insurers and HMOs to which the amendment applies do business in all counties of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). This amendment may also affect small business and individuals that purchase health insurance coverage, some of which are located in rural areas across the state. This amendment modifies and simplifies the current pooling methodology for the individual and small group health insurance markets established by the Fourth Amendment to Regulation 146. Similar to all prior pooling methodologies, the new pooling methodology establishes a risk adjustment mechanism so that insurers covering persons with higher cost claims will receive monies from the market stabilization pools, and insurers covering persons with lower cost claims will pay money into the pools. Also similar to all prior pooling methodologies, the Fifth Amendment to Regulation 146 continues to pool individual and small group policies together in order to share the risk of or equalize high cost claims or high cost persons, as required by Section 3233 of the Insurance Law. As has been the experience under prior pooling methodologies, the Department estimates that some small groups will see a premium reduction, while others will see a nominal increase. In addition, persons covered under the individual standardized direct payment policies will on average likely see a decrease in their premiums. In order to mitigate the initial impact of the amendment, the Department has established a gradual three-year implementation period until the pools become fully funded. In 2007, the pools will be funded at \$80 million, which is half of the funding amount of the prior specified medical condition pools established under the Fourth Amendment to Regulation 146. In 2008, the funding level of the pools will be increased to \$120 million. And in 2009, the funding level of the pools will be increased to the full funding amount of \$160 million.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed amendment imposes new reporting requirements for insurers and health maintenance organizations. However, insurers and health maintenance organizations are currently reporting similar information to the Superintendent for the pooling requirements set forth in the specified medical condition pools established by the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Therefore, this proposed amendment should not create more paperwork, recordkeeping or other compliance requirements or professional services for insurers and health maintenance organizations than are currently in place.

3. Costs: As under all prior pooling methodologies, some small businesses will see a premium reduction, while others will see a nominal increase. These small businesses may be located in rural or urban areas across the state. Individuals covered under the standardized direct payment policies will likely see a reduction in their premiums. These individuals may be located in rural or urban areas across the state.

4. Minimizing adverse impact: This amendment simplifies the market stabilization methodology for individual and small group coverage established by the Fourth Amendment to Regulation 146. The same requirements will apply uniformly to individual and small group insurance coverage offered by HMOs and insurers, similar to the Fourth Amendment to

Regulation 146. The impact on small businesses and individuals who purchase health insurance in the individual or small group market and who may be located in rural areas, should be comparable to the impact on small businesses or individuals who are located in urban areas. The amendment is being transitioned into full effect over the course of three years in order to mitigate any impact.

5. Rural area participation: These regulations are directed at HMOs and insurers licensed to do business in New York State, which do businesses in every county in New York. Notice of the proposal was previously published in the Insurance Department's Regulatory Agenda. That notice was intended to provide small businesses or individuals who are located in rural areas with the opportunity to participate in the rulemaking process. Interested parties were also consulted through direct meetings during the development of the proposed regulations.

Job Impact Statement

This amendment to Regulation 146 will not adversely impact job or employment opportunities in New York. The proposed amendment is likely to have no measurable impact on jobs. Insurers and health maintenance organizations will need to annually report to the Superintendent their annualized premium amount and their cumulative calendar year claims paid. However, it is anticipated that such responsibilities will be handled by existing personnel because these reporting requirements are similar to the existing reporting requirements set forth in the Fourth Amendment to Regulation 146 (11 NYCRR 361.5). Costs to the Insurance Department will also be minimal, as existing personnel are available to assist insurers and health maintenance organizations in implementing the new pooling methodology.

Assessment of Public Comment

The regulation amends Section 361.5 and adds a new Section 361.6 to 11 NYCRR to establish a new market stabilization mechanism as required by Section 3233 of the Insurance Law.

Detailed comments were received from an interested party representing health plans. The Insurance Department analyzed the comments and met with the interested party to discuss the comments. The Department is now engaged in further internal analysis of the comments to determine an appropriate response. Once the analysis is complete, the Department will provide a detailed assessment for publication in the State Register.

NOTICE OF ADOPTION

Minimum Standards for the Form, Content and Sale of Health Insurance

I.D. No. INS-49-07-00006-A

Filing No. 149

Filing date: Feb. 20, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3103, 3201, 3217, 3221, 4235, 4303, 4305 and 4308

Subject: Minimum standards for the form, content and sale of health insurance, including standards for full and fair disclosure.

Purpose: To require insurers, art. 43 corporations and HMO's to send notices to their policyholders, certificateholders, and members describing chapter 748 of the Laws of 2006.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. INS-49-07-00006-EP, Issue of December 5, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-52-07-00011-A

Filing date: Feb. 26, 2008

Effective date: March 1, 2008

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

Action taken: Revision in rates for City of Sherrill.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain system's fiscal integrity; this increase in rates is not the result of a Power Authority rate increase to the city.

Text or summary was published in the notice of proposed rule making, I.D. No. PAS-52-07-00011-P, Issue of December 26, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: anne.cahill@nypa.gov

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.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity by Solow Management Corporation

I.D. No. PSC-28-06-00011-A

Filing date: Feb. 22, 2008

Effective date: Feb. 22, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order in Case 06-E-0701 approving the petition filed by Solow Management Corp., to submeter electricity at 501 E. 87th St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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 submeter electricity at 501 E. 87th St., New York, NY.

Substance of final rule: The Commission approved a petition by Solow Management Corp., to submeter electricity at 501 East 87th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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. (06-E-0701SA1)

NOTICE OF ADOPTION

Measuring, Limiting and Reporting Electric Commodity Price Volatility by Consolidated Edison Company of New York, Inc., et al.

I.D. No. PSC-35-07-00005-A

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order establishing electric supply portfolio standards, goals, and reporting requirements, and directed Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to implement the methods for measuring, monitoring and constraining electric supply price volatility described in their respective filings and to file quarterly reports on electric supply prices and price volatility.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Utility hedging practices and commodity portfolio management strategies and reporting.

Purpose: To adopt policies, practices and procedures on utility hedging practices and commodity portfolio management strategies and reporting.

Substance of final rule: The Commission adopted an order establishing electric supply portfolio standards, goals and reporting requirements, and directed Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to implement the methods for measuring, monitoring and constraining electric supply price volatility described in their respective filings and to file quarterly reports on electric supply prices and price volatility, 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. (06-M-1017SA4)

NOTICE OF ADOPTION

Measuring, Limiting and Reporting Electric Commodity Price Volatility by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-35-07-00006-A

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order establishing electric supply portfolio standards, goals, and reporting requirements, and directed Niagara Mohawk Power Corporation d/b/a National Grid to implement the methods for measuring, monitoring and constraining electric supply price volatility described in its filing and to file quarterly reports on electric supply prices and price volatility.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Utility hedging practices and commodity portfolio management strategies and reporting.

Purpose: To adopt policies, practices and procedures on utility hedging practices and commodity portfolio management strategies and reporting.

Substance of final rule: The Commission adopted an order establishing electric supply portfolio standards, goals and reporting requirements, and directed Niagara Mohawk Power Corporation d/b/a National Grid to implement the methods for measuring, monitoring and constraining electric supply price volatility described in its filing, and to file quarterly reports on electric supply prices and price volatility, 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. (06-M-1017SA5)

NOTICE OF ADOPTION

Measuring, Limiting and Reporting Electric Commodity Price Volatility by Central Hudson Gas and Electric Corporation

I.D. No. PSC-35-07-00007-A

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order establishing electric supply portfolio standards, goals, and reporting requirements, and directed Central Hudson Gas and Electric Corporation to implement the methods for measuring, monitoring and constraining electric supply price volatility described in its filing, and to file quarterly reports on electric supply prices and price volatility.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Utility hedging practices and commodity portfolio management strategies and reporting.

Purpose: To adopt policies, practices and procedures on utility hedging practices and commodity portfolio management strategies and reporting.

Substance of final rule: The Commission adopted an order establishing electric supply portfolio standards, goals and reporting requirements, and directed Central Hudson Gas and Electric Corporation to implement the methods for measuring, monitoring and constraining electric supply price volatility described in its filing, and to file quarterly reports on electric supply prices and price volatility, 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. (06-M-1017SA6)

NOTICE OF ADOPTION

Measuring, Limiting and Reporting Electric Commodity Price Volatility by New York State Electric & Gas Corporation, et al.

I.D. No. PSC-35-07-00008-A

Filing date: Feb. 26, 2008

Effective date: Feb. 26, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order establishing electric supply portfolio standards, goals, and reporting requirements, and directed New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to implement the methods for measuring, monitoring and constraining electric supply price volatility described in their respective filings, and to file quarterly reports on electric supply prices and price volatility.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Utility hedging practices and commodity portfolio management strategies and reporting.

Purpose: To adopt policies, practices and procedures on utility hedging practices and commodity portfolio management strategies and reporting.

Substance of final rule: The Commission adopted an order establishing electric supply portfolio standards, goals and reporting requirements, and directed New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to implement the methods for measuring, monitoring and constraining electric supply price volatility described in their respective filings, and to file quarterly reports on electric supply prices and price volatility, 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. (06-M-1017SA7)

NOTICE OF ADOPTION

Property Lease Renewal by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, et al.

I.D. No. PSC-39-07-00018-A

Filing date: Feb. 20, 2008

Effective date: Feb. 20, 2008

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

Action taken: The Commission, on Feb. 13, 2008, adopted an order approving the joint petition filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) and Consolidated Edison Company of New York, Inc. (Con Edison) for a lease renewal associated with KEDNY's property located at 89-67 162nd St., Jamaica, NY.

Statutory authority: Public Service Law, section 70

Subject: Property lease renewal.

Purpose: To approve the renewal of a property lease associated with KEDNY's Jamaica Customer Office located in Jamaica, NY.

Substance of final rule: The Commission adopted an order approving the joint petition filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KEDNY) and Consolidated Edison Company of New York, Inc. (Con Edison) for a lease renewal associated with KEDNY's property located at 89-67 162nd Street, Jamaica, New York, 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. (07-M-0957SA1)

NOTICE OF ADOPTION

Submetering of Electricity by the George A. Fuller Company, Inc. on behalf of Renaissance Condominium Partners

I.D. No. PSC-47-07-00021-A

Filing date: Feb. 22, 2008

Effective date: Feb. 22, 2008

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

Action taken: The commission, on Feb. 13, 2008, adopted an order in Case 07-E-1278 approving the petition filed by George A. Fuller Company Inc., on behalf of Renaissance Condominium Partners, to submeter electricity at 221 Main St., White Plains, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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 submeter electricity at 221 Main St., White Plains, NY.

Substance of final rule: The Commission approved a petition by George A. Fuller Company Inc., on behalf of Renaissance Condominium Partners, to submeter electricity at 221 Main Street, White Plains, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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-1278SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Major Rate Filing by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-08-00016-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 or modify, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for steam service—P.S.C. No. 3. The statutory suspension period of the filing runs through Sept. 30, 2008.

Statutory authority: Public Service Law, section 80(10)

Subject: Major rate filing.

Purpose: To consider a proposal to increase annual steam revenues by approximately \$126.6 million (a 19 percent average rate year increase, approximately 44 percent net of fuel costs).

Public hearing(s) will be held at: 10:30 a.m., April 7, 2008 and continuing, as needed, weekday to weekday thereafter* at Department of Public Service, 90 Church St., 4th Fl., New York, NY.

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS web site (www.dps.state.ny.us) under Case No. 07-S-1315.

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.

Substance of proposed rule: On November 7, 2007, Consolidated Edison Company of New York, Inc. (Con Edison) made a tariff filing to increase its annual steam revenues by approximately \$126.6 million on a rate year basis (a 19% average rate year increase, approximately 44% net of fuel costs). The statutory suspension period of the filing runs through September 30, 2008. The Commission may approve, reject or modify, in whole or in part, Con Edison's proposal.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

Data, views or argument 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-S-1315SA1)

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

Interconnection Agreement between Verizon New York Inc. and Crossroads Wireless Holding, LLC

I.D. No. PSC-11-08-00005-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, a proposal filed by Verizon New York Inc. and Crossroads Wireless Holding, LLC for approval of an interconnection agreement executed on Jan. 22, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Crossroads Wireless Holding, LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Crossroads Wireless Holding, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Crossroads Wireless Holding, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 21, 2010, or as extended.

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.

(08-C-0064SA1)

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

Interconnection Agreement between Verizon New York Inc. and Gridway Communications Corp.

I.D. No. PSC-11-08-00006-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 approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Gridway Communications Corp. for approval of an interconnection agreement executed on Jan. 30, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Gridway Communications Corp. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Gridway Communications Corp. have reached a negotiated agreement whereby Verizon New York Inc. and Gridway Communications Corp. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 29, 2010, or as extended.

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.

(08-C-0086SA1)

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

Interconnection Agreement between Verizon New York Inc. and Fibernetics USA, Inc.

I.D. No. PSC-11-08-00007-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, a proposal filed by Verizon New York Inc. and Fibernetics USA, Inc. for approval of an interconnection agreement executed on Jan. 25, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Fibernetics USA, Inc. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Fibernetics USA, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Fibernetics USA, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 24, 2010, or as extended.

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.

(08-C-0087SA1)

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

Interconnection Agreement between Verizon New York Inc. and Wholesale Carrier Services, Inc.

I.D. No. PSC-11-08-00008-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, a proposal filed by Verizon New York Inc. and Wholesale Carrier Services, Inc. for approval of an interconnection agreement executed on Jan. 21, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Wholesale Carrier Services, Inc. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Wholesale Carrier Services, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Wholesale Carrier Services, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 20, 2010, or as extended.

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.

(08-C-0137SA1)

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

Interconnection Agreement between Verizon New York Inc. and MetroPCS New York, LLC

I.D. No. PSC-11-08-00009-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, a proposal filed by Verizon New York Inc. and MetroPCS New York, LLC for approval of an interconnection agreement executed on Jan. 31, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and MetroPCS New York, LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and MetroPCS New York, LLC have reached a negotiated agreement whereby Verizon New York Inc. and MetroPCS New York, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until January 30, 2010, or as extended.

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.

(08-C-0138SA1)

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

Interconnection Agreement between Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications and Cavalier Telephone LLC

I.D. No. PSC-11-08-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications and Cavalier Telephone LLC for approval of a mutual traffic exchange agreement executed on Jan. 28, 2008.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications and Cavalier Telephone LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications and Cavalier Telephone, LLC have reached a negotiated agreement whereby Berkshire Telephone Company/Taconic Telephone Corporation d/b/a FairPoint Communications and Cavalier Telephone LLC will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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.

(08-C-0174SA1)

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

Recovery of Costs by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-08-00011-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 ("PSC") is considering whether to grant or deny, in whole or in part, a Consolidated Edison Company of New York, Inc. ("Con Edison") petition for rehearing. The

petition requests recovery of costs associated with retirement and improvements of its Hudson Avenue Facility.

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

Subject: Recovery of expenses from electric and steam ratepayers.

Purpose: To authorize recovery from electric and/or steam ratepayers of expenses for shut-down of unit 10/100 and improvements associated with a Con Edison Hudson Avenue Facility.

Substance of proposed rule: The Public Service Commission ("PSC") is considering whether to grant or deny, in whole or in part, a Consolidated Edison Company of New York, Inc. ("Con Edison") Petition for Rehearing. The Petition requests recovery from electric and/or steam ratepayers of \$835,000 of costs associated with mechanical and electric shut-down work related to the Hudson Avenue Steam Generating Unit 10/100, repair of a wall and facade, and relocation and reconstruction of a control room.

A previous Commission Order directed the Company to apportion approximately \$360,000 in shut-down costs between steam and electric ratepayers, and charge approximately \$350,000 in costs to repair walls and facade and approximately \$125,000 in costs for control room construction as operation and maintenance expenses.

In its Petition for Rehearing, Con Edison requests authority to recover all the costs from electric ratepayers, or, in the alternative, defer the steam related portion for deferral and later recovery from steam ratepayers.

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.

(01-E-0147SA3)

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

Customer Service Incentive Program by Orange and Rockland Utilities, Inc.

I.D. No. PSC-11-08-00012-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, the proposal submitted by Orange and Rockland Utilities, Inc. for a tiered incentive for the survey portion of its customer service incentive program as directed by commission order issued Oct. 8, 2007.

Statutory authority: Public Service Law, sections 5, 65(1), 66(1) and (5)

Subject: Tiered incentive for the survey portion of its customer service incentive program.

Purpose: To consider the proposal submitted by Orange and Rockland Utilities, Inc. as directed by commission order issued Oct. 8, 2007.

Substance of proposed rule: The Public Service Commission is considering whether to accept or reject, in whole or in part, the proposal submitted on December 13, 2007 by Orange and Rockland Utilities, Inc. for a tiered incentive for the survey portion of its customer service incentive program as directed by Commission Order issued October 8, 2007.

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.
(06-E-1433SA6)

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

Rehearing and Clarification of Commission’s Order by Orange and Rockland Utilities, Inc.

I.D. No. PSC-11-08-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a petition for rehearing and clarification filed by Orange and Rockland Utilities, Inc. (Orange and Rockland) of the commission’s order concerning proposed decoupling mechanism and energy efficiency programs, in Case 06-E-1433.

Statutory authority: Public Service Law, section 22

Subject: Orange and Rockland’s petition for rehearing and clarification of the commission’s order concerning proposed decoupling mechanism and energy efficiency programs issued Jan. 16, 2008 in Case 06-E-1433.

Purpose: To consider the petition on the grounds that in light of developments in the energy efficiency portfolio standard proceeding, Case 07-M-0548, the commission should postpone spending of deferred customer funds on energy efficiency programs, or clarify certain terms of the order concerning funds for energy efficiency.

Substance of proposed rule: Orange and Rockland Utilities, Inc. (Orange and Rockland) has requested rehearing and clarification of the Commission’s Order Concerning Proposed Revenue Decoupling Mechanism and Energy Efficiency Programs issued January 16, 2008 in Case 06-E-1433 on the grounds that, in light of developments in the Energy Efficiency Portfolio Standard Proceeding, Case 07-M-0548, the Commission should postpone spending of deferred customer funds on energy efficiency programs, or clarify certain terms of the Order concerning funds for energy efficiency. Orange and Rockland also contends that the record in Case 06-E-1433 fails to support the cost effectiveness of the Staff and the New York State Energy Research and Development Authority (NYSERDA) Joint Proposal. In addition, Orange and Rockland has requested clarification of the Order on the grounds that the Commission must (1) clarify the specific amount of deferred customer funds that the Company must transfer to NYSEDA; (2) articulate the legal authority for requiring the Company to transfer customer funds to a state authority; (3) require Staff and NYSEDA to update the Joint Proposal; and (4) clarify the specific oversight and accountability protocols that will apply to NYSEDA. The Commission may grant and/or deny all or portions of Orange and Rockland’s petition.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: 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.
(06-E-1433SA7)

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

Standard Agreement for Wire Pole Attachments

I.D. No. PSC-11-08-00014-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 modify the order adopting policy statement, issued on Aug. 6, 2004, as to the requirement of a standard agreement for wire attachments to utility poles.

Statutory authority: Public Service Law, sections 119-a, 66(1) and 94(2)

Subject: Standard agreement for wire pole attachments.

Purpose: To consider modifying the requirement for a standard agreement in the commission’s Aug. 6, 2004 order.

Substance of proposed rule: The Commission is considering whether to modify the Order Adopting Policy Statement, issued on August 6, 2004, as to the requirement of a Standard Agreement for wire attachments to utility poles.

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.
(03-M-0432SA7)

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

Waiver of Provisions by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-11-08-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (Con Ed) for a waiver of any and all provisions of the rate schedule (P.S.C. No. 9—Electricity) and the commission rules and regulations in 16 NYCRR Part 13, as may be necessary to permit the company to provide credits to certain electric customers who were unable to access their premises during the July 2008 steam pipe rupture incident.

Statutory authority: Public Service Law, sections 4(1) and 66

Subject: Waiver of P.S.C. No. 9—Electricity and 16 NYCRR Part 13 to permit credits to certain electric customers.

Purpose: To consider petition for waivers of rate schedule and regulations to allow for credits to certain electric customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. (Con Ed) for a waiver of any and all provisions of the rate schedule (P.S.C. No. 9 Electricity) and the Commission rules and regulations in 16 NYCRR Part 13, as may be necessary to permit the Company to provide credits to certain electric customers who were unable to access their premises during the July 2008 steam pipe rupture incident at 41st Street and Lexington Avenue in Manhattan.

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. (08-S-0153SA1)

Department of State

**EMERGENCY
RULE MAKING**

Cease and Desist Zone for the County of Kings

I.D. No. DOS-11-08-00004-E

Filing No. 189

Filing date: Feb. 25, 2008

Effective date: Feb. 25, 2008

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h

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

Specific reasons underlying the finding of necessity: The Department of State held a public hearing on September 6, 2007 to determine whether this rulemaking should be proposed. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeated solicitation to list their homes for sale. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. The testimony and evidence submitted to the Department of State amply demonstrates that some residents within the proposed geographic area are the subject of intense and repeated solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited. An existing cease and desist zone protecting a portion of the defined geographic area is due to expire on February 23, 2008. The Department of State has determined that these, and other residents, are in need of continued protection.

Subject: Cease and desist zone for the County of Kings.

Purpose: To extend and expand an existing cease and desist zone for the County of Kings.

Text of emergency rule: An Amendment to 19 NYCRR Part 175.17 (c)(2) is adopted to read as follows:

(c)(2) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, 2009

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
County of Queens	August 1, 2009

Cease and Desist Zone

(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, [2007] 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, [and] Marine Park and *Madison Marine*, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to [Gerritsen Avenue] *Kings Highway*; thence [southeasterly along Gerritsen Avenue and the southern prolongation of Gerritsen Avenue] *southwesterly along Kings Highway to Ocean Avenue*; thence *southerly along Ocean Avenue to Shore Parkway*; thence northeasterly, *southeasterly*, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence *northwesterly along Paerdegat Basin and northern prolongation of Paerdegat Basin* to Flatlands Avenue and the point of beginning.

Cease and Desist Zone
(Canarsie)

Zone	Expiration Date
County of Kings (Brooklyn)	May 31, 2008

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection of Stanley Street and East 108th Street; thence southeasterly along East 108th Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Shore (Belt) Parkway; thence southwestly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwestly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

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 May 24, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, Division of Licensing Services, P.O. Box 22001, Albany, NY 12231-0001, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Real Property Law section 442-h(3) permits the Department of State to adopt a rule establishing a cease and desist zone for a defined geographic area if it is determined that some owners of residential real property within the defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate broker or salesperson. Accordingly, the Department of State has express authority to adopt this rule.

2. Legislative objectives:

In enacting Real Property Law section 442-h, the legislature highlighted the problems faced by some residents from intense and repeated solicitation to list their homes for sale. Recognizing that not all homeowners who are the subject of this solicitation are desirous of being solicited, the legislature established a procedure to determine if a cease and desist zone should be established, and a mechanism for homeowners to notify the Department of State that they do not wish to be solicited after a cease and desist zone has been established.

Thus, Real Property Law section 442-h was designed to protect the public. This rule re-enforces the objectives of the Legislature when it enacted Real Property Law section 442-h by establishing a cease and desist zone for an area that has demonstrated that some residents are the subject of intense and repeated solicitation to list their homes for sale.

3. Needs and benefits:

The Department of State held a public hearing on September 6, 2007 to determine whether this rule making should be proposed. At the public hearing, testimony was taken and evidence submitted to demonstrate that some residents within the proposed geographic area are subject to intense and repeat solicitation to list their homes for sale. The Department of State held the record open after the public hearing to afford others the opportunity to submit written testimony and proof. The testimony and evidence submitted to the Department of State amply demonstrates that some residents within the proposed geographic area are the subject of intense and repeat solicitation to list their homes for sale. This rule making will benefit residents of the defined area by providing a mechanism for them to notify the Department of State that they do not wish to be solicited.

4. Costs:

a. Costs to regulated parties:

The costs to real estate brokers and salespersons are minimal. The Department of State maintains copies of the cease and desist lists on its website. This list is available for all to view, at no cost. Additionally, the Department of State will mail a copy of the list to any person desiring a copy for the minimal cost of \$10.00.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation will be minimal, and administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule does not impose any paperwork requirements on licensees.

7. Duplication:

This rule extends an existing cease and desist zone that is due to expire on November 30, 2007. It does not otherwise duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

No alternatives were considered by the Department of State.

9. Federal standards:

There are no federal standards addressing the subject of this rule making.

10. Compliance schedule:

Licensees are currently required to comply with 19 NYCRR 175.17. The rule will extend and expand the cease and desist zone that is due to expire on November 30, 2007. Therefore, regulated parties will be on notice of, and have adequate time to comply with the requirements imposed by the proposed rule making.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects all licensed real estate brokers and salespersons to the extent that they are prohibited from soliciting a real estate listing from a resident of the defined geographic zone who has notified the Department of State that he or she does not wish to be so solicited. Real estate brokers and salespersons will remain free, however, to solicit listings from other residents of the defined zone and to participate in regulated transactions within the zone. Insofar as the rule making seeks to extend and expand an existing cease and desist zone, it is not anticipated that the solicitation limitations will place an undue financial burden, or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State publishes and makes available a list of residents within cease and desist zones who have notified the Department of State that they do not wish to be solicited by real estate brokers and salespersons. These lists are made available to real estate brokers and salespersons. To comply with the rule, they need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Licensees will not incur any significant compliance costs associated with this rule. The Department of State publishes a free list of all cease and desist lists on its website at no cost. Licensees who desire a hard copy of

the lists may notify the Department of State and receive a copy of the list by mail for a cost of \$10.00.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of implementation of this rule.

6. Minimizing adverse economic impact:

Insofar as no compliance costs are anticipated, the Department of State did not consider any remedies to minimize adverse economic impacts of the rule.

7. Small business and local government participation:

The Department of State held a public hearing to consider proposing this rule making. The hearing was publicized in advance and open to all. In addition, the Department of State kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence after the open public hearing.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule does not apply to rural areas and, rather, applies only to a defined geographic area within the County of Kings.

2. Reporting, record-keeping and other compliance requirements:

This rule, which applies only to a portion of urban Kings County, does not impose any reporting and record-keeping requirements on licensees located within rural areas.

3. Costs:

The rule does not impose any costs on rural areas.

4. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

5. Rural area participation:

Insofar as the rule does not apply to rural areas, rural area participation was not solicited by the Department of State.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate brokers and salespersons from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate brokers and salespersons will remain free to solicit other residents within the defined zone and to engage in real estate transactions within and outside of the defined geographic area.

Assessment of Public Comment

On September 6, 2007, the Department of State held a public hearing in Brooklyn NY to consider whether to extend and/or expand the existing cease and desist order for the Mill Basin area. The public hearing was attended by residents, representatives of local civic associations and legislative representatives. The testimony and evidence submitted demonstrates that some residents of the defined geographic zone are the subject of intense and repeated solicitation to list their homes for sale.

Department of Transportation

NOTICE OF ADOPTION

Rates and Charges at Republic Airport

I.D. No. TRN-32-07-00001-A

Filing No. 190

Filing date: Feb. 25, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of Part 78 of Title 17 NYCRR.

Statutory authority: Transportation Law, sections 400 and 402

Subject: Rates and charges at Republic Airport.

Purpose: To revise the fees paid for use of Republic Airport by individuals and businesses.

Text or summary was published in the notice of proposed rule making, I.D. No. TRN-32-07-00001-P, Issue of August 8, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Michael Geiger, Department of Transportation, 7150 Republic Airport, Rm. 216, East Farmingdale, NY 11735, (631) 752-7707, e-mail: mgeiger@dot.state.ny.us

Assessment of Public Comment

Our office received 22 letters commenting on the proposed changes to Rates & Charges. Four letters were received from pilots or pilot organizations, who would be directly affected by the new rates & charges, and 18 letters from the elected officials and community around the airport.

David Goldberg notes that two other airports on Long Island, MacArthur and Brookhaven, do not charge landing fees for based aircraft and tie-down fees at those airports are lower. MacArthur Airport has both commercial and general aviation uses and generates much of its revenue from commercial operations. Republic Airport does not have commercial service. Brookhaven Airport recently increased its landing fee from \$2 to \$5 for transient aircraft. According to Brookhaven Airport Management, there are a number of flight schools that are not based at the airport and use the facilities for flight training. About 75% of Republic Airport's operations are conducted by based aircraft. As mentioned when the rule was initially proposed, this requires the airport to either charge based tenants or drastically increase the fees charged to non-tenants to cover the loss of income. Since the rates will be increasing significantly for most transient aircraft, adding to that burden with a much more substantial increase would be punitive.

There are only about 50 paved tie-downs at Brookhaven Airport. All other tie-downs are grass. MacArthur Airport also has a mix of paved and unpaved tie-downs. The approximately 200 tie-downs in the Echo Ramp of Republic Airport are all paved, which generally generate higher rents than unpaved tie-downs. Furthermore, Republic Airport has a long waiting list for tie-downs, which justifies charging higher rates, and the fixed-base-operators on the airport charge a higher fee for tie-downs. The new fees will still be below the market rate on the airport.

Robert E. Gordon, on behalf of the Republic Airport Pilots Association, states support for the new fee structure and that it is fair to all users.

Eugene J. Pileggi, on behalf of Pilots United At Republic, comments that there has been a rapid growth in the non-flying tenant population and that the airport is required to operate without a profit. In the past ten years, only one non-aviation tenant started business operations at Republic Airport, the Courtyard By Marriot hotel. So while the airport is receiving more rent because of the hotel, this is a minimal increase compared to the increased cost of operating the airport. The proposed increase in rates & charges will not result in the airport making a profit. The increased income will be used to bring the airport back to a state of good repair. Many of the facilities at the airport have not received the preventive maintenance that is needed to keep them operating well. This has resulted in deterioration of the facilities. As an example, about 50% of the taxiways are either in poor or failed condition. The increased income will be used to repair these taxiways.

Bill Dunn, on behalf of the Aircraft Owners and Pilots Association, requests the increase in tie-down fees be phased in over a protracted period. They also request that airport management more regularly reviews rates and charges. We agree that rates and charges should have been reviewed more frequently since 1992 and if increases were instituted about every five years, each increase would have been about 10 percent rather than the 38 percent increase being requested. During the initial comment period pilots expressed a negative reaction to the increase being instituted at one time. That is why the final proposal phased the increase in two steps, one immediately upon adoption of the rule and the second in April, 2008. Since this is the only increase for recreational pilots (landing fees and fuel flowage fees will remain the same), and no increase has occurred in 15 years, we believe increasing the tie-down fees in two steps is the best compromise.

Steven Bellone, Babylon Town Supervisor, comments that landing fees should be in line with New York Port Authority fees (Kennedy, LaGuardia, Newark, and Teterboro airports). His other comment is that increased tie-down fees may discourage recreational pilots from basing at Republic Airport. Several residents also requested higher landing fees for the larger aircraft using Republic Airport. Most suggested a fee structure similar to Kennedy Airport. Their belief is that landing fees lower than the major New York City commercial airports will encourage the aircraft using Kennedy and LaGuardia to use Republic instead. Republic Airport is a general aviation airport. General aviation airports support recreational and business aviation. There is also a limited amount of charter activity at the airport, mostly traveling to casinos or carrying Long Island based sports teams. Kennedy and LaGuardia Airports are almost exclusively commer-

cial airports. Almost no traffic from these airports could use Republic since no commercial traffic is allowed at Republic Airport. Republic Airport currently charges \$0.40 per thousand pounds maximum gross weight. Kennedy Airport charges \$5.35 per thousand pounds maximum gross weight and LaGuardia Airport charges \$6.60 per thousand pounds maximum gross weight. Kennedy and LaGuardia Airports each have about 1,000 operations per day by larger commercial type aircraft. Republic Airport has about 1 operation per day by larger commercial type aircraft operating as charters. If the landing fee were the primary measure of operations, Republic Airport would have a much higher percentage of landings as compared to Kennedy and LaGuardia. The reason this is not the case is; Republic Airport does not have the space or facilities to handle any volume of commercial traffic, the primary origin or destination of the travelers is New York City, and Republic Airport does not have commercial service. Additionally, increasing the maximum fee by 500% will not encourage planes to start using Republic Airport. The fee being proposed by Republic is much more in line with general aviation airports and airports with a mix of general and commercial aviation that have a similar amount of larger aircraft using the facility. The Supervisor also states that recent infrastructure improvements would allow larger jet aircraft to be based and operate out of Republic. However, there have been no improvements at the airport designed for larger, commercial aircraft. All improvements to taxiways and hangars are designed for aircraft with less than 79 foot wingspans. Typically, major commercial airplanes have wingspans larger than 79 feet. In regards to tie-down fees, Republic Airport has a large waiting list. If some of the tenants decided to base their planes elsewhere, there would not be an issue with filling those spots and therefore keeping the maximum amount of smaller, recreational aircraft at the airport. Furthermore, the tie-down fee has not increased in 15 years. In that time inflation is up nearly 50% and the proposed increase is well below that amount. In conjunction with no increase in landing fees for these aircraft and no increase in fuel flowage fees for these aircraft, the additional expense to recreational flyers is minimal.

Frank P. Petrone, Huntington Town Supervisor, is similarly concerned about rates being less than the commercial airports in New York City and the issue of a master plan at Republic Airport. The rates issue is discussed above and a master plan at the airport is not related to rates and charges.

Elie Mystal, Suffolk County Legislator, is opposed to any schedule that will offer an incentive for use by larger aircraft at Republic Airport and requests that the rates reflect the rates at surrounding airports. As discussed above, the airport is increasing the maximum fee for larger aircraft by 500%, which does not offer an incentive for larger aircraft to increase their operations at the airport. Also, airports such as MacArthur Airport, Westchester County Airport, and Gabreski Airport are surrounding airports that have similar amounts of general aviation aircraft operations. Republic Airport will have the largest fees of these airports for the largest aircraft by at least \$100. Therefore, the airport will be charging fees that are higher than the surrounding airports of similar nature.

Rose Hobbins on behalf of the North Massapequa Civic Association, Robert Queen on behalf of the Woodland Civic Association, Mark Neadel on behalf of the Country Pointe at Melville Civic Association, and Nancy Schliwka all want fees similar to Kennedy Airport and most of these respondents request a public meeting for rates and charges. As discussed above, there are very few commercial type aircraft operating at Republic Airport. Increasing the fees by 500% will not make the airport more desirable for these aircraft. In regards to a need for a public meeting, the airport has provided many opportunities for comment by the aviation and non-aviation community. A list of the outreach efforts is described below:

- Meetings on February 14, 2006, May 15, 2006, and June 12, 2006 with the Long Island Business Aviation Association.

- A letter sent on February 23, 2006 to tenants on the airport providing a summary of the proposed rates.

- Meetings with the pilot community on March 15, 2006 where rates and charges was one of the two main topics and again on March 14, 2007 to further discuss the issue.

- Meetings with the "Key Tenants" on the airport on April 5, 2006 and October 4, 2006.

- A letter sent on May 8, 2006 sent to elected officials and over 50 community groups requesting input on the proposed rates.

- Discussion at multiple Republic Airport Commission meetings including April 18, 2006, where the proposal was distributed and comments were requested; June 13, 2006; December 12, 2006, when a resolution was passed by the Commission supporting the proposed changes; and at every commission meeting held this year to update the Commission and community on the progress of the proposal.

-Comments received through 2006 were replied to on December 21, 2006.

-Discussion at multiple Community Working Group Meetings.

-Another mailing informing the community that the proposal was published in the State Register on August 8, 2007 and that comments would be accepted for 45 days. This document was also posted on the airport's web site.

Many of the respondents either attended at least one of these meetings or were sent correspondence by mail. The only comment submitted by the communities concludes that by raising fees 500%, the airport is encouraging aircraft to use the airport. Based on the substantial opportunity provided for comment on this proposal, we have concluded that there has been sufficient outreach and opportunity provided to comment both verbally and in writing and no further public meetings are necessary.

Kevin R. Norton, on behalf of the Residents of East Farmingdale Civic Association, and Helen G. Norjen request rates for jet aircraft be equal to that of Teterboro Airport in New Jersey. While Teterboro Airport is a general aviation airport, it has a different characteristic than the other airports in the metropolitan area that service general aviation aircraft. Teterboro Airport is located about five miles from Manhattan and almost all of its traffic is business jets bringing passengers to and from Manhattan. As a result, Teterboro Airport has about 150,000 jet operations a year and significant delays for aircraft using the airport. By comparison, Republic Airport had about 17,500 jet operations in 2006, or about one-eighth the operations of Teterboro. Other airports handling general aviation aircraft are more representative of Republic Airport and Republic's rates will be higher than those airports when the rates and charges are approved.

Hilda K. Carmen, Eileen Lamdan, Eileen James, Carol Meschlow on behalf of the Concerned Citizens of the Plainview-Old Bethpage Community, and Alissa Sue Taff, on behalf of the Civic Association of Sweet Hollow, request rates and charges should be equal to other facilities. As discussed above, Republic Airport is basing its new rates and charges on other general aviation airports in the area.

Carol Bromm, on behalf of the Daniel Street Civic Association, states that aircraft over 60,000 pounds are not supposed to land at Republic Airport. While this issue was raised and responded to in the first comment period, it should be noted that there is a court injunction against Republic Airport having a requirement for prior permission for aircraft weighing over 60,000 pounds. Therefore, it would be illegal for the airport to deny access to aircraft over 60,000 pounds.

Kevin Doherty, Anthony and Anna Mae Timko, and Barbara Miller requested that rates and charges should be substantially increased. The highest landing fee rate will increase from \$0.40 per thousand pounds to \$2.00 per thousand pounds, a rate 500% higher than the existing rate. This is a substantial increase of the existing fee.

Carl Loiacano, on behalf of the North Lindenhurst Civic Association, sent a copy of a letter from Assemblyman Robert K. Sweeney where he requested an increase in landing fees in the late night/early morning hours. The increase in the landing fees will include nighttime landings. The airport also investigated an additional surcharge for aircraft landing at night, but according to FAA personnel, an additional fee could bring legal action since there are specific criteria for a nighttime surcharge and Republic Airport does not meet that criteria.

Purpose: To clarify who may participate in the HIMP program and define the term collection agency.

Text or summary was published in the notice of proposed rule making, I.D. No. WCB-02-08-00003-P, Issue of January 9, 2008.

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

Text of rule and any required statements and analyses may be obtained from: Cherly M. Wood, Special Counsel to the Chair, Workers' Compensation Board, 20 Park St., Rm. 400, Albany, NY 12207, (518) 486-9564, e-mail: regulations@wcb.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

NOTICE OF ADOPTION

Health Insurers Matching Program

I.D. No. WCB-02-08-00003-A

Filing No. 194

Filing date: Feb. 26, 2008

Effective date: March 12, 2008

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

Action taken: Amendment of section 325-5.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117(1), 13(d) and (h), and 110-a(2)(g)

Subject: Health Insurers Matching Program.