

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Official Station and Limitations of Traveling Expenses

I.D. No. AAC-35-09-00010-P

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

Proposed Action: Amendment of sections 8.2 and 8.13 of Title 2 NYCRR.

Statutory authority: State Finance Law, sections 8 and 109

Subject: Official station and limitations of traveling expenses.

Purpose: To clarify the regulation and correct a typographical error.

Text of proposed rule: Sections 8.2 and 8.13 of Part 8 Title 2 NYCRR are amended to read as follows:

Section 8.2 Official station defined; limitations on traveling expenses imposed thereby

(a) Official station. (1) The official station of every employee shall be designated by the head of the agency. Such designation shall be in the best interests of the State and not for the convenience of an employee or to maximize travel expense reimbursement. Every designation of the official station of an employee shall be subject to review by the Comptroller. If any designation of an official station is found to be inconsistent with the provisions of this Part, a request for travel expense reimbursement based upon such an inconsistent designation may be disapproved by the Comptroller.

(2) No transportation costs will be allowed for travel between any employee's [place of residence] home and his or her official station. The [place of residence] home is considered to be the [city or town in which]

location where the employee primarily resides. [Agency management retains discretion in allowing transportation costs to locations within the proximity of the official station.]

(3) Travel in proximity of official station. When an employee is traveling to or from an alternate work station that is thirty-five miles or less from the employee's official station or the employee's home, the employee will be reimbursed for such travel at the appropriate mileage rate for the mileage between either: (i) the employee's home and the alternate work station; or (ii) the employee's official station and the alternate work station, whichever mileage is less. Agency management retains the discretion to establish a reasonable reimbursement policy providing for higher reimbursement when the employee travels to or from an alternate work station within thirty-five miles of the employee's home or his or her official station.

(b) Subsistence charges. The expense of meals or lodging within the immediate vicinity of the official station will not normally be reimbursed unless it is in the best interest of the State as determined by the head of the agency's finance office and subject to audit by the Comptroller.

Section 8.13 Advance for travel expenses

Generally, agencies are expected to provide each agency traveler with a credit [care] card enabling the traveler to charge traveling expenses directly to the State and to avoid the need for the agency to make an advance payment to a traveler for traveling expenses. However, an agency may advance funds to a traveler for traveling expenses when it is in the best interests of the State to do so, and a traveler shall account for such a payment upon completion of the travel for which the payment was advanced.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua - Legislative Counsel, Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 474-4146, email: jelacqua@osc.state.ny.us

Data, views or arguments may be submitted to: Jamie L. Elacqua, Esq., Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jlelacqua@osc.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Section 109 of the State Finance Law provides that State employees shall receive reimbursement for actual and necessary transportation expenses pursuant to the Comptroller's rules, regulations and guidelines. Additionally, section 8 of the State Finance Law provides that the Comptroller may promulgate regulations as deemed necessary in the performance of his or duties imposed under law.

2. Legislative objectives: Amendment to this regulation saves the State money by clarifying what is reimbursable for employee travel. This is in accordance with the intent of section 109 of the State Finance Law.

3. Needs and benefits: Although this rule applies to all State employees, it is needed to implement a recent agreement between the State and the Public Employees Federation. It will provide a method for calculating the minimum amount the State will reimburse State employees for transportation costs when traveling within thirty-five miles of their home or official work station to an alternate work station.

This rule also makes several technical changes relating to terminology and corrects a typographical error in section 8.13.

4. Costs: There is no readily available method to calculate the costs associated with this rule; however we believe this rule will be cost neutral. State agencies have the discretion to establish a policy providing for higher reimbursement than the amount arrived at utilizing the "lesser mileage" rule and currently some state agencies do so. Additionally, many state employees do not request reimbursement for mileage when traveling to an alternate work location, since the reimbursement amounts are usually minimal. As a result, the potential costs, if any, associated with the rule are not quantifiable.

5. Local government mandates: No duty, service or responsibility is

imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Agencies and employees will be required to record and report information concerning travel within 35 miles of an employee's home or official station however, in most cases, this is current practice.

7. Duplication: There is no duplication.

8. Alternatives: No significant alternatives were considered.

9. Federal standards: Amendment to the regulation does not exceed any minimum standard of the federal government for the same of similar subject area.

10. Compliance schedule: It is estimated that regulated persons will be able to achieve compliance with this rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule: This rule will not impact small businesses or local governments since they are not regulated entities pursuant to this rule.

2. Compliance requirements: There will be no reporting, recordkeeping, or other affirmative acts that a small business or local government will have to undertake to comply with the rule.

3. Professional services: No professional services are needed for small businesses or local government to comply with this rule.

4. Compliance costs: There are no compliance costs associated with this rule for small businesses or local governments.

5. Economic and technological feasibility: Not applicable since small businesses and local governments are not regulated entities pursuant to this rule.

6. Minimizing adverse impact: Not applicable since small businesses and local governments are not regulated entities pursuant to this rule.

7. Small business and local government participation: Not applicable since small businesses and local governments are not regulated entities pursuant to this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule will apply to all State agencies that are located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Agencies and employees will be required to record and report information concerning travel within 35 miles of an employee's home or official station but in most cases this is already being done.

3. Costs: This rule will require State agencies in rural areas to compensate State employees in accordance with the rule.

4. Minimizing adverse impact: This rule will not adversely impact rural areas.

5. Rural area participation: This rule was proposed with input from the Governor's Office of Employee Relations, the Public Employees Federation, and other unions which represent the interests of State employees in both urban and rural areas.

Office of Children and Family Services

EMERGENCY RULE MAKING

Child Care Stimulus Regulations

I.D. No. CFS-35-09-00006-E

Filing No. 947

Filing Date: 2009-08-13

Effective Date: 2009-08-13

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

Action taken: Amendment of sections 404.5, 415.2 and 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410 and Title 5-C

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

Specific reasons underlying the finding of necessity: The emergency adoption of these regulations is necessary to protect the public health, safety and general welfare due to the economic depression gripping, not only the State, but the national economy. With the simultaneous severe downturn of the credit, housing, job and stock markets and expected

unusually slow recovery of each, OCFS expects the need for child care services for those battling the economic depression to only continue to grow for the foreseeable future. Further, without this action OCFS believes that the consequences for those battling the economic depression will only deepen, and only lead to an even slower recovery for the affected families and, as a result, the State economy.

OCFS also believes that by implementing these regulations, it will allow social services districts to meet some of the expanding need for child care services by families imperiled by the economic depression, which will hopefully allow those families to maintain or gain much needed services, training or employment. To be effective and in order to best serve the families in the State that need child care services, OCFS must act quickly and without delay. Any delay in action may only exacerbate the financial crisis facing many families that need child care services in the State. Faced with this stark consequence, OCFS decided it had to act on an emergency basis, to get the needed child care services to those in the affected communities as soon as possible.

Subject: Child Care Stimulus Regulations.

Purpose: To revise the market rates and address the expanded need for child care services caused by the economic downturn.

Text of emergency rule: Subparagraphs (xviii) and (xix) of subparagraph (6) of paragraph (b) of section 404.5 of Title 18 are amended, and a new subparagraph (xx) is added to such paragraph, to read as follows:

(xviii) veterans' assistance payments made to or on behalf of certain Vietnam veterans' natural adult or minor children for any disability resulting from spina bifida suffered by such children; [and]

(xix) veterans' assistance payments made for covered birth defects to or on behalf of the adult or minor children of women Vietnam veterans in service in the Republic of Vietnam during the period beginning on February 28, 1961 and ending on May 7, 1975. Covered birth defects means any birth defect identified by the Veterans' Administration as a birth defect that is associated with the service of women Vietnam veterans in the Republic of Vietnam during the period on February 28, 1961 and ending on May 7, 1975, and that has resulted or may result in permanent physical or mental disability[.]; and

(xx) one-time \$250 payments made under the American Recovery and Reinvestment Act of 2009 to Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits recipients for 10 months from the date the payment was received, including the month payment was received.

A new subparagraph (c) of subparagraph (vii) of subparagraph (3) of paragraph (a) of section 415.2 of Title 18 is added to read as follows:

(c) a program to train workers in an employment field that currently is or is likely to be in demand in the near future, if the caretaker documents that he or she is a dislocated worker and is currently registered in such a program, provided that child care services are only used for the portion of the day the caretaker is able to document is directly related to the caretaker engaging in such a program. For the purposes of this provision, a dislocated worker is any person who: has been terminated or laid off from employment; has received a notice of termination or layoff from employment that will occur within six months of such notice; or was self-employed but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

Subparagraph (1) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

(1) Effective [October 1, 2007] *May 15, 2009*, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Subparagraph (2) of paragraph (j) of section 415.9 of Title 18 is renumbered as subparagraph (3) and a new subparagraph (2) is added to read as follows:

(2) *Upon the effective date of these regulations, there will be two market rates for the legally-exempt family child care and in-home child care categories, a standard market rate and an enhanced market rate. The standard market rate for legally-exempt family child care and in-home child care categories will be 65 percent of the applicable registered family day care market rate. The enhanced market rate for legally-exempt family child care and in-home child care categories will be 70 percent of the applicable registered family day care market rate. The enhanced market rate will apply to those caregivers of legally-exempt family child care and in-home child care who have provided notice to, and have been verified by, the applicable legally-exempt caregiver enrollment agency or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, as having completed ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the social services law. A social services district has the option, if it so chooses in the child care portion of its child and family services plan, to*

increase the enhanced market rate for eligible legally-exempt family child care and in-home child care categories to up to 75 percent of the applicable registered family day care market rate: (i) for all such providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Re-numbered subparagraph (3) of paragraph (j) of section 415.9 of Title 18 is amended and reads as follows:

[(2)] (3) The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

- Group A: Nassau, Putnam, Rockland, Suffolk, Westchester
- Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren
- Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
- Group D: Albany, Dutchess, Orange, Ulster
- Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester
DAY CARE CENTER

	Age of Child			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$314	\$280	\$250	\$262
Exceptions:				
Westchester	\$378	\$331	\$274	—
DAILY	\$70	\$62	\$55	\$54
Exceptions:				
Nassau	\$75	\$77	—	—
Suffolk	\$80	\$70	—	—
Westchester	\$75	\$70	\$58	—
PART-DAY	\$47	\$41	\$37	\$36
Exceptions:				
Nassau	\$50	\$51	—	—
Suffolk	\$53	\$47	—	—
Westchester	\$50	\$47	\$39	—
HOURLY	\$8.88	\$9.48	\$8.81	\$9.17

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$250	\$250	\$250	\$250
Exceptions:				
Putnam	\$300	\$275	\$278	—
Suffolk	\$260	\$263	—	—
Westchester	\$300	—	\$331	—
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.89	\$7.75	\$8.00

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$260	\$255	\$250	\$250

Exceptions:				
Rockland	—	—	\$261	—
Westchester	\$275	\$275	\$266	\$276
DAILY	\$58	\$56	\$55	\$56
Exceptions:				
Westchester	—	\$60	\$60	\$60
PART-DAY	\$39	\$37	\$37	\$37
Exceptions:				
Westchester	—	\$40	\$40	\$40
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$262
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$9.17

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$163	\$163	\$163	\$163
DAILY	\$36	\$36	\$36	\$33
PART-DAY	\$24	\$24	\$24	\$22
HOURLY	\$5.20	\$5.78	\$5.04	\$5.20

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	[\$188] \$175	[\$188] \$175	[\$188] \$175	[\$188] \$175
DAILY	[\$42] \$39	[\$42] \$39	[\$41] \$39	[\$38] \$35
PART-DAY	[\$28] \$26	[\$28] \$26	[\$27] \$26	[\$25] \$23
HOURLY	[\$6.00] \$5.60	[\$6.67] \$6.22	[\$5.81] \$5.43	[\$6.00] \$5.60

GROUP B COUNTIES:

Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren
DAY CARE CENTER

	AGE OF CHILD			
	Under 1 1/2	1 1/2-2	3-5	6-12
WEEKLY	\$210	\$200	\$183	\$177
Exceptions:				
Saratoga	—	\$211	\$196	—
DAILY	\$50	\$48	\$43	\$38
Exceptions:				
Erie	—	—	\$44	—
Monroe	\$55	\$52	\$48	—
PART-DAY	\$33	\$32	\$29	\$25
Exceptions:				
Monroe	\$37	\$35	\$32	—

REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
HOURLY	\$7.74	\$7.78	\$6.89	\$7.74
WEEKLY	\$150	\$150	\$145	\$136
DAILY	\$34	\$35	\$31	\$31
PART-DAY				
PART-DAY				
HOURLY				
GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$170	\$165	\$160	\$160
DAILY	\$38	\$35	\$35	\$33
PART-DAY				
HOURLY				
SCHOOL AGE CHILD CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.74
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE STANDARD RATE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$98	\$98	\$94	\$88
DAILY	\$22	\$23	\$20	\$20
PART-DAY	\$15	\$15	\$13	\$13
HOURLY	\$3.25	\$3.36	\$3.25	\$2.89
LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE ENHANCED RATE				

AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	[\$113] \$105	[\$113] \$105	[\$109] \$102	[\$102] \$95
DAILY	[\$26] \$24	[\$26] \$25	[\$23] \$22	[\$23] \$22
PART-DAY				
PART-DAY				
HOURLY				
GROUP C COUNTIES:				
Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates				
DAY CARE CENTER				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$171	\$165	\$155	\$136
PART-DAY				
PART-DAY				
HOURLY				
REGISTERED FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
PART-DAY				
PART-DAY				
HOURLY				
GROUP FAMILY DAY CARE				
AGE OF CHILD				
	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$140	\$130	\$126	\$125
PART-DAY				
PART-DAY				
HOURLY				

PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$136
Exceptions:				
Niagara	—	—	—	\$138
DAILY	\$0	\$0	\$0	\$31
PART-DAY	\$0	\$0	\$0	\$21
HOURLY	\$0	\$0	\$0	\$5.23

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$88	\$85	\$81	\$81
DAILY	\$20	\$20	\$20	\$20
PART-DAY	\$13	\$13	\$13	\$13
HOURLY	\$2.07	\$1.95	\$1.95	\$1.95

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	[\$101] \$95	[\$98] \$91	[\$94] \$88	[\$94] \$88
DAILY	[\$23] \$22	[\$23] \$22	[\$23] \$21	[\$23] \$21
PART-DAY	\$15	\$15	[\$15] \$14	[\$15] \$14
HOURLY	[\$2.39] \$2.23	[\$2.25] \$2.10	[\$2.25] \$2.10	[\$2.25] \$2.10

GROUP D COUNTIES:
Albany, Dutchess, Orange, and Ulster
DAY CARE CENTER

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$227	\$210	\$195	\$185
Exceptions:				
Dutchess	\$250	\$225	\$197	\$223
Orange	—	\$220	—	—
DAILY	\$51	\$47	\$44	\$44
Exceptions:				
Albany	—	\$50	\$45	—
PART-DAY	\$34	\$31	\$29	\$29
Exceptions:				
Albany	—	\$33	\$30	—
HOURLY	\$7.75	\$7.46	\$7.24	\$7.34

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$191	\$185	\$175	\$175
Exceptions:				

Dutchess	—	—	—	\$180
Orange	\$200	\$200	\$200	\$200
DAILY	\$44	\$41	\$38	\$38

Exceptions:

Dutchess	—	\$45	\$44	\$45
Orange	—	—	\$40	\$44
PART-DAY	\$29	\$27	\$25	\$25
Exceptions:				
Dutchess	—	\$30	\$29	\$30
Orange	—	—	\$27	\$29
HOURLY	\$7.00	\$6.00	\$6.00	\$6.10

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$200	\$194	\$180	\$178
Exceptions:				
Orange	\$225	—	—	\$189
DAILY	\$45	\$45	\$43	\$40
Exceptions:				
Orange	\$54	—	\$45	\$44
PART-DAY	\$30	\$30	\$29	\$27
Exceptions:				
Orange	\$36	—	\$30	\$29
HOURLY	\$7.50	\$7.00	\$7.00	\$7.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
Exceptions:				
Dutchess	—	—	—	\$223
DAILY	\$0	\$0	\$0	\$44
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.34

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *STANDARD RATE*

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	\$124	\$120	\$114	\$114
DAILY	\$29	\$27	\$25	\$25
PART-DAY	\$19	\$18	\$17	\$17
HOURLY	\$4.55	\$3.90	\$3.90	\$3.98

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE *ENHANCED RATE*

AGE OF CHILD

	Under 1 ^{1/2}	1 ^{1/2} -2	3-5	6-12
WEEKLY	[\$143] \$134	[\$139] \$130	[\$131] \$123	[\$131] \$123
DAILY	[\$33] \$31	[\$31] \$29	[\$29] \$27	[\$29] \$27
PART-DAY	[\$22] \$21	[\$21] \$19	[\$19] \$18	[\$19] \$18
HOURLY	[\$5.25] \$4.90	[\$4.50] \$4.20	[\$4.50] \$4.20	[\$4.59] \$4.27

GROUP E COUNTIES:
Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$370	\$255	\$224	\$185
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$45	\$33	\$33
HOURLY	\$17.64	\$17.00	\$16.21	\$12.18

REGISTERED FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$141
DAILY	\$36	\$39	\$35	\$31
PART-DAY	\$24	\$26	\$23	\$21
HOURLY	\$16.00	\$11.11	\$13.20	\$13.06

GROUP FAMILY DAY CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$175	\$160	\$150
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$16.41	\$15.17	\$11.73	\$17.14

SCHOOL AGE CHILD CARE
AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$185
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$12.18

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME
CHILD CARE STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	\$104	\$98	\$98	\$92
DAILY	\$23	\$25	\$23	\$20
PART-DAY	\$15	\$17	\$15	\$13
HOURLY	\$10.40	\$7.22	\$8.58	\$8.49

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME
CHILD CARE ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½-2	3-5	6-12
WEEKLY	[\$120] \$112	[\$113] \$105	[\$113] \$105	[\$106] \$99
DAILY	[\$27] \$25	[\$29] \$27	[\$26] \$25	[\$23] \$22
PART-DAY	[\$18] \$17	[\$19] \$18	\$17	\$15
HOURLY	[\$12.00] \$11.20	[\$8.33] \$7.78	[\$9.90] \$9.24	[\$9.80] \$9.14

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the

statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$378
DAILY	\$80
PART-DAY	\$53
HOURLY	\$17.64

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 November 10, 2009.

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant (NYSCCBG). It includes provisions regarding the use of funds by local social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. OCFS is required to specify certain NYSCCBG requirements in regulation. Section 410-w(1)(e) permits social services districts to provide child care subsidies to those families with incomes up to 200 percent of the state income standard that the social services district designates in its Child and Family Services Plan as eligible for child care assistance in accordance with criteria established by OCFS. Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rate that will establish a ceiling for State and federal reimbursement for payments made under the NYSCCBG.

2. Legislative objectives:

The regulations support the legislative objectives underlying the child care subsidy programs to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide each social services district with greater local flexibility to provide child care services in the manner that best meets its needs during the current difficult fiscal times.

3. Needs and benefits:

The regulations address the federal requirement that one-time payments disbursed under the American Recovery and Reinvestment Act of 2009 (AARA) to recipients of Social Security, Supplemental Security Income (SSI), Railroad Retirement Benefits and Veterans Disability Compensation or Pension Benefits be excluded as income for determining eligibility for any programs in receipt of federal funds.

The changes also address the expanded need for child care services by families affected by the extensive loss of jobs and employment opportunities resulting from the significant economic downturns of the state and national economies. The regulations benefit needy families by providing social services districts with an additional option to provide child care services to low-income families where the caretaker(s) is displaced from work and is participating in a training program needed to obtain employment in a new field. Social services districts may choose to provide subsidies to these dislocated workers so that they can obtain safe and affordable child care while they are retrained in skills that will enable them to rejoin the workforce in new employment.

Additionally, some districts have indicated that, in these difficult economic times, more families could be served without a negative impact on family access to child care if the enhanced child care market rate for legally-exempt family and in-home child care providers was lowered. Currently, there are two child care market rates established for legally-exempt family and in-home child care providers. One, the enhanced market rate, based on a 75 percent differential applied to the child care market

rates established for registered family day care. The 75 percent reflects an incentive to legally-exempt providers to pursue a minimum of ten hours of approved training. Two, the standard market rate, based on a 65 percent differential applied to the child care market rates established for registered family day care. The 65 percent applies to legally-exempt family and in-home child care providers that have not obtained ten hours of training annually.

These regulations establish the enhanced market rate for legally-exempt family and in-home providers at a 70 percent differential applied to the child care market rates established for registered family day care so that social services districts have an ability to serve more families. However, the regulations allow those social services districts that want to pay a higher enhanced market rate the option to pay up to 75 percent of the applicable registered family day care market rate: (i) for all legally-exempt family and in-home providers; (ii) for those providers who were receiving the enhanced rate on the date of the regulations but only for the remainder of their current one-year enrollment period; or (iii) for those providers who were receiving the enhanced rate on the date of the regulations for the remainder of the time they remain enrolled and continue to meet the ten hour annual training requirement.

Neither social services districts nor child care providers should have to hire additional professional staff to implement these regulations.

4. Cost:

It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

5. Local government mandates:

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. If a district does not choose to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced market rate, the district must send a notice of the change in the payment rate to the families receiving services from such providers.

6. Paperwork:

A social services district that chooses to implement either of the new options provided under the regulations must submit an amendment to its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The only alternative would be to not expand the delivery of child care services to needy families. This would adversely impact federal and State initiatives to support needy families affected by the recession and to stimulate the economy.

9. Federal standards:

The regulations are consistent with applicable federal regulations. The State remains in compliance with 45 CFR 98.43(a) and (b)(2) and (3) which require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families.

10. Compliance schedule:

These provisions must be implemented on the effective date of the regulations.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The exclusion of the one-time payment of \$250 under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain recipients for the determination of eligibility for social services programs, which receive federal funds, will not impact small businesses or local governments.

The expansion of categories of families that can be provided with child care subsidies would benefit employers including small businesses, as more families would be able to seek and accept employment. Also, local governments would benefit in the decreased dependence on temporary assistance as more families become or remain employed.

Legally-exempt family and in-home providers that have obtained ten

hours of training and currently are receiving the enhanced rate of 75 percent of the registered family rate represent only a small fraction of legally-exempt providers caring for children whose families receive child care subsidies. These providers would be minimally impacted to the extent that a social services district does not select to continue to provide them with the enhanced rate of 75 percent of the registered family rate.

2. Compliance requirements:

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan. If a district does not choose to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced market rate, the district will need to send notice of the change in the payment rate to the families receiving services from such providers.

3. Professional services:

Neither social services districts nor legally-exempt family or in-home child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

5. Economic and technological feasibility:

The social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:

The regulatory changes were discussed with a workgroup of local social services districts, including rural districts, for advice on potential impact.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts (districts) located in rural areas of the State and the child care providers located in those districts.

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

All social services districts must not consider the one-time federal AARA payment when considering whether a family is eligible for services. In addition, a social services district that chooses to provide child care services to dislocated workers and/or to pay an enhanced market rate for legally-exempt providers of family child care or in-home child care above 70 percent of the registered family child care rate will have to amend the child care portion of its Child and Family Services Plan. The Office has developed a template that a district may use if it chooses to amend its Plan. If a district does not choose to continue to pay 75 percent of the registered family child care rate for legally-exempt providers that are currently receiving the enhanced market rate, the district must send a notice of the change in the payment rate to the families receiving services from such providers.

Neither social services districts nor legally-exempt family or in-home child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

It is not anticipated that these regulations will result in any additional costs to the State or social services districts. All the social services districts received their allocations for federal and State funds under the New York State Child Care Block Grant for State fiscal year 2009-10. These funds are available to each district and the district may choose to serve optional categories of eligible individuals with the funds allocated to them. Social services districts are required to provide child care services to the optional categories of low-income families only to the extent that they have funds available to provide such services. Some social services districts also

received preliminary estimates of their allocations of the additional federal child care subsidy funds made available under AARA.

4. Minimizing adverse impact:

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

5. Rural area participation:

The regulatory changes were discussed with a workgroup of local social services districts, including rural districts, for advice on potential impact.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State. A full job impact statement has not been prepared for these regulations, due to the fact that these amendments will not result in the loss or creation of any jobs.

These regulations will have a positive impact on jobs or employment opportunities. The regulations will improve the ability of low-income workers who have been displaced from the workforce to search for and be eligible for employment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure Requirements for Registered Professional Nurses and Licensed Practical Nurses and Certified Nurse Practitioners

I.D. No. EDU-35-09-00009-P

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

Proposed Action: Amendment of sections 64.1, 64.2 and 64.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6507(2), 6905(2) and (4), 6906(2) and (4), 6910(1) and (5)

Subject: Licensure requirements for registered professional nurses and licensed practical nurses and certified nurse practitioners.

Purpose: Clarify education and examination requirements for licensure.

Text of proposed rule: 1. Section 64.1 of the Regulations of the Commissioner of Education is amended, effective December 10, 2009, as follows:

§ 64.1 Professional study of nursing.

(a) *As used in this section, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accreditation at the postsecondary level, applying its criteria for granting accreditation in a fair, consistent, and nondiscriminatory manner, such as an agency recognized for this purpose by the United States Department of Education.*

[(a)] (b) Registered professional nursing. To meet the professional education requirement, the applicant shall have graduated from:

(1) a program in nursing registered by the department, *accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of a registered or accredited program* as preparation for practice as a registered professional nurse;

(2) *for applicants applying prior to September 1, 2011, a program in nursing approved by the licensing authority in another state, territory or possession of the United States as preparation for practice as a registered professional nurse; or*

(3) a general nursing course of at least two academic years in a country outside the United States and its territories or possessions that is satisfactory to the department and that the licensing authority or appropriate governmental agency of said country certifies to the department as being preparation for practice as a registered professional nurse. [For issuance of a limited permit, an applicant shall obtain a score satisfactory to the department on a proficiency examination selected by the department as evidence of equivalent training, if the applicant's nursing education was obtained in a school of nursing outside the United States and its territories and has not been determined by the department to be equivalent in quality and scope to a program of nursing education registered by the department.]

[(b)] (c) Licensed practical nursing. To meet the education require-

ments, the applicant shall have graduated from high school or its equivalent, and shall have:

(1) graduated from a program in nursing registered by the department, *accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of a registered or accredited program as preparation for practice as a licensed practical nurse;*

(2) *for applicants applying for licensure prior to September 1, 2010, graduated from a program in nursing approved by the licensing authority in another state, territory, or possession of the United States as preparation for practice as a licensed practical nurse; or*

[(2) completed preparation in a program determined by the department to be equivalent to the programs described in paragraph (1) of this subdivision;]

(3) graduated from a program in practical nursing of at least nine months in a country outside the United States and its territories or possessions, which program is satisfactory to the department and which program the licensing authority of said country certifies to the department as being preparation for practice as a licensed practical nurse[; or

(4) graduated from a general nursing course in a country outside the United States and its territories that is satisfactory to the department and that the licensing authority of said country certifies to the department as being preparation for practice as a professional nurse].

2. Section 64.2 of the Regulations of the Commissioner of Education is amended, effective December 10, 2009, as follows:

§ 64.2 Licensing examinations.

(a) Registered professional nursing. [(1) All parts of the registered professional nurse licensing examination shall be taken each time the candidate is examined.] *Each candidate for licensure as a registered professional nurse shall pass an examination that is acceptable to the State Board for Nursing.*

[(2) Each candidate for licensure as a registered professional nurse examined after November 22, 1961 shall have taken an examination acceptable to the State Board for Nursing. Except as provided in section 64.3 of this Part, each candidate examined after May 31, 1974 shall have taken the same examination on the same dates such examination was given in this State.

(3) The registered professional nurse licensing examination results shall be reported as a single score. Applicants who have passed a part or parts of the registered professional nurse licensing examination prior to July 1, 1982 may not retain credit for such part or parts beyond that date.]

(b) Licensed practical nursing. [(1) A candidate for licensure as a practical nurse shall pass an examination acceptable to the State Board for Nursing. Each candidate examined after September 11, 1974 shall have taken the same examination on the same dates such examination was given in this State.] *Each candidate for licensure as a licensed practical nurse shall pass an examination that is acceptable to the State Board for Nursing.*

[(2) The passing score as determined by the State Board for Nursing for the licensed practical nurse licensing examination shall be reported as a single score.]

3. Subdivision (d) of section 64.4 of the Regulations of the Commissioner of Education is repealed and subdivision (e) is relettered as subdivision (d), effective December 10, 2009.

Text of proposed rule and any required statements and analyses may be obtained from: Christine Moore, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 148 EB, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Data, views or arguments may be submitted to: Frank Munoz, Associate Commissioner, New York State Education Department, 2nd Floor, West Wing, Education Bldg., Albany, NY 12234, (518) 473-4921, email: opopr@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Subdivision (2) of section 6905 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding the education requirements for licensure as a registered professional nurse.

Subdivision (4) of section 6905 of the Education Law requires applicants for licensure as a registered professional nurse to pass an examination satisfactory to the State Board for Nursing and in accordance with regulations of the Commissioner.

Subdivision (2) of section 6906 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding the education requirements for licensure as a licensed practical nurse.

Subdivision (4) of section 6906 of the Education Law requires applicants for licensure as a licensed practical nurse to pass an examination satisfactory to the State Board for Nursing and in accordance with regulations of the Commissioner.

Subparagraph (iii) of paragraph (c) of subdivision (1) of section 6910 of the Education Law authorizes the Commissioner of Education to promulgate regulations establishing alternative criteria for certification as a nurse practitioner.

Subdivision (5) of section 6910 of the Education Law authorizes the Commissioner of Education to promulgate regulations regarding certificates for nurse practitioner practice.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by assuring that only those who have received an adequate nursing education are licensed and requiring that applicants for licensure as registered professional nurses or licensed practical nurses pass an examination acceptable to the State Board for Nursing. The proposed amendment also makes several technical amendments relating to the examination requirements for licensure as a registered professional nurse and licensed practical nurse and certification as a nurse practitioner.

3. NEEDS AND BENEFITS:

Existing regulations authorize the Department to accept the completion of nursing education completed in a licensure qualifying program registered by the Department in satisfaction of the professional education requirements for licensure as a registered professional nurse (RN) or as a licensed practical nurse (LPN). The proposed amendment authorizes the Department to accept education completed in a nursing program accredited by an accrediting agency acceptable to the Department, or a program determined by the department to be the equivalent of a registered or accredited program and eliminates current regulatory provisions that accept, for licensure purposes, graduation from a nursing program approved by the licensing authority of another state, territory or possession of the United States as preparation for practice as a registered professional nurse or licensed practical nurse.

The State Board for Nursing has determined that the standards imposed by some licensing authorities are not adequately preparing nurses for practice and that such standards are not the substantial equivalent of nursing programs registered by the Department. The proposed amendment does, however, continue the existing authority of the Department to accept as professional education, completion of a general nursing course of at least two academic years in a country outside the United States and its territories or possessions that is satisfactory to the Department and that the licensing authority or appropriate governmental agency of said country certifies to the department as being preparation for practice as a registered professional nurse. For licensure as a practical nurse, the Department may accept as professional education, graduation from a practical nursing program of at least nine months in length in a country outside the United States and its territories that is satisfactory to the Department and that the licensing authority of said country certifies to the Department as being preparation for practice as a licensed practical nurse.

The proposed amendment also requires that any applicant seeking licensure as a registered professional nurse or a licensed practical nurse take a licensing examination acceptable to the State Board for Nursing and eliminates current provisions relating to the manner in which the exam is administered because these provisions no longer apply.

The proposed amendment also makes technical corrections to delete current provisions related to limited permits and a proficiency exam, which have not been in effect for at least 20 years, and provisions relating to alternative criteria for the certification of nurse practitioners in a second specialty, which are not available to applicants applying for certification after September 15, 2006.

(b) Cost to local government: None.

(c) Cost to private regulated parties: None.

(d) Costs to the regulatory agency: As stated in "Costs to State Government," the proposed amendment does not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment does not impose any additional paperwork requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards regarding the education of nursing, licensing that are violated by these proposed changes.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment relates to professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse and the certification of nurse practitioners. The purpose of the proposed amendment is to clarify what professional education is adequate for the licensure of registered professional nurses and licensed practical nurses and to make technical amendments to the examination requirements for licensure due to changes in the manner in which the examination is administered. The proposed amendment also eliminates the regulatory provisions relating to alternative criteria for certification in additional specialty areas of practice because these requirements are not available to applicants who apply for certification after September 15, 2006.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will have an affect on candidates that live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment makes changes in the professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse. The proposed amendment also makes technical amendments to the examination requirements for licensure as a registered professional nurse or a licensed practical nurse due to changes in the manner in which the examination is administered and eliminates language that is no longer relevant relating to limited permits and a proficiency examination and alternative criteria for nurse practitioners to be able to obtain licensure in a second specialty.

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

The proposed amendment does not impose a need for professional services and does not establish additional reporting or recordkeeping requirements on applicants for licensure in nursing, including those located in rural areas of New York State.

3. COSTS:

The proposed amendment will not result in any additional costs beyond those currently imposed by statute or regulation.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes changes in the professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse. Because of the nature of the proposed amendment, establishing different alternatives for registered professional nurses and licensed practical nurses located in rural areas of New York State would not be appropriate.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments on the proposed amendment from the New York State Nurses Association and the State Board for Nursing, which includes members who live and work in all areas of New York State, including rural areas of the State.

Job Impact Statement

The proposed amendment relates to professional education and examination requirements for licensure as a registered professional nurse or a licensed practical nurse and the certification of nurse practitioners. The purpose of the proposed amendment is to clarify what professional education is adequate for the licensure of registered professional nurses and licensed practical nurses and to make technical amendments to the examination requirements for licensure due to changes in the manner in which the examination is administered. The proposed amendment also eliminates the regulatory provisions relating to alternative criteria for certification in additional specialty areas of practice because these requirements are not available to applicants who apply for certification after September 15, 2006.

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 was not prepared.

State Board of Elections

NOTICE OF ADOPTION

Disclosure of Campaign Financial Statements

I.D. No. SBE-22-09-00004-A

Filing No. 951

Filing Date: 2009-08-13

Effective Date: 2009-09-02

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

Action taken: Amendment of section 6200.1 of Title 9 NYCRR.

Statutory authority: Election Law, section 3-102(1)

Subject: Disclosure of Campaign Financial Statements.

Purpose: To prevent duplicate filing of qualifying campaign financial statements.

Text or summary was published in the June 3, 2009 issue of the Register, I.D. No. SBE-22-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: William J. McCann, Jr., New York State Board of Elections, 40 Steuben Street, Albany, NY 12207, (518) 474-2063, email: wmccann@elections.state.ny.us

Assessment of Public Comment

Two public comments were received. Both were favorable to the regulation amendment, saying it is logical and timesaving.

Department of Health

EMERGENCY RULE MAKING

Health Care Personnel Influenza Vaccination Requirements

I.D. No. HLT-35-09-00007-E

Filing No. 948

Filing Date: 2009-08-13

Effective Date: 2009-08-13

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

Action taken: Addition of Subpart 66-3 and amendment of sections 405.3, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2166, 2800, 2830(2), 3612 and 4010(4)

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

Specific reasons underlying the finding of necessity: Transmission of influenza disease from health care personnel to patients is a serious and significant patient safety issue because influenza disease is a leading cause of morbidity and mortality among hospitalized patients and those admitted to other types of health care facilities. This fact, plus the new threat posed to health and safety by the novel H1N1 influenza A strain that is circulating in New York State, puts a need for emergency regulations requiring that all health care personnel (HCP) be immunized against influenza annually into focus for the upcoming influenza season. Yearly, a significant threat to the health of patients, HCP themselves, and local communities exists that will be magnified in the upcoming season by the ongoing pandemic. The sooner that the emergency regulations are in place the sooner lives will be saved and other complications of influenza disease avoided.

Each year, influenza causes significant morbidity and mortality in the United States, especially among the vulnerable populations in hospitals and other health care facilities. Complications of influenza may include bacterial or viral pneumonia; dehydration; the worsening of chronic medical conditions, such as congestive heart failure, asthma, or diabetes; or

death. The risk for complications, hospitalization, and death from influenza are higher among persons 65 years of age or older, young children, and persons with chronic medical conditions. Influenza is the sixth leading cause of death among adults in the United States, killing an average of 36,000 Americans annually and causing more deaths than all other vaccine-preventable diseases combined.

Recognizing the need to protect patients, the Centers for Disease Control and Prevention (CDC) has recommended influenza vaccination for HCP since 1981. In February 2006, the Healthcare Infection Control Practices Advisory Committee (HICPAC) and the Advisory Committee on Immunization Practices (ACIP) jointly recommended that all HCP be vaccinated annually against influenza. In addition, the Infectious Disease Society of America, the Society of Hospital Epidemiologist of America, the American Medical Association, the American Academy of Family Practitioners, the American Academy of Pediatrics, the Association of Perioperative Nurses, the American Nurses Association, and multiple individual health care institutions have all supported and called for all HCP to receive influenza immunization yearly. Facilities that employ HCP have been strongly encouraged to provide vaccine to their staff by using evidence-based approaches that maximize the use of influenza vaccination.

Yet, despite the documented and positive effects of immunizing HCP against influenza on patient outcomes, HCP absenteeism, and reducing influenza infection among staff, and the fact that influenza transmission and outbreaks in healthcare facilities are well documented, national vaccination coverage rates among HCP continue to remain low, at around 42%. Even among health care centers utilizing highly organized and aggressive campaigns and incentives to promote immunization of HCP, 30-50% continue to remain unvaccinated. In 2000, New York State enacted Public Health Law Article 21A requiring long term care facilities to offer influenza vaccine to all residents and HCP and to document refusal of the vaccine. As seen in New York State Department of Health (NYSDOH) survey data, while the overall vaccination of residents has improved to 80% or greater in most facilities, the response among HCP has been poor.

Because of the serious consequences of nosocomial influenza outbreaks, as well as the impact on health care workers and the economic impact on health care systems, it is imperative that action be taken to ensure high health care worker vaccination rates. HCP absenteeism can result in serious staffing shortages during the influenza season, at a time when emergency room visits and admissions due to influenza-related illness are greatly increased. The benefit of an immunized staff decreases direct and indirect costs to health care facilities. The United States and New York State are entering the 2009-2010 influenza season this Fall facing an emergency situation, with the potential circulation of both seasonal influenza viruses and the pandemic novel H1N1 influenza strain. Health care resources will be strained to the breaking point while addressing the burden of treating large numbers of patients ill with influenza. HCP need to be protected so that they will not become ill, transmit influenza to patients, their families and their communities, and also so that the health care system can be preserved and not collapse due to high degrees of HCP absenteeism. The urgency of this situation necessitates immediate emergency regulatory action to allow sufficient time for hospitals to arrange for the purchase and administration of influenza vaccine for the upcoming influenza season. This will also give health care facilities time to prepare for an extended novel H1N1 influenza vaccination campaign, in tandem with seasonal vaccination efforts.

Immunizing the staff of health care facilities against influenza will promote the health and safety of the patients they serve and support efficient provision of services during the pandemic. The NYSDOH has strongly and continuously advocated that all HCP should receive annual influenza vaccination(s). Annual influenza morbidity and mortality necessitates requiring influenza vaccination of all HCP in hospitals and other health care facilities on an emergency basis, so that lives can be saved. This is an even more urgent imperative during the current novel H1N1 influenza pandemic.

Summary of Key Points

- The burden of influenza disease is very high in health care facilities and will increase due to the current pandemic.
- Influenza vaccination of HCP is a patient and community safety issue and protects vulnerable hospitalized patients during seasonal influenza seasons and during the pandemic.
- HCP need to be vaccinated to control influenza in health care facilities even if patient vaccination rates are high.
- During the pandemic, it may be recommended that HCP receive influenza vaccination as the first line of protection of the public.
- Seasonal and pandemic influenza vaccination can be cost saving to health care facilities by decreasing absenteeism, improving patient outcomes, decreasing error rates, increasing quality of care, and decreasing personal and organizational expenditures.
- Voluntary programs to increase HCP influenza immunization rates have not resulted in adequate immunization levels.

Subject: Health Care Personnel Influenza Vaccination Requirements.

Purpose: To prevent transmission of influenza disease from health care personnel (HCP) to vulnerable health care facility residents.

Text of emergency rule: Part 66 is amended to add Subpart 66-3, as follows:

Title: Subpart 66-3 - Health care facility personnel - influenza vaccination requirements

Section 66 - 3.1 - Definitions

(a) "Medically contraindicated" means a physician licensed to practice in the State of New York or a nurse practitioner certified to practice in the State of New York certifies that influenza vaccine(s) should not be administered to an individual because it would be detrimental to the individual's health. Medical contraindication shall continue until such immunization is found no longer to be detrimental to the individual's health. Nationally recognized up-to-date guidance for medical contraindications and recommendations for vaccination(s) for influenza will be posted on the New York State Department of Health immunization page website and will be updated regularly.

(b) "Personnel" means all persons employed or affiliated with a healthcare facility, whether paid or unpaid, including but not limited to employees, members of the medical staff, contract staff, students, and volunteers, who either have direct contact with patients or whose activities are such that if they were infected with influenza, they could potentially expose patients, or others who have direct contact with patients, to influenza; provided, however, that the provisions of this subpart shall not apply to those individuals employed or affiliated with a facility that have neither direct contact with patients nor activities that could potentially expose patients or others who have direct contact with patients. This shall include, but not be limited to, any individual whose (i) job site is physically separated from patient care locations, and who has no direct contact with patients; and (ii) job activities would result in no more than infrequent and/or incidental direct contact with others who might have direct contact with patients; provided, that such direct contact is unlikely to transmit influenza. Examples include, but are not limited to, administrative, data entry, and building or property maintenance functions that meet the criteria of items (i) and (ii).

(c) "Health Care Facilities" include general hospitals as defined in section 2801 of the Public Health Law, diagnostic and treatment centers as defined in section 751.1 of part 751 of this Title, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs and licensed home care services agencies as defined in section 3602 of the Public Health Law, and hospices as defined in section 4002 of the Public Health Law.

Section 66 - 3.2 - Health care facility - personnel influenza immunization requirements

Every health care facility in this state shall notify all personnel of the requirement and require that personnel be immunized against influenza virus(es) as a precondition to employment and on an annual basis. Such influenza vaccination(s) must be in accordance with the national recommendations in effect at the time of vaccination(s), unless the commissioner has determined that there is not an adequate supply of vaccine. If the commissioner determines the vaccine supplies are not adequate given the numbers of personnel to be vaccinated or vaccine(s) are not reasonably available, the commissioner may suspend the requirement(s) to vaccinate and/or change the annual deadline for such vaccination(s), as established in this subpart.

Section 66 - 3.3 - Health care facility requirements, existing personnel

Each health care facility must provide or arrange for influenza vaccination(s), at no cost to its personnel, either at the facility or elsewhere. Personnel may choose to receive influenza vaccination(s) from a source other than that arranged for by the facility and provide documentation to the facility as described in Section 66 - 3.5. Annual influenza vaccination(s) and the documentation thereof shall take place no later than November thirtieth of each year.

66 - 3.4 - Health care facility requirements, new personnel

Personnel newly entering into service at a facility after November thirtieth but before April first of each year shall have his or her status for influenza vaccination(s) determined by the facility and, if found to be deficient, the facility shall provide or arrange for the necessary vaccination(s) at no cost to the new personnel. Instead of obtaining influenza vaccination(s) from the facility, personnel may choose to receive influenza vaccination(s) from a source other than that arranged for by the facility and provide documentation as described in Section 66 - 3.5.

Section 66 - 3.5 - Documentation

The health care facility shall document the annual vaccination(s) against influenza virus of all personnel in their personnel files, including the date, site of administration, type of vaccine, dose, manufacturer and lot number of the vaccine, reactions if any, vaccine information statement given, and the name of the person administering the vaccines. If any

personnel receive influenza vaccination(s) from other than facility staff, the facility shall document in the personnel file the date, type of vaccine, dose and name of the person administering the vaccine.

Section 66 - 3.6 - Exceptions

No personnel shall be required to receive an influenza vaccine if the vaccine is medically contraindicated for that individual. Nationally recognized up-to-date guidance for medical contraindications and recommendations for vaccination(s) for influenza will be posted on the New York State Department of Health immunization page website and will be updated regularly. The facility shall, on a case-by-case basis, evaluate what steps those who are not vaccinated pursuant to this section must take to reduce the risk of transmitting influenza to patients.

Section 66 - 3.7 - Reporting Requirements

Each facility shall collect aggregate data on personnel influenza vaccination(s) status for the period beginning April first and ending March thirty-first of each year and report that data to the department by May first of the same year in a manner determined by the commissioner. Required data will include, but not be limited to, number of personnel immunized by occupation, total number of personnel by occupation, and reason(s) personnel did not receive vaccine.

Subparagraph (v) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 is added to read as follows:

(v) documentation of preemployment and annual vaccination(s) against influenza, in accordance with Part 66 of this Title.

Paragraph (6) of subdivision (d) of Section 751.6 is added to read as follows:

(6) documentation of preemployment and annual vaccination(s) against influenza, in accordance with Part 66 of this Title.

Paragraph (5) of subdivision (c) of Section 763.13 is added to read as follows:

(5) documentation of preemployment and annual vaccination(s) against influenza, in accordance with Part 66 of this Title.

Paragraph (6) of subdivision (d) of Section 766.11 is added to read as follows:

(6) documentation of preemployment and annual vaccination(s), in accordance with Part 66 of this Title.

Paragraph (6) of subdivision (d) of Section 793.5 is added to read as follows:

(6) documentation of preemployment and annual vaccination(s) against influenza, in accordance with Part 66 of this Title.

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 November 10, 2009.

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of the regulatory changes adding Subpart 66-3 and amending Sections 405.3, 751.6, 766.11 and 793.5 of Title 10 is contained in Sections 2803 (2), 3612 and 4010 (4) of the Public Health Law (PHL). PHL section 2800 places the comprehensive responsibility for the development and administration of the state's policy with respect to Article 28 facilities with the State Department of Health. PHL Section 2803(2) authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Section 3612 authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, providers of long term home health care programs and providers of AIDS home care programs. PHL Section 4010 (4) authorizes the SHRPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. PHL Article 36 states a public commitment to the appropriate provision and expansion of services rendered to the residents of the State by certified home health agencies, to the maintenance of a consistently high level of services by all home care services agencies, to the central collection and public accessibility of information concerning all organized home care services, and to the adequate regulation and coordination of existing home care services. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care

for those afflicted by terminal illness. In recognition of the value of hospice and consistent with State policy to encourage the expansion of health care service options available to New York State residents, it is the intention of the Legislature that hospice be available to all who seek such care and that it become a permanent component of the State's health care system. Immunizing staff of these providers against influenza will promote the health and safety of the patients they serve and support efficient provision of services.

Needs and Benefits:

The State Department of Health strongly advocates that all health care personnel (HCP) should receive annual influenza vaccination(s). This recommendation was communicated in two letters from the Commissioner (dated October 2006 and September 2007), and a health advisory (dated December 14, 2007), sent to hospitals, long term care facilities, providers and local health departments. PHL Article 21-A, the Long Term Care Resident and Employee Immunization Act, currently requires that all long-term care facilities, adult homes, adult day healthcare facilities, and enriched housing programs offer influenza vaccine to all employees and residents. Further amendments to PHL Article 21-A have been introduced to require all HCP under its purview to receive annual influenza vaccination(s).

The intent of this regulation is to coordinate the influenza vaccination requirements for personnel in Article 28, Article 36, and Article 40 entities to be the same; however, each type of entity has a separate set of regulations that apply to them. In order to avoid the need to revise multiple regulations in the event of future changes to Subpart 66-3, the regulations for each type of provider entity will refer to one central set of requirements in Part 66. The authority for the Part 66-3 regulation, as applying to the affected types of facilities, rests with the State Hospital Review and Planning Council.

Each year, influenza causes significant morbidity and mortality in the United States, especially among the vulnerable populations in hospitals and long term care facilities. Common symptoms include the sudden onset of headache, high fever, cough, sore throat, fatigue and body aches. Complications of influenza may include bacterial or viral pneumonia; dehydration; the worsening of chronic medical conditions, such as congestive heart failure, asthma, or diabetes; or death. The risk for complications, hospitalization, and death from influenza are higher among persons 65 years of age or older, young children, and persons with chronic medical conditions. Influenza is the sixth leading cause of death among adults in the United States, killing an average of 36,000 Americans annually and causing more deaths than all other vaccine-preventable diseases combined.

Influenza viruses spread mainly from person to person when an infected individual coughs or sneezes. Most healthy adults, including HCP, may be able to infect others beginning 1-2 days before symptoms develop and up to 5 days after becoming sick. That means HCP may be able to pass on the disease to a patient before they are aware they are sick or they may continue to work while they are contagious.

Influenza Infections in Hospitals and Long Term Care Facilities. Tables 1 and 2 detail the burden of nosocomial influenza infections (i.e., influenza infections acquired in hospitals and long term care facilities) in New York State by using NYSDOH surveillance data from 2001 to 2006. During the 2005-06 influenza season, there were 205 confirmed outbreaks in New York State hospitals and long-term care facilities. There were 1,896 suspected and confirmed cases of influenza associated with these reported outbreaks. As shown in Tables 1 and 2, the number of outbreaks and cases varies significantly year to year depending on the severity of that year's influenza season.

Table 1: Confirmed Influenza Outbreaks in New York State Hospitals and LTCFs

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	Total
Number of outbreaks reported to NYSDOH	31	173	24	199	451	205	70	1153

Source: NYSDOH surveillance data

Table 2: Morbidity from Nosocomial Influenza Infections in New York State

	2000-01*	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	Total
--	----------	---------	---------	---------	---------	---------	---------	-------

Number of patients/residents reported ill (suspected and confirmed) with nosocomial influenza in hospitals and LTCFs	359	2814	403	3535	8675	2603	663	19,052
Number of staff reported ill (suspected and confirmed) with nosocomial influenza in hospitals and LTCFs	55	889	146	1105	2124	702	158	5,179

Source: NYSDOH surveillance data

*Nosocomial data is only available from January 1, 2001 forward.

Role of HCP in Influenza Transmission. Influenza transmission and outbreaks in hospitals and nursing homes are well documented. HCP can acquire influenza from infected patients or the community and transmit influenza to patients and other staff. Many HCP develop no or only mild symptoms of the disease and, therefore, do not realize they have influenza and can transmit the disease to patients. Since influenza can be transmitted 1-2 days before the onset of symptoms, patients are at risk even if HCP do stay at home while ill.

A few studies provide estimates of the incidence of influenza-like illness among HCP. According to the CDC, "In one serosurvey of HCP, 23% had documented serologic evidence of influenza infection after a mild influenza season; however, of these, 59% could not recall having influenza, and 28% could not recall any respiratory infection, suggesting a high proportion of asymptomatic illness." In addition, multiple studies have also shown that HCP continue to work despite being ill with influenza, increasing exposure of patients and coworkers. When HCP come in to work while ill, whether it is because they do not want to lose sick time or pay or out of a sense of obligation, influenza virus can be transmitted to patients and other staff.

Studies have shown that influenza outbreaks in health facilities are associated with low vaccination rates among HCP and that, conversely, high vaccination rates among HCP are associated with fewer outbreaks. One study looked at the yearly incidence of lab-confirmed influenza illness among both staff and patients over 12 influenza seasons in an acute care facility, from 1999-2000. As the influenza vaccine rate climbed from 4% to 67%, the proportion of influenza cases decreased among hospitalized patients from 32% to 0, and among staff from 42% to 9%.

Influenza outbreaks in long-term care facilities are common and can cause severe outcomes in the vulnerable resident populations. Older adults in nursing homes often have multiple chronic or acute conditions that make them particularly susceptible to the complications of influenza disease. The intimate and constant care that is required by residents from the HCP who care for them allows for ready transmissibility from symptomatic or asymptomatic infected staff members. In addition, because influenza vaccination(s) is/are less effective among frail and elderly patients, outbreaks can occur in facilities where a high proportion of residents or patients are immunized. High vaccination levels of HCP are needed to protect patients, making influenza vaccination(s) of HCP an important patient safety issue.

A Scottish study compared mortality rates between long-term care hospitals that offered influenza vaccination to HCP, where 51% were vaccinated, and hospitals that did not, where only 5% were vaccinated. The result was nearly a 40% reduction in all-cause mortality among the patients cared for by HCP in the hospitals with higher levels of HCP influenza vaccination.

Yet, despite the documented and positive effects of immunizing HCP against influenza on patient outcomes, HCP absenteeism, and reducing influenza infection among staff, and incentives to promote vaccination(s) of HCP, 30-50% continues to remain unvaccinated.

In 2000, New York State enacted Public Health Law Article 21-A requiring long-term care facilities to offer influenza vaccine to all residents and HCP and to document refusal of the vaccine. As seen in NYSDOH survey data, while the overall vaccination of residents has improved to 80% or greater in most facilities, the response among HCP has been poor (less than 45%).

CDC and National Recommendations. Recognizing the need to protect hospital patients and long-term care facility residents, the Centers for Disease Control and Prevention (CDC) has recommended influenza vaccination(s) for health care personnel (HCP) since 1981.

In November 2003, 24 leading organizations endorsed a policy to make annual influenza vaccination(s) among HCP an important goal for public health and safety. These organizations included the Society for Hospital

Epidemiology of America, the American Medical Association, the American Academy of Family Practitioners, the American Academy of Pediatrics, and the American Nurses Association.

In February 2006, the Healthcare Infection Control Practices Advisory Committee (HICPAC) and the Advisory Committee on Immunization Practices (ACIP) jointly recommended that all HCP be vaccinated annually against influenza.

In January 2007, the Infectious Disease Society of America called for a mandatory requirement for all HCP to receive influenza vaccination yearly.

Costs:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity

The cost to regulated entities to vaccinate personnel should be modest. Personnel in hospitals, diagnostic and treatment centers, home care services agencies and hospices all must undergo a health assessment to ensure that such personnel are free from a health impairment which is a potential risk to patients or which may interfere with the performance of his/her duties. Personnel are also required to have a certificate of vaccination against measles and rubella unless medically contraindicated and be tested for tuberculosis as condition of employment or affiliation. It should be noted that measles and rubella are one-time vaccinations, while influenza vaccination(s) is/are given annually. Many, if not most, facilities recognize the importance of their personnel receiving such vaccination(s) and already offer it to them, usually at no charge. Influenza vaccine is one of the least expensive vaccines and the average price in the private sector ranges from approximately \$9.75 to \$19.70 per dose.

Any additional costs to vaccinate all personnel should be more than offset by cost savings to the facility. Cost-effectiveness studies of adults aged <65 years indicate that vaccination(s) can reduce both direct medical costs and indirect costs from work absenteeism, resulting in 13%-44% fewer health-care provider visits, 18%-45% fewer lost workdays, 18%-28% fewer days working with reduced effectiveness, and a 25% decrease in antibiotic use for influenza-like illness (ILI). HCP absenteeism can be a serious cause of staffing shortages during the influenza season at a time when emergency room visits and admissions due to influenza-related illness are greatly increased. The benefit of an immunized staff decreases direct and indirect costs to health care facilities.

Before 12/1/09, for inpatient hospital reimbursement, flu costs incurred prior to 12/1/09 may be the subject of a rate appeal per 10 NYCRR 86-1.17(a)(3). Section 86-1.17(a)(3) permits application for prospective revisions of certified rates and established revenue caps in the current year based on "[D]ocumented increases in the overall operating costs of a medical facility resulting from the implementation of additional or expanded programs, staff or services specifically mandated for the facility by the commissioner." After that time, the new hospital reimbursement system, PHL section 2807-c, subdivision 35 (added by section 2 of Part C, Chapter 58 of the Laws of 2009) permits very limited rate appeals, as noted in PHL 2807-c (35)(b)(x).

Reimbursement for certified home health agencies (CHHA) is set forth in 10 NYCRR 86-1.46. This is not impacted by the new subdivision 35. Consequently, CHHA rate appeals based on new DOH mandated services may continue to be available.

For long-term home health care programs, reimbursement is found in Subpart 86-5 of 10 NYCRR and section 86-5.14(a)(3) and permits the commissioner to consider applications for revision of certified rates which are based on "significant increases in the overall operating costs of the long term home health care program resulting from the implementation of additional programs, staff or services specifically mandated for the program by the commissioner."

Diagnostic and treatment centers (D&TC) rates were scheduled to move to a new system (APGs) on March 1, 2009, but the transition has not occurred due to a delay in federal approval of state plan amendments. In the interim, 10 NYCRR 86-4.16(c) would continue to permit D&TC rate appeals based on new mandates.

Cost to State and Local Government:

The regulatory requirements are not expected to result in costs to state or local governments. Potential savings to Medicaid and other payors are expected by decreasing influenza cases. Among healthy persons aged 18-64 years, vaccination(s) can save an estimated \$60-\$4,000 per illness, depending on the cost of vaccination(s), the influenza attack rate, and vaccine effectiveness against influenza-like illness (ILI). In another economic analysis, vaccination(s) resulted in an average annual cost savings of \$13.66 per person vaccinated; however, other analyses have not demonstrated cost savings. Among studies of healthy young adults, >70% of the costs prevented were associated with reductions in lost work productivity. The estimated annual direct cost of influenza infection in the United States is estimated to be between 3 and 5 billion dollars.

In the event that medical facilities and long-term home health care programs seek a timely medicaid rate change and it is approved, the state

and local government may have to pay a proportion of the amount approved, with the federal government contributing the balance. However, due to the medicaid cap imposed on the county share, it is impossible at this time to calculate whether local governments will in fact have to contribute any funds to meet this potential expense.

Cost to the Department of Health:

Minimal new costs to the New York State Department of Health (NYSDOH) will be incurred associated with enactment of these regulations. By decreasing HCP influenza disease and absenteeism, and the spread of influenza disease among patients, the quality of health care should be improved, as well as patient outcomes.

NYSDOH has dedicated multiple resources to promote voluntary HCP vaccination(s) programs in public health and private arenas, including hospitals, clinics, and local health organizations over the past decade. As previously mentioned, the standard for care in New York State is that all HCP should receive annual influenza vaccination(s). This recommendation was sent to all New York State hospitals, long-term care facilities, providers and local health departments, via two Commissioner letters (dated October 2006 and September 2007), and a Health Advisory (December 14, 2007). Other initiatives to promote this practice have included educational materials, toolkits, a department-wide workgroup, outreach to healthcare partners, and public service announcements. These initiatives will continue.

Any additional costs will be associated with increased oversight of compliance with the regulatory requirements. NYSDOH already collects data from long-term care facilities on an annual basis to monitor compliance with PHL Article 21-A. Long-term care facilities must submit an annual report (DOH form 4193) to NYSDOH by May 1 providing information on the number of residents and employees who received and the number who did not receive influenza and pneumococcal vaccine during the previous year. This form will be modified to capture data from additional health care facilities. Additional costs will mostly involve the additional data collection, analysis, written reports and follow-up with facilities.

Local Government Mandates:

There are no local government mandates in New York State related to this proposal, except as they apply to providers operated by local government entities.

Paperwork:

PHL Article 21-A, the New York State Long-Term Care Resident and Employee Immunization Act, requires nursing homes, adult care facilities, enriched housing facilities, and adult day health care programs in New York State to document their vaccination efforts and to submit an annual report to NYSDOH. The facility annual report was historically completed using DOH form 4193. This form is now available on the Health Provider Network (HPN). The form will be modified to capture hospitals, diagnostic and treatment centers, home care and hospice programs. Those entities covered by these regulations will be required to submit vaccination information using the Health Commerce System. All reporting will be accomplished using the internet only.

Duplication:

This proposal does not duplicate any state or federal regulation.

Alternative Approaches:

Voluntary programs to increase HCP influenza vaccination rates have not resulted in adequate vaccination levels. For the past decade, the New York State Department of Health has dedicated multiple resources to promote voluntary HCP vaccination programs in public health and private arenas, including hospitals, clinics, and local health organizations. Initiatives have included educational materials, toolkits, a department-wide workgroup, outreach to healthcare partners, and public service announcements. However, these programs have failed to substantially increase HCP vaccination rates.

On April 1, 2000, Article 21-A, the Long-Term Care Resident and Employee Immunization Act, was added to the Public Health Law. This law requires nursing homes, adult homes, enriched housing programs, and adult day health care programs to provide or arrange for influenza vaccination(s) for all residents and employees every year. The law also requires these types of facilities to provide or arrange for pneumococcal vaccination(s) for all residents and employees for whom the vaccine is recommended according to guidelines issued by the Advisory Committee on Immunization Practices. Residents and employees may refuse vaccination(s) due to medical contraindication, religious objection, or by choice after being fully informed of the health benefits and risks of such action. These long-term care facilities must document vaccination status of residents and employees, including refusal of vaccination(s) and the reasons for refusal.

In 2001, NYSDOH began collecting data from long-term care facilities to monitor compliance with PHL Article 21-A. Long-term care facilities must submit an annual report (DOH form 4193) to NYSDOH by May 1 providing information on the number of residents and employees who

received and the number that did not receive influenza and pneumococcal vaccine during the previous year. Even the enactment of NYS PHL Article 21-A targeting long-term care facilities has failed to promote consistent HCP vaccination rates above 44%.

A requirement for vaccination(s) is not unique to influenza. Childhood vaccination rates vastly improved in the US, often exceeding 90-95%, once mandatory school-entry vaccination requirements were put into place. In health care settings, measles and rubella vaccination has also been successful in achieving nearly universal vaccination of health employees against these pathogens. Consequently, requiring influenza vaccination(s) for health care workers would similarly be highly effective and, perhaps with additional education, widely accepted.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

This proposal will go into effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

Any facility defined as a hospital pursuant to PHL Article 28, as a home care services agency by PHL Article 36, or hospice by PHL Article 40 will be required to comply. Small businesses (defined as 100 employees or less), independently owned and operated, affected by this rule will include: 3 hospitals, 237 diagnostic and treatment centers, 91 nursing homes, 252 certified home health agencies, and approximately 900 licensed home care services agencies. There are 50 certified hospices in New York State; most of them would fit into the category of a small business, but definitive data concerning their small business status is not available.

Compliance Requirements:

All facilities must document the preemployment and annual vaccination(s) for influenza virus, subject to the availability of an adequate supply of the necessary vaccine and subject to exemptions for medical contraindications.

Professional Services:

Facilities will need to provide or arrange for influenza vaccination(s) of personnel. Most facilities currently offer influenza vaccinations to their personnel on a voluntary basis. It is not anticipated that facilities will need to hire additional staff to meet this mandate.

Compliance Costs:

The cost to facilities to meet this mandate is estimated to be minimal. It is anticipated that any costs incurred to vaccinate HCP will be offset by savings in direct medical costs by reducing influenza infection among HCP and patients, as well as savings in indirect costs associated with HCP absenteeism.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

There are no alternatives to the proposal to require influenza vaccination(s) of all HCP.

Small Business and Local Government Participation:

Outreach to the affected parties has been conducted. Such parties include professional organizations representing physicians, nurses, and other health care personnel, as well as general hospitals, diagnostic and treatment centers, home care agencies and hospices.

The organization representing county health officers, NYSACHO, has also been briefed. Organizations that represent the affected parties are given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council (SHRPC).

Presentations by Department staff were also given at the full Public Health Council and State Hospital Review and Planning Council meetings to brief Council members on this upcoming proposal. The public, including many affected parties, have been in attendance at these meetings.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, 36, or 40. It will require additional documentation, record-keeping and other compliance requirements on public or private entities, but it is not expected to adversely affect rural areas.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.

Higher Education Services Corporation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

New York Higher Education Loan Program

I.D. No. ESC-35-09-00008-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 2200-a to Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10), 653 and 655

Subject: New York Higher Education Loan Program.

Purpose: Implementation of the New York Higher Education Loan Program.

Public hearing(s) will be held at: 12:00 p.m. and 4:00 p.m., Sept. 9, 2009 at Legislative Office Bldg., Hearing Room B, Albany, New York.

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

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.hesc.com/content.nsf/>): The New York State Higher Education Services Corporation (Corporation) proposes to add a new Subchapter D, Part 2200-a to title 8 NYCRR Volume B, Chapter XX. The proposal would implement the New York Higher Education Loan Program (NYHELPS). The following summarizes the proposed regulation by section.

Section 2200-a.1 includes thirty-five definitions applicable to this new subchapter.

Section 2200-a.2 outlines borrower eligibility requirements for student and non-student borrowers. In addition, this section establishes aggregate Program loan limits and sponsor limits. Other eligibility criteria are set forth including ineligibility for borrowers with an adverse credit history and an ability for a borrower or co-signer to obtain renewed eligibility in certain situations.

Section 2200-a.3 outlines school eligibility requirements, including the contribution of a fee by the school, and provides for disqualification from participation for just cause.

Section 2200-a.4 outlines lender eligibility requirements and provides for disqualification from participation for just cause.

Section 2200-a.5 provides due diligence requirements in originating, disbursing, and servicing of Program loans. This section establishes required processes, provides for the proper application of payments and sets forth requirements for the sale or transfer of Program loans.

Section 2200-a.6 sets forth application content required for the Program which includes certain disclosure requirements.

Section 2200-a.7 outlines the fixed rate Program loan portion of the Program. In particular, this section sets forth the process governing the establishment of interest rates, notification of such rates and allocation of fixed rate Program loans.

Section 2200-a.8 outlines the variable rate Program loan portion of the Program including provisions related to the establishment of interest rates.

Section 2200-a.9 provides the minimum and maximum Program loan limits available to eligible borrowers. The amount of the Program loan shall not exceed the difference between the cost of attendance less all other New York State aid, Title IV aid (excluding federal PLUS loans), other federal aid, institutional aid, and private aid, as certified by the eligible college.

Section 2200-a.10 outlines issues involved in the calculation and handling of school default fees and borrower default fees.

Section 2200-a.11 establishes Program loan verification requirements.

Section 2200-a.12 covers prohibited transactions and requirements for lenders and schools pertaining to any unfair or deceptive lending practices for educational loans, any conflicts of interest detrimental to the student, and any other prohibited conduct in connection with student lending.

Section 2200-a.13 sets forth school certification requirements related to eligibility for a Program loan.

Section 2200-a.14 outlines requirements for the processing of Program loan proceeds by schools.

Section 2200-a.15 outlines requirements for the processing of Program loan refunds by schools.

Section 2200-a.16 provides disclosure requirements for participating schools as part of its entrance and exit counseling requirements.

Section 2200-a.17 provides disclosure requirements for participating lenders at the time of Program loan approval and consummation. In addition, this section provides a borrower with the right to cancel a Program loan without penalty in certain circumstances and with the right to make prepayment on Program loan balances without penalty.

Section 2200-a.18 provides reporting requirements for participating schools.

Section 2200-a.19 establishes reporting and retention requirements for participating holders.

Section 2200-a.20 sets forth the terms of Program loan repayment. The repayment period shall begin sixty days after the date the last disbursement is made on the Program loan. Interest shall begin to accrue starting the day of disbursement by the lender to the Corporation. This section provides for in-school deferment, grace period, return to school, repayment terms, minimum payments and an income sensitive repayment option for delinquent Program loans. This section provides for certain forbearances, deferments and Program loan discharges for the death or total and permanent disability of the student. Program loan interest rate reduction and co-signer release options are also established in this section.

Section 2200-a.21 provides due diligence requirements for Program loan delinquency. Holders, or entities servicing Program loans, shall perform required due diligence activities against a borrower and co-signer based on the timeframes and requirements set forth in this section.

Section 2200-a.22 establishes procedures, applicable to holders or entities servicing Program loans, regarding default claims.

Section 2200-a.23 provides for Program loan collection efforts to be set forth in the Program's Default Avoidance and Claim Manual.

Section 2200-a.24 establishes administrative wage garnishment procedures.

Section 2200-a.25 references the Program's Default Avoidance and Claim Manual for the procedures to be followed by holders, or entities servicing Program loans for any borrower filing bankruptcy on a Program loan.

Section 2200-a.26 provides for the annual review and determination by the Corporation of the availability of Program loan consolidations.

Section 2200-a.27 provides for Program audits to be performed on lenders, servicers, holders and eligible schools for Program compliance.

Section 2200-a.28 incorporates certain Program manuals by reference.

Text of proposed rule and any required statements and analyses may be obtained from: George M. Kazanjian, NYS Higher Education Services Corporation, 99 Washington Avenue, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.com

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

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

Regulatory Impact Statement

1. Statutory Authority.

Education Law § 691(10) provides that the New York State Higher Education Services Corporation (Corporation) shall have the power and duty to adopt rules and regulations to implement the New York Higher Education Loan Program (Program).

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

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

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

2. Legislative Objectives.

A growing number of New York State students and families are struggling to obtain affordable private education loans to fill the gap between college costs and available State and federal student aid. Disruptions in the capital markets have led many lenders to either stop offering or tighten their credit criteria for obtaining such loans.

With a typical cost of attendance at a four-year college in New York of approximately \$20,000 at a public institution and over \$35,000 at a private institution, a student receiving the maximum federal and State grant awards (\$5,350 Pell and \$5,000 TAP) and maximum federal loans (\$5,500 freshman limit) can still have an unmet financial need of up to \$19,000. The Program can assist with up to \$10,000 annually, by offering a lower cost loan alternative for that student.

The New York State Commission on Higher Education recognized the need for an affordable loan option in its June 2008 Final Commission Report, which recommended the establishment of a state sponsored low-interest education loan program to provide students and families with the same range of college financing options available in many other states.

Proposed by Governor Paterson in his Executive Budget and supported by the State Legislature, the Program was enacted as part of the State's 2009-10 budget to ease the financial burden on students and their families and ensure that New York's institutions of higher education remain financially accessible.

The Program's regulations are patterned after the Federal Family Education Loan (FFEL) Program to provide consistency with schools' and lenders' experience with federal educational loans. As with the FFEL Program, participating lenders will provide loan capital and originate loans using Program credit policies. The statute establishing the Program authorizes the State, through the State of New York Mortgage Agency (SONYMA), to serve as a secondary market for fixed rate Program loans.

3. Needs and Benefits.

Last year, New Yorkers borrowed over two billion dollars in private educational loans. Currently, these loan options in New York offer only variable interest rates between ten and eighteen percent. Additionally, the nation's largest private student loan provider has tightened its credit criteria, and more private lenders are dropping out of the student loan business, thereby creating a need for the State's action.

The annual demand for alternative (or private education) loans in New York continues to grow. The Program requires that students first exhaust all state, federal (excluding federal PLUS loans) and institutional aid to which they are entitled in order to qualify for a Program loan.

Program Overview

The Program is a public/private partnership that makes available up to \$350 million annually in tax-exempt private activity bonds for fixed rate loans, and allows for unlimited lender participation to make variable rate loans. Lenders will make fixed rate education loans supported by the proceeds of bonds issued by SONYMA. The State is providing \$50 million in General Fund support in the Program's initial year and up to \$10 million per year thereafter toward default reserve funds, used to pay lender default claims. This support will effectively lower the overall cost to students through reduced fees and interest rates. Participating colleges will contribute a one percent fee to the default reserve funds based on their loan volume in the Program.

Program Participants

- **Corporation Role:** To develop and administer the Program, including:
 - o establishing criteria for lender underwriting, origination, servicing, secondary market purchasing criteria, and default payments, in consultation with bond issuers and industry experts;
 - o marketing the Program, providing financial literacy education; and
 - o performing default aversion and collections activities on delinquent and defaulted Program loans, respectively.
- **Lender Role:** To originate and disburse fixed and/or variable rate education loans using underwriting criteria developed by the Corporation and bond issuers. Lenders will be paid an origination fee upon the purchase of fixed rate loans by SONYMA, and will be reimbursed the principal and unpaid accrued interest for all defaulted Program loans.
- **Public Benefit Corporation Role:** To assist in the establishment of underwriting criteria, issue private activity bonds, and purchase fixed rate Program loans with such bond proceeds.
- **College Role:** To certify a student's enrollment and unmet financial need, and to contribute one percent of the loan dollar volume to the default reserve funds. Eligible institutions must be located in New York and be approved to participate in the federal Higher Education Act (HEA) of 1965, as amended, Title IV student aid programs.

Student Eligibility

To be eligible, a student must be enrolled at least half-time in a degree-granting or professional certificate program at an eligible institution and:

- first apply for, and receive, all State, federal (excluding federal PLUS loans), and institutional aid for which the student is entitled; and
- be a New York State resident and have an eligible co-signer who is a New York State resident, if the student is the borrower; and/or
- have a parent borrower or non-parent sponsor who is a New York State resident.

Loan Amounts and Interest

Program loans will be available in January 2010, for the spring term of the 2009-10 academic year. Up to \$10,000 may be borrowed on behalf of a student annually, with cumulative loan amounts of up to \$20,000 for undergraduate students at 2-year institutions, up to \$50,000 for undergraduates at 4-year institutions, and up to \$70,000 for undergraduate and graduate study, combined. Rates for fixed rate Program loans will be determined annually based on the rate yielded from the bond issuance. Variable rate Program loans, when offered, will be determined annually based on an index.

Loans will be subject to borrower and college fees. Borrower fees may be added to a student's cost of attendance for purposes of calculating the loan amount. The college fee will not reduce the loan amount credited to the student's account by the college.

Financial Literacy and Default Avoidance

Borrowers must successfully complete a comprehensive Web-based financial literacy program each year in order to receive a Program loan. The Corporation and its servicer will maintain communications with borrowers and/or co-signers who are 15 or more days delinquent on their payments to help avert the borrower from defaulting on his/her Program loan.

4. Costs.

The Program allows for the annual issuance of up to \$350 million in tax-exempt private activity bonds. Borrower payments will support the repayment of the bonds. The State will provide \$50 million in General Fund support in the Program's initial year, and up to \$10 million per year thereafter to help fund default reserve funds. The Program will offer an estimated 40,000 student loans with an expected interest rate of 7.5% to 8.5%. When compared to a 16.5% private loan, these Program loans will save the average 4-year college student more than \$52,000 in repayment costs.

A \$5 million State appropriation has also been provided for administration of the Program. This appropriation, funded from proceeds of the bond issuance, coupled with existing resources, will support the administrative costs of the Program.

Colleges volunteering to participate in the Program will also pay a fee towards the default reserves. Colleges responding to the Corporation's college survey have largely indicated that the one percent fee requirement will not hinder their participation.

5. Local Government Mandates.

None. Participation in the Program is voluntary.

6. Paperwork.

Borrowers will be required to complete a Program application and promissory note. Colleges will have to obtain information, certify student eligibility, and forward forms/information to the Corporation and/or lender. Lenders will have to meet certain disclosure and reporting requirements. The use of on-line e-filing reduces any paperwork burden on all Program participants.

7. Duplication.

None.

8. Alternatives.

The Program's regulations are modeled after current federal educational loan delivery and servicing standards and include provisions consistent with private education loan requirements and practices. As a result, the origination, disbursement and servicing of Program loans are consistent with current practices employed by lenders and colleges, which will enable participants to adhere to Program requirements with relative ease.

Outreach

The Corporation consulted with a number of interested parties in preparing this rulemaking. Outreach was conducted through: conference calls; e-mails; meetings; and opportunities for submission of comments, questions and/or suggestions to drafts of the regulation text.

Participants in the regulation development process included: the Corporation's College Advisory Council; public interest groups; consumer groups; staff from the State Legislature; SONYMA; the Commission on Independent Colleges and Universities; State University of New York; City University of New York; Association of Proprietary Colleges; student loan industry experts; bond experts; banking organizations; and college financial aid organizations.

In addition, the Corporation surveyed colleges and lenders to estimate potential demand and lender interest. Their comments and concerns were considered in the development of the Program.

The public was provided with an opportunity to comment on the May 29th draft Program regulation text, which was posted on the Corporation's Web site. Revisions were made based on comments received, and additionally opportunities for public comment were provided with regard to a June 19th draft and a July 14th draft, both of which were posted on the Corporation's Web site.

Public Concerns

To date, the following general concerns have been raised:

- **Borrower protections.** In response to concerns raised by the public, provisions for economic hardship forbearance and income sensitive repayment were added to the Program. These tools will protect borrowers not yet in default who are struggling to make their required payments. With actual Program experience, other borrower protections will be evaluated.
- **Overborrowing.** To discourage unnecessary borrowing, Program loans are only available after exhausting federal, state and institutional aid. The Program's financial literacy component also educates borrowers on the best means for financing their education.
- **Consequences for non-compliance.** In response to public comments received, the Corporation included language in the Program regulation with regard to the disqualification of lenders and schools who fail to comply with Program requirements.
- **Public benefit corporation role.** The regulation provides that the role of the public benefit corporation is dependent upon favorable market conditions. The Corporation was informed by bond experts that such conditional statements must be included for the Program to be viable.
- **Distribution.** The fixed rate Program loan allocation methodology is designed to ensure equitable distribution of fixed rate Program loans across the State.

9. Federal Standards.

To the extent applicable, the Program complies with disclosure requirements for private education loans.

10. Compliance Schedule.

Requirements are effective upon adoption. Program loans will be available for students in the spring term of the 2009-2010 academic year.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) 'Notice of Proposed Rulemaking' seeking to add a new Part 2200-a to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact or impose reporting or other compliance requirements on either small businesses or local governments. The proposed rule would implement the New York State Higher Education Loan Program (Program). Participation in the Program is voluntary and, as such, this regulation would only apply to those taking part in the Program. The 2009-10 New York State Budget established the Program, which will help fill the gap between college costs and financial aid in order to assist eligible students. While eligible colleges electing to participate in the Program will pay a fee of one percent of the original principal amount of each Program loan, such colleges will benefit from participation by, among other things, enhancing financing opportunities for their students.

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

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) 'Notice of Proposed Rulemaking' seeking to add a new Part 2200-a to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of the rule that it will not impose an adverse economic impact on public or private entities in rural areas. The proposed rule would implement the New York State Higher

Education Loan Program (Program). Participation in the Program is voluntary and, as such, this regulation would only apply to those taking part in the Program. The 2009-10 New York State Budget established the Program, which will help fill the gap between college costs and financial aid in order to assist eligible students. While eligible colleges electing to participate in the Program will pay a fee of one percent of the original principal amount of each Program loan, such colleges will benefit from participation by, among other things, enhancing financing opportunities for their students.

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

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's (Corporation) 'Notice of Proposed Rulemaking' seeking to add a new Part 2200-a to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a substantial adverse impact on jobs or employment opportunities. This rule would implement the New York State Higher Education Loan Program (Program). Participation in the Program is voluntary and, as such, this regulation applies to those taking part in the Program. The 2009-10 New York State Budget established the Program, which will help fill the gap between college costs and financial aid in order to assist eligible students.

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

Division of Housing and Community Renewal

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Division of Housing and Community Renewal publishes a new notice of proposed rule making in the *NYS Register*.

Rent Stabilization Code (RSC) and Emergency Tenant Protections Regulations (TPR)

I.D. No.	Proposed	Expiration Date
HCR-26-08-00015-P	June 25, 2008	August 12, 2009

Insurance Department

EMERGENCY RULE MAKING

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-35-09-00001-E
Filing No. 941
Filing Date: 2009-08-13
Effective Date: 2009-08-13

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

Action taken: Amendment of Part 83 (Regulation No. 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599 and L. 2008, ch. 311

Finding of necessity for emergency rule: Preservation of general welfare.
Specific reasons underlying the finding of necessity: Certain provisions

of the Insurance Law require that insurers file financial statements annually and quarterly with the superintendent. These insurers are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as annual and quarterly statement blanks on forms prescribed by the superintendent. The superintendent has prescribed forms and annual and quarterly statement instructions that are adopted from time to time by the National Association of Insurance Commissioners ("NAIC"), as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy procedure and instruction manuals. The latest edition of one of the manuals, the "Accounting Practices and Procedures Manual as of March 2009" ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). This regulation incorporates by reference the Accounting Manual adopted by the NAIC in March, 2009.

The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. The preamble to the Accounting Manual states that "this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations." Section 83.4 of the proposed regulation sets out the "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset. Chapter 311 also modified certain limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. Chapter 311 made the changes regarding the treatment of goodwill and EDP equipment subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

Absent the amendment being effective immediately, health insurers would be allowed to treat goodwill and EDP equipment, for financial statement purposes, as other regulated insurers do. In other words, the Department is concerned that absent an amendment, the financial statements that health insurers must file with the Department on an annual and quarterly basis may not reflect with sufficient accuracy the true financial condition of such companies.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update the regulation to conform to NAIC guidelines, statutory amendments, and to clarify existing provisions.

Substance of emergency rule: Subdivision (c) of Section 83.2 of Part 83 is amended to update the publication dates for the *Accounting Practices and Procedures Manual* ("Accounting Manual"), which is incorporated by reference in Regulation 172. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

Subdivision (c) of Section 83.3 is repealed and a new subdivision (c) is adopted to clarify the fact that the Accounting Manual is adopted in its entirety, subject to such conflicts and exceptions as found in Section 83.4 of this part.

Section 83.4 is amended to conform to updates to the Accounting Manual and the provisions of Chapter 311 of the Laws of 2008. Section 83.4 sets out "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control. Section 83.4 is amended as follows:

Subdivision (b) is amended so that the admitted value of gross deferred tax assets is in accordance with SSAP No. 10.

Subdivision (c) is repealed and a new subdivision (c) is added to require insurers other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans to depreciate electronic data processing equipment and operating system software over three years.

Paragraph (3) of subdivision (e), which permitted insurers to take credit for aircraft as admitted assets, has been deleted.

Subdivision (h) is amended so that insurers may no longer take credit for certain prepaid real estate taxes as admitted assets.

Subdivision (i), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are not subsidiaries, has been deleted.

Subdivision (j), which set forth rules different from the rules set forth in the Accounting Manual for the calculation of investment income due and accrued has been deleted.

Subdivision (k) is relettered (i).

Subdivision (l), which set forth rules different from the rules set forth in the Accounting Manual for limitations on accrued mortgage loan interest, has been deleted.

Paragraph (1) of subdivision (m), which set forth rules different from the rules set forth in the Accounting Manual, for depreciation of life insurers' investments in real estate, has been deleted.

Paragraph (2) of subdivision (m) has been relettered 83.4(j).

Paragraphs (1) and (3) of subdivision (n) have been renumbered paragraphs (1) and (2) of subdivision (k) respectively.

Paragraph (2) of subdivision (n), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are subsidiaries, has been deleted.

Subdivision (o) is relettered (l).

Subdivision (p), which required all goodwill from assumption reinsurance transactions pertaining to life, deposit-type and accident and health reinsurance to be non-admitted, has been deleted.

Subdivision (q) is relettered (m).

Subdivision (r) is relettered (n).

Subdivision (s) is relettered (o).

Subdivision (t) has been relettered (p), and has been amended to permit insurers, other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, to admit goodwill in accordance with the Accounting Manual.

Subdivision (u), which set forth rules for declaring and distributing dividends, in the case of the quasi-reorganization of a domestic stock property/casualty insurer, has been deleted.

Subdivision (v) is relettered (q).

Subdivision (w) is relettered (r).

Subdivision (x) is relettered (s).

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 November 10, 2009.

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

Regulatory Impact Statement

1. Statutory authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law; Sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law; and Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008.

Insurance Law Section 107(a)(2) defines the term "accredited reinsurer", which is used in sections 83.2, 83.3, and 83.5 of Part 83, to mean an assuming insurer not authorized to do an insurance business in this state but which (i) presents satisfactory evidence to the superintendent that it meets the applicable standards of solvency required in this state, (ii) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state, and (iii) has received a certificate of recognition as an accredited reinsurer issued by the superintendent pursuant to such regulation; provided that no insurer shall be an accredited reinsurer with respect to any kind of insurance not provided for in such certificate.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe forms and regulations interpreting the Insurance Law, and to effectuate any power granted to the superintendent under the Insurance Law.

Insurance Law Sections 307 and 308 require insurers to file annual and quarterly statements on forms prescribed by the superintendent and in accordance with instructions prescribed by the superintendent. Section 307(a)(1) of the Insurance Law requires every insurer authorized in New York to file an annual statement showing its financial condition in such form as prescribed by the superintendent. Section 307(a)(2) permits the use of the annual statement form adopted from time to time by the National Association of Insurance Commissioners (NAIC).

Insurance Law Section 1109(a) provides that an organization complying with the provisions of Article 44 of the Public Health Law is subject to various specified sections of the Insurance Law, including section 308. Section 1109(e) provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Article 13 specifies the requirements regarding the treatment of assets and deposits in determining the financial condition of insurers for the purposes of the Insurance Law.

Insurance Law Sections 1301 and 1302 define which assets are "admitted" or "not admitted" (only "admitted" assets are included in determining an insurer's solvency).

Insurance Law Section 1308 (in conjunction with Insurance Law Section 1301(a)(14)) allows for an authorized insurer to reduce the amount that it must hold in its reserves through the use of reinsurance with another authorized insurer or an accredited reinsurer.

Insurance Law Article 14 establishes the investments that may be used by insurers to satisfy minimum capital, surplus and reserve requirements. It further governs those classes of investments in which insurance companies may invest after satisfying minimum capital, surplus and reserve requirements, and establishes allocation or diversification limits among assets classes. Article 14 also sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Section 1404 establishes the types of reserve investments that may be used by non-life insurers to satisfy reserve requirements.

Insurance Law Section 1405 establishes the types of surplus investments that may be used by life insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1407 establishes the types of surplus investments that may be used by property/casualty and certain other insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1411 establishes the types of investments that domestic insurers are prohibited from making.

Insurance Law Section 1415 sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Article 15 contains provisions that govern the establishment and operation of holding company systems, including controlled insurers. Insurance Law Section 1501 provides for an administrative determination of the existence or absence of control to determine whether the insurer is a member of a holding company system. Insurance Law Section 1505 establishes standards for transactions between a controlled insurer and other members of the holding company system to safeguard the interests of the insurer and policyholders.

Insurance Law Section 3233 sets forth provisions concerning stabilization of health insurance markets and premium rates.

Insurance Law Section 4117 sets forth provisions concerning loss reserves and loss expense reserves of property/casualty insurance companies.

Insurance Law Section 4233 sets forth provisions concerning the annual statements of life insurance companies, including a provision that in addition to any other matter that may be required to be stated therein, either by law or by the superintendent pursuant to law, every annual statement of every life insurer doing business in New York shall conform substantially to the form of statement adopted from time to time for such purpose by, or by the authority of, the NAIC, together with such additions, omissions or modifications, similarly adopted from time to time, as may be approved by the superintendent.

Insurance Law Section 4239 sets forth provisions concerning allocation and reporting of income and expenses of life insurers.

Insurance Law Article 43 establishes organizational requirements, investment and reserve requirements for non-profit medical and dental indemnity, or health and hospital service corporations organized in this state. The article also establishes "stop loss" funds, from which health maintenance organizations, corporations or insurers may receive reimbursement for claims paid by such entities for members covered under certain contracts.

Insurance Law Section 4301 establishes requirements applicable to the formation and operation of the corporate entity, including composition and term limits of the corporation's board of directors.

Insurance Law Section 4310 sets forth requirements applicable to investments, reserves and the financial condition of not-for-profit health insurers and health maintenance organizations (HMOs).

Insurance Law Sections 4321-a, 4322-a, and 4327 establish state-funded stop loss pools to subsidize claim payments made by HMOs pursuant to policies issued in the individual market and the Healthy NY market.

Insurance Law Section 6404 sets forth provisions concerning the investments that may be used by title insurance corporations. It also sets forth provisions concerning the valuation of various assets of title insurers.

Insurance Law Sections 1109(e) and 4301(e)(5), respectively, provide that the superintendent may promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law pertaining to health maintenance organizations. Public Health Law Article 44 authorizes the superintendent to establish standards governing the fiscal solvency of integrated delivery systems, and requires the filing of financial reports by prepaid health service plans and comprehensive HIV special needs plans.

Pursuant to the above provisions, the superintendent is authorized to implement the NAIC's *Accounting Practices and Procedures Manual* ("Accounting Manual"), subject to any provisions in New York law that conflict with particular points in the Accounting Manual. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The

Accounting Manual represents a codification of Statutory Accounting Principles.

Chapter 599 of the Laws of 2002 amended the Insurance Law relating to the treatment of deferred tax assets in the filing of quarterly and annual financial statements by certain insurers.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Chapter 311 also modified the limitations on the ability of insurers to take credit for electronic data processing (EDP) equipment as an admitted asset.

2. Legislative objectives: Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Sections 307 and 308 of the Insurance Law, which require the filing of what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except with regard to filings made by Underwriters at Lloyd's, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that have been adopted from time to time by the NAIC, as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Manual, sets forth Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation.

The preamble to the Accounting Manual states that "this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations." Section 83.4 of the proposed regulation sets out the "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

3. Needs and benefits: Section 83.3 of the regulation provides that the financial statements of all authorized insurers, accredited reinsurers (except Underwriters at Lloyd's, London), authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans (collectively, to as "regulated insurers") shall be completed in accordance with statutory accounting practices and procedures as prescribed by applicable provisions of the Insurance Law and regulations.

The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by regulated insurers, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements that must be filed with the Department.

The NAIC has most recently adopted a new Accounting Manual as of March 2009. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of the SSAPs. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Codification provides examiners and analysts with uniform accounting rules against which insurers' financial statements can be evaluated.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Section 1302 provides a listing of non-admitted assets.

Chapter 311 removed “goodwill” from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer’s capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, “health insurers”) will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

Chapter 311 also modified the limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

4. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. The Department estimates that an insurer with 2,000 employees would require between 15 and 20 copies, for a total cost of between \$5,925 and \$9,300 (exclusive of shipping charges). However, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states’ requirements as much as New York’s.

There is no cost to the Insurance Department for the Accounting Manual, since the Department may obtain it free of charge from the NAIC.

5. Paperwork: To the extent that this rule makes changes in accounting principles, regulated insurers will need to familiarize themselves with this regulation. To the extent that the rule conforms New York’s requirements to those of other states, the need for separate New York filings will be reduced.

6. Local government mandate: This rule does not impose any obligations on local governments.

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

8. Alternatives: None. The rule ensures conformance with New York statutes and regulations that preclude implementation of particular rules found in the Accounting Manual.

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

10. Compliance schedule: Regulated insurers already should be aware of the need to comply with the provisions of the Accounting Manual, since the NAIC issued the most recent version of the accounting Manual in March, 2009. Regulated insurers use the Accounting Manuals in preparing their Quarterly Statements and the Annual Statements.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule will have no adverse economic impact on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that this rule is directed at regulated insurers, as defined under section 83.3 of this regulation, none of which are local governments.

The Insurance Department is not aware of any adverse impact that this rule will have on small businesses or of any reporting, recordkeep-

ing or other compliance requirements that it will impose on small businesses. This rule is directed at regulated insurers, most of which do not come within the definition of “small business” found in Section 102(8) of the State Administrative Procedure Act, because none is independently owned and operated, and employs less than one hundred individuals.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This rule applies to regulated insurers doing business or resident in every county in the state, including those that are, or contain, rural areas, as defined under Section 102(13) of the State Administrative Procedure Act. Some of the home offices of these insurers are located within rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment does not impose new reporting or recordkeeping requirements. To the extent that the rule conforms New York filings to other states’ requirements, the need for separate New York filings will be reduced. To the extent that the rule renders changes in accounting principles, insurers will need to familiarize themselves with the principles themselves.

3. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. The Department estimates that an insurer with 2,000 employees would require between 15 and 20 copies, for a total cost of between \$5,925 and \$9,300 (exclusive of shipping charges). However, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states’ requirements as much as New York’s.

These costs are likely to be minimized or offset by the fact that the rule will enhance efficiencies for regulated insurers by establishing a consistent accounting treatment of assets, liabilities, reserves, income and expenses.

The Accounting Manual specifies substantive changes to eight of the ninety-six “Statements of Statutory Accounting Principles” contained therein. Affected parties will have the opportunity to assess the changes and provide comments to the Department.

4. Minimizing adverse impact: This rule applies to regulated insurers that do business in New York State. It does not impose any unique adverse impact on rural areas. The impact(s) are discussed in items 2 and 3 above.

Job Impact Statement

The Insurance Department has no reason to believe that this rule will have any impact on jobs and employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The rule changes the publication date references to a manual incorporated by reference in the regulation, and clarifies the relationship of the provisions of the Accounting Manual to corresponding provisions of the Insurance Law and regulations. The Accounting Manual specifies that there are substantive changes to eight of the ninety-six “Statements of Statutory Accounting Principles” contained therein. Affected parties will have the opportunity to assess the changes and provide comments to the Department. The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

NOTICE OF ADOPTION

Excess Line Placements Governing Standards

I.D. No. INS-24-09-00002-A

Filing No. 978

Filing Date: 2009-08-19

Effective Date: 2009-09-02

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103 and 9102 and art. 59

Subject: Excess Line Placements Governing Standards.

Purpose: Add additional coverages to the “export” list and reduce the requisite declinations for several other coverages.

Text or summary was published in the June 17, 2009 issue of the Register, I.D. No. INS-24-09-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Workplace Safety and Loss Prevention

I.D. No. LAB-20-09-00010-A

Filing No. 979

Filing Date: 2009-08-19

Effective Date: 2009-09-02

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

Action taken: Addition of Part 60 to Title 12 NYCRR.

Statutory authority: Workers’ Compensation Law, section 134

Subject: Workplace Safety and Loss Prevention.

Purpose: Provide incentives to employers who institute programs for safety procedures, drug and alcohol prevention, return to work.

Substance of final rule: Section 60-1.2 defines: (a) Accommodate; (b) Attorney General; (c) Board; (d) Certification; (e) Certified; (f) Chair; (g) Commissioner; (h) Department; (i) Drug and Alcohol Prevention Program; (j) Evaluation; (k) Incentive; (l) Monitoring; (m) Qualified Organization; (n) Return to Work Program; (o) Review; (p) Safety Incentive Program; (q) Specialist; (r) Superintendent; (s) Verification; (t) Workplace Safety and Loss Prevention Incentive Program (WSLPIP).

Section 60-1.3 describes:

(a) the intent of this Rule to: (1) reduce occupational injuries and illnesses in the workplace; (2) return injured or ill employees to work; (3) reduce workers’ compensation costs for employers; and (4) reward employers that have implemented a quality WSLPIP;

(b) the purpose of this Rule to set forth: (1) the procedures that must be followed in order for an employer to apply for and receive approval of a WSLPIP; (2) the minimum requirements for each WSLPIP; (3) the basic education or experience required of an individual to be Certified as a Specialist;

Section 60-1.4 (a) describes the eligibility requirements for an employer insured by the New York State Insurance Fund or any other authorized insurer that issues policies of workers’ compensation insurance; (b) describes the eligibility requirements of an individually self-insured employer; (c) requires compliance with the procedures set forth in this Part and with New York State Labor Law and Workers’ Compensation Law; (d) excludes employers required to implement a mandatory safety and loss prevention program from WSLPIP eligibility; (e) includes employers that have a preexisting program that complies with this Part in eligibility; and (f) subjects a group member’s eligibility to the authorization of and limitations set by the Chair in addition to the requirements set forth in this Part.

Section 60-1.5 (a) describes the resources available to employers in establishing a compliant WSLPIP; (b) requires an implemented WSLPIP to undergo an Evaluation by a Certified Specialist and describes the employer’s options for obtaining those services; (c) allows for the eligibility of previously implemented programs that meet the requirements of this Part; (d) describes the fees for Evaluations conducted by Department staff; (e) requires the Evaluation be conducted according to the criteria set forth by this Part; and (f) allows an employer implementing more than one WSLPIP to undergo a single Consultation and Evaluation for all of its programs.

Section 60-1.6 (a) requires that an employer apply for WSLPIP approval using Department forms no later than 120 calendar days prior to the employer’s annual policy renewal date, or the end of the calendar year for individually self-insured employers, and to provide a copy of the application to the employer’s insurer or to the Board; for those employers who

have an annual policy renewal date that falls between January 1, 2010 and March 31, 2010 and who have a preexisting program that meets the criteria for any of the three incentive programs set out in these regulations, the Department will accept their initial application if postmarked no later than 90 calendar days prior to their annual policy renewal date; (b) requires that the employer use a Specialist to perform the Evaluation prior to application; (c) describes the application fees; (d) describes the information required on the application; (e) describes notification of approval, approval duration, and Incentive effective date; (f) describes the employer’s responsibility for notification; (g) provides that the Department will notify the employer’s insurer, the Superintendent, and the Board of the approval; and (h) requires employer record-keeping and continued compliance.

Section 60-1.7 (a) requires approved employers to submit an annual report in order to receive the Incentive in the second and third year of initial and renewal approval periods; (b) describes the information to be included on the annual report; (c) describes notification of approval; (d) describes the employer’s responsibility for notification; (e) provides that the Department will notify the employer’s insurer, the Superintendent, and the Board of the Review and approval; and (f) requires the employer to notify the Department and its insurer or the Board if it discontinues a WSLPIP during an approval period.

Section 60-1.8 (a) requires that Incentive renewal be sought by the employer no later than 90 days prior to the end of the initial three year approval period using Department forms; (b) describes the renewal application fees; (c) describes the information required on the renewal application; (d) requires that the WSLPIP report and Verification comply with the procedures in Section 60-1.8; (e) describes notification of approval and Incentive effective date; (f) describes the employer’s responsibility for notification; (g) provides that the Department will notify the employer’s insurer, the Superintendent, and the Board of the approval; and (h) requires employer record-keeping and continued compliance.

Section 60-1.9 provides that: (a) the Incentive provided to insured employers for implementation and renewal of each WSLPIP shall be in accordance with Section 134 (6) of the Workers’ Compensation Law; and (b) the reduction in the security deposit provided to individually self-insured employers for implementation and renewal of each WSLPIP shall be pursuant to Section 134 (7) of the Workers’ Compensation Law.

Section 60-1.10 (a) describes the reasons why and method by which the Department may deny, revoke, or suspend Incentives and the procedure the employer may follow to correct their deficiencies; (b) subjects any approved WSLPIP to Monitoring by the Department and describes potential Monitoring activities; and (c) describes an employer’s appeal rights should their application for Incentive be denied, revoked, or suspended.

Section 60-1.11 requires the employer to: (a) post the certificate of approval issued by the Department for each WSLPIP prominently in all work locations; (b) provide access to personnel, facilities, records, and documents required to carry out this Part to the Department and various parties identified by the Department and describes the penalty for failure to do so; (c) notify the Department about changes that relate to the WSLPIP; and (d) represent the status of a WSLPIP truthfully to the Department and describes the penalties for misrepresentation.

Section 60-1.12 (a) requires the insurer to apply each Incentive granted by the Department and the Superintendent to the employer’s policy renewal period following the date of the Department’s approval certificate; (b) requires an insurer to continue to apply an approved Incentive to a new policy that was originally provided by a prior insurer; (c) requires the insurer to report annually to the Commissioner and the Superintendent and describes the information to be reported; and (d) provides that the Chair of the Board shall maintain the information required by this Part and provide it to the Commissioner and the Superintendent on behalf of individually self-insured employers.

Section 60-1.13 describes: (a) the purpose and methods of a Safety Incentive Program; (b) the parties who may provide the services related to a Safety Incentive Program; (c) the documentation of a Safety Incentive Program required to qualify for an Incentive; (d) the elements required to be included in an acceptable Safety Incentive Program; and (e) the required dissemination and availability of the approved Safety Incentive Program plan to employees.

Section 60-1.14 describes: (a) the purpose and methods of a Drug and Alcohol Prevention Program; (b) the parties who may provide the services related to a Drug and Alcohol Prevention Program; (c) the documentation of a Drug and Alcohol Prevention Program required to qualify for an Incentive; (d) the elements required to be included in an acceptable Drug and Alcohol Prevention Program; and (e) the required dissemination and availability of the approved Drug and Alcohol Prevention Program plan to employees.

Section 60-1.15 describes: (a) the purpose and methods of a Return to Work Program; (b) the parties who may provide the services related to a Return to Work Program; (c) the documentation of a Return to Work Program required to qualify for an Incentive; (d) the elements required to

be included in an acceptable Return to Work Program; and (e) the required dissemination and availability of the approved Return to Work Program plan to employees.

Section 60-1.16 describes: (a) the process a Safety and Loss Management Specialist must follow when conducting a WSLPIP Consultation and Evaluation, including communication with stakeholders, collection of information, analysis of historical loss and claim information, and industrial hygiene sampling procedures; and (b) the information required on the Evaluation Report.

Section 60-1.17 (a) requires a Specialist performing services identified in this Part to be Certified by the Department; (b) provides for designated Department employees to be automatically Certified and exempt from application requirements; (c) describes the qualifications required for Certification to conduct a Consultation and Evaluation of a Safety Incentive Program; (d) describes the qualifications required for Certification to conduct a Consultation and Evaluation of a Drug and Alcohol Prevention Program and provides for collaboration between the Department and the Office of Alcoholism and Substance Abuse Services in developing evaluation criteria to determine the acceptability of an applicant's experience; (e) describes the qualifications required for Certification to conduct a Consultation and Evaluation of a Return to Work Program; (f) describes the requirements for Certification as a Specialist in multiple Incentive Programs; (g) defines "professional experience;" (h) limits Specialists' activities to their area(s) of expertise as Certified by the Department; (i) describes the Specialist application and Recertification processes and their associated fees; (j) requires a Specialist applying for Recertification to advise the Department of any circumstance which would disqualify the Specialist from Recertification; (k) describes the circumstances under which the Department may deny, suspend, or revoke a Specialist's Certification; (l) requires an investigation, formal hearing, and written notification to revoke or suspend a Specialist's Certification; (m) describes the circumstances under which a Specialist's Certification may be reinstated; and (n) subjects a Specialist applying for reinstatement of Certification to those procedures pertaining to application for an original Certification.

Section 60-1.18 indicates that variances from the provisions of this Part may be granted in accordance with Article 2, Section 30 of the Labor Law.

Section 60-1.19 declares the provisions of this Part to be severable.

Section 60-1.20 declares that nothing contained in this Part shall abrogate or otherwise limit the responsibility of an employer to comply with all requirements set forth in State and Federal safety and health standards to which the employer would otherwise be subject, nor abrogate or otherwise limit the liability of such employer to fines or other penalties to which it would otherwise be subject for failure to comply with such Rules and Regulations.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 60-1.2(k), 60-1.5(e), 60-1.6(a), (a)(3), (d)(5), 60-1.7(a), (a)(1) and (2), (b)(4), (5)(i), (6)(iii), 60-1.10(c), 60-1.11(b), 60-1.15(d)(14), 60-1.17(a), (c)(6), (d)(5) and (e)(5).

Text of rule and any required statements and analyses may be obtained from: Benjamin Garry, Senior Attorney, NYS Department of Labor, State Office Campus, Bldg. 12, Rm. 509, Albany, NY 12240, (518) 485-6205, email: benjamin.garry@labor.state.ny.us

Revised Regulatory Impact Statement

Statutory Authority: Chapter 6, Section 33 of the Laws of 2007, titled the 2007 New York Workers' Compensation Law Reform, amended Article 7, Section 134(6-10) of the Workers' Compensation Law and directed the Commissioner of Labor to develop a Workplace Safety and Loss Prevention Incentive Program (WSLPIP) which encourages employers to voluntarily implement a Safety Incentive Program, a Drug and Alcohol Prevention Program, and/or a Return to Work Program by providing participating employers with a credit in workers' compensation premiums, or a reduction in the security deposit in the case of self-insured employers. The Commissioner of Labor was given the responsibility for monitoring all incentive plans implemented by the employer and for establishing rules for the certification of Safety and Loss Management Specialists who perform such services. The State Insurance Department was given the authority to determine the size of the credit in workers' compensation premiums, and the Workers' Compensation Board was given the authority to determine the reduction in the security deposit required by self-insured employers for each of the three incentive programs implemented.

Furthermore, the Commissioner of Labor was given statutory authority to make recommendations on how to help injured workers return to work under Chapter 6, Section 5 of the Laws of 2007, which established new Safety Net provisions in Section 35 of the Workers' Compensation Law. The Commissioner also has statutory authority under New York State Labor Law to monitor and enforce various workplace safety and health laws.

Legislative Objectives: The new legislation that amended Article 7,

Section 134(6-10) was intended to (1) reduce occupational injuries and illnesses in the workplace; (2) return injured or ill employees to work; (3) reduce workers' compensation costs for employers; and (4) encourage and reward employers that have implemented or plan to implement quality, cost-effective safety incentive, drug and alcohol prevention, and return to work programs.

Article 7, Section 134 originally went into effect on January 8, 1997, and established both a mandatory safety and loss prevention program for insured employers with high experience ratings and a voluntary safety incentive program for those employers with low experience ratings. Section 134 originally did not include an incentive for the implementation of a drug and alcohol prevention program or a return to work program. The Department of Labor was responsible for administering the mandatory safety and loss program and for certifying consultants who provide the required services. Under the 1997 law, a safety panel was created to approve incentives for the voluntary program, and the Workers' Compensation Board was given responsibility for monitoring the safety incentive program, but these provisions were not implemented.

During the legislative negotiations for the 2007 Workers' Compensation Reform, the stakeholders sought to improve workplace safety and encourage the reemployment of injured workers by creating additional opportunities for employers to receive incentives for implementing safety and health, drug and alcohol prevention, and return to work programs. It was recognized that such efforts would result in cost savings and provide real value to employers, workers, and the workers' compensation system. The stakeholders also transferred the responsibility for overseeing the voluntary program to the Department because of its proven track record in administering the compulsory safety and loss prevention program as well as its expertise in safety incentive programs.

The thresholds established by law for participation in the voluntary and mandatory programs overlap. The mandatory safety and loss prevention program, established by regulation as Industrial Code Rule 59, covers employers with both an experience rating that exceeds 1.20 and an annual payroll exceeding \$800,000. Section 134(6-10) of the WCL specifies that the voluntary safety and loss prevention program covers those employers who maintain an experience rating of "under 1.30 for the year preceding and the years in which the credit has been applied for." This section also states that employers who are required to participate in the compulsory program are not eligible for the voluntary program. The Legislature gave the Department the responsibility and authority to draft clarifying language and regulations. The Department, in consultation with the Workers' Compensation Board, set the eligibility threshold for the voluntary program to be those insured employers whose experience modification for the previous year was under 1.30. This decision opens the program up to more employers including smaller employers whose experience rating is above 1.20 but below 1.3 and who are not subject to the mandatory program. This threshold will avoid confusion and clarify the parameters of the program.

The Legislature sought to encourage employers to establish these voluntary programs. According to the State Insurance Department, approximately 77,000 employers have an experience modification factor at or below 1.2 and pay annual workers' compensation premiums of \$5,000 or more. Currently, 150 employers actively self-insure and these employers along with their 285 subsidiary companies would be eligible to apply for a reduction in their security deposit. Employers with experience ratings greater than 1.20 represent only 1.7% of the total number of employers in New York State. The pool of eligible employers will be slightly larger than the figures indicate, as the Department decided to make smaller employers that have annual payrolls of less than \$800,000 and experience ratings between 1.2 and 1.3 eligible for the incentive in order to maximize the number employers that could choose to have a WSLPIP approved.

The purpose of this Rule is to: outline the procedures, including the application process, that must be followed in order for an employer to receive the Department's approval of a WSLPIP; establish the minimum requirements for an acceptable Safety Incentive Program, Drug and Alcohol Prevention Program and Return to Work Program; and describe the basic educational and/or professional work experience required of an individual to be Certified as a Specialist.

Needs and Benefits: This legislation addresses the needs of employers and employees in reducing the incidence and severity of occupational accidents and illnesses and promotes positive solutions that are universally recognized in safety and loss prevention. Numerous studies have documented how these programs reduce the incidence and cost of workplace accidents or illnesses and help injured workers return to work.

Each day, on average, 9,000 U.S. workers sustain disabling injuries on the job, sixteen workers die from an injury suffered at work, and one-hundred thirty-seven workers die from work-related diseases. The average cost per disabling injury is approximately \$34,000. Disabling workplace injuries are estimated to cost employers over \$50 billion in direct wage replacement and medical payments annually and generate between \$80

billion and \$200 billion in indirect costs per year for replacement labor, overtime, lost production and decreased productivity.

According to a report issued by the Superintendent of Insurance in March 2008, while the overall number of claims in New York is decreasing, indemnity and medical costs per claim continue to rise. Overall, indemnity costs comprise 62% of the total workers' compensation claim costs in New York, which is higher than the national average of 55% of total system costs related to indemnity. Programs which focus on ways to reduce the number and severity of workplace injuries and time lost on the job, and which result in safer workplaces, benefit all stakeholders in the system: workers, employers and the State.

There is much data to support the cost-effectiveness of implementing an occupational safety and health program. Safety and health programs help prevent workplace accidents and illnesses and provide direct cost-savings to businesses including lower workers' compensation insurance costs; reduced medical expenditures; less disruption to the normal course of workplace activity; lower costs for job accommodations for injured workers; and less money spent for overtime payments. Safety and health programs also reduce indirect costs because they result in increased productivity, improved morale, better labor-management relations, reduced turnover, and better use of human resources. Employees and their families benefit from workplace safety and health programs because their incomes are protected.

The cost of implementing an accident prevention program is far lower than the cost of accidents. It is estimated that workplaces that establish safety and health management systems can reduce their injury and illness costs by 20 to 40 percent. Studies from the Occupational Safety and Health Administration (OSHA) confirm that incentives for implementing effective worker safety and health programs result in lowered incidents of injury. Employers participating in OSHA's Voluntary Protection Program (VPP) report 51% fewer injury incidences than their respective industry averages.

The economic and human costs of drug and alcohol use are staggering. The National Institutes of Health estimated that alcohol and drug abuse cost the U.S. economy \$351 billion in 2006 dollars. Numerous studies, reports and surveys indicate that substance abuse has a profoundly negative effect on the workplace in terms of decreased productivity and increased accidents, absenteeism, turnover, and medical costs. National statistics show that one-third of all workplace deaths have some link to drug or alcohol use. A study published in Occupational Medicine indicated that as many as 40% of fatal workplace accidents and 47% of serious workplace accidents involve alcohol and/or drug use. Drug and alcohol users are three to four times more likely to be involved in workplace accidents, and five times more likely to file a workers' compensation claim.

Workplace substance use and abuse can be prevented. Taking steps to raise awareness among employees about the impact of drug and alcohol abuse on workplace performance, and offering the appropriate assistance to employees in need will improve worker safety and health, lower workers' compensation costs, and increase workplace productivity and market competitiveness. According to the U.S. Department of Labor, for every dollar invested in drug and alcohol prevention programs, often referred to as employee assistance programs (EAPs), employers generally save anywhere from \$5 to \$16. A study showed that when EAP services were provided work loss was avoided in 60% of cases.

Research has documented the psychological, medical, social and economic effects caused by unnecessarily prolonged work disability and loss of employability. Return to work programs have been shown to reduce the frequency and duration of lost time, workers' compensation costs, medical and indemnity costs, litigation, wage replacement costs, utilization of short term and long term disability benefits, utilization of leave benefits, and worker replacement and productivity costs.

Return to work programs facilitate recovery and lead to less time off work for the worker. A 1995 study demonstrated that employees recover from their injuries three times faster when they are on the job. Furthermore, this data indicated that an employer's return to work efforts can save up to 70 percent in claims costs. Return to work programs also help injured employees maintain their earnings and benefits, such as sick leave and health insurance, and they improve labor relations and employee and supervisor satisfaction.

There are many sources that have documented the key components of these three programs. The Department will provide model programs for an employer's consideration. The Department also will partner with the New York State Office on Alcoholism and Substance Abuse Services to develop sample drug and alcohol prevention programs. Each program implemented will be evaluated to ensure that it contains the proven elements and strategies that will lower workers' compensation and related costs, and justifies approval for the incentive.

Costs: Implementation costs of each WSLPIP option are employer specific and based upon the size and location of the employer. It is anticipated that the cost of implementing any of the options of this legisla-

tion will be significantly lower than the cost that employers would incur for employee injuries and illnesses if they did not implement a program.

The cost of the program to employers will be offset by the premium credit or reduction in the security deposit required. The incentives are available to employers on an annual basis as long as an acceptable program is implemented. These programs will also lower the costs to employers of workers' compensation, replacing employees, overtime, and employee turnover.

Local governments that are not self-insured may elect to participate in the program to reduce their workers' compensation premiums. The Department encourages them to consider sharing resources with other nearby local governments in the development and implementation of their programs, thereby reducing the costs of participating in a program.

There are a variety of ways an employer may choose to implement any of the programs in this legislation. The employer has the option to use its own resources to establish a WSLPIP that complies with this Rule, establish a program with the assistance of its insurer, adopt a model program deemed by the Department to comply with this Rule, or use a Specialist or the Department's trained personnel to assist in establishing a WSLPIP that complies with this Rule. Unionized employers may operate a WSLPIP in conjunction with the union that represents their employees. Preexisting programs that meet the criteria established in this Rule are eligible for the Incentive.

An employer must implement a program and the program must undergo a consultation and evaluation by a Specialist or Department staff before the employer applies to the Department for approval. Employers have several options for conducting the consultation and evaluation. This includes seeking the certification of a qualified employee to implement and verify the appropriate program, contracting with a Specialist in the appropriate safety or loss prevention field, consulting with a Specialist employed by the employer's insurance carrier or a representative of the bargaining unit who can evaluate the program, or having a Department staff conduct an evaluation. In most cases, the cost of the consultation and evaluation will be determined by supply and demand.

The New York State Department of Labor's fee for consultation and evaluation services is below statewide rates already in place under the mandatory safety and loss prevention program. The Department proposes to charge \$100.00 per hour for consultation and evaluation services for each of the three WSLPIPs. It is anticipated that the review of the Safety Incentive Programs will require several hours of staff time. Consultation and evaluation costs of the Drug and Alcohol Abuse Programs and the Return to Work Programs, as well as the credits given for such programs, are expected to be lower than those of the Safety Incentive Programs; therefore, the Department capped those charges at \$300.00 for employers with less than \$50,000 in annual premiums. The Department believes that its fees are less than those charged by Specialists/Consultants in the private sector. The Department considered requiring programs to undergo a Consultation and Evaluation either annually or every three years upon renewal, but the Department wanted to lower the cost of the program and determined that it would have enough information from the annual reports and renewal applications to make an accurate assessment as to the worthiness of each program.

As an additional incentive for employers to apply for these credits, the Department proposed an application fee of \$100.00, which is discounted to \$50.00 for small employers with annual policy premiums of \$10,000.00 or less. The fee is waived if the employer chooses to use DOL staff for the consultation and evaluation. The renewal application fee is set at \$100.00 and employers with annual policy premiums of \$10,000.00 or less are charged a discounted fee of \$50 for renewals. The discounts will help small employers in particular. These application fees are below the expected cost of administering this program.

It is imperative that Specialists and Department employees engaged in the consultation and evaluation process have the qualifications necessary to advise employers on their programs. In determining criteria for Specialist certification, the Department considered various education and professional requirements. The Department chose those criteria determined to be the least onerous, while still maintaining the integrity of the program.

In an effort to ensure that there would be an adequate supply of Specialists available to employers, the Department proposed application fees for Specialists that are below DOL's administrative costs. Individuals who wish to be certified as a Specialist in one program area must submit a \$100.00 non-refundable application fee, which will be applied to the certification fee of \$800.00 if the applicant is approved. Individuals seeking certification in more than one program area would pay a discounted certification fee of \$200 for each additional incentive program certification. In order to expand the number of Certified Specialists, Specialists certified for three years in one specialty will receive experience credit toward certification in the second and third specialty.

Fees for members of qualified organizations are discounted to \$600 for the first certification. The Department encourages business, labor, insur-

ance and industry groups to serve as qualified organizations. Renewal fees are minimal and scaled to the number of Specialists recertifying. Those currently certified by the Department as Safety and Loss Prevention Consultants under Code Rule 59 will incur no additional costs for certification as a Specialist for the Safety Incentive Program and will incur the same renewal fees as Specialists.

The Department had multiple alternative fee structures for certifying Specialists and opted for a lower fee schedule to minimize costs to those seeking certification, while providing some funds to cover the cost of the program. Costs of certification as a Safety and Loss Management Specialist will be incurred by those wishing to provide the appropriate services as described in this legislation.

The increased administrative costs related to the paperwork for certifying Specialists and collecting fees will require additional resources and staff for the Department's Licensing and Certification Units. In addition, the Department will incur increased costs for sending staff out to provide consultation and evaluation services. The Department foresees that it will need at least 13 additional staff to administer this program.

The Department set fees below its anticipated costs. The Department considered trying to recoup its administrative costs through increased fees, but was concerned that the number of employers who will implement these programs would be reduced.

Local Government Mandate: This regulation relates to a voluntary program and applies to county and local governments who are not self-insured or are members of a self insurance workers' compensation program that requires a security deposit and is monitored under the rules and regulations of the New York State Workers' Compensation Board. Municipal corporations that are exempt from posting a security deposit for their self insurance plans are not affected by this legislation. Approximately 1,500 local governments, such as counties, cities, towns, villages, school districts, fire districts and other special districts and public authorities, do not self-insure and would be eligible to voluntarily participate in this program if their annual premium costs are above \$5,000.

Paperwork: This Rule creates reasonable paperwork requirements to ensure compliance and measure quality. The proposed Rule would require that employers develop a written program for any of the options available in the WSLPIP. An evaluation report and written WSLPIP plan must accompany initial applications so that the Department has adequate data to assess whether the WSLPIP approval should be granted. The renewal application and annual reports provide sufficient information for the Department to determine whether the employer's incentive should continue. The employer also must simultaneously send a copy of the application to the employer's workers' compensation insurer, or to the Board if it is self-insured.

Application materials developed by the Department will seek to minimize necessary paperwork. The Department will provide samples of model programs and make them accessible to employers.

Once the WSLPIP is approved, the employer must notify the insurer, or the Workers' Compensation Board if self-insured, and post the certificate of approval at the worksite. Employers must also inform workers of the program and provide program documents to employee representatives, including the recognized collective bargaining representatives where applicable. These provisions involve stakeholders in the program implementation and oversight. The Department also will send copies of the approval notice to the insurer, the Board and the Superintendent of Insurance, but the primary responsibility for notification rests with the employer.

The annual WSLPIP report and reports by insurers will provide data for evaluating and determining compliance by individual programs as well as for measuring the effectiveness of the overall program. The Department will develop report forms that are streamlined to capture relevant data necessary to evaluate the program.

The Department proposes sensible recordkeeping requirements and monitoring procedures. Monitoring is an opportunity for the Department to take a first-hand look at a program and for an employer to receive valuable feedback on its operations. The Department's onsite review is more accurate with the full cooperation of the employer. The Department will conduct the monitoring process in a reasonable manner to ensure that it does not cause undue hardship. However, employers are expected to fully comply with the recordkeeping and reporting requirements of the regulations and to respond cooperatively to the Department's request for information. The Department will look for evidence of compliance, not just the written program or recordkeeping sheets.

The law states that employee representatives must be involved in the programs. The Department believes that the participation of employee representatives in each program is necessary and will ensure that the programs are in compliance with this Rule. The Department requires employers to verify that they have complied with all requirements of these regulations concerning the participation of employee representatives, including the designated employee representatives and the recognized representative of each collective bargaining unit, where applicable.

Insurers are also asked to report annually to the Department and the State Insurance Department concerning the number of employers and the total amount of credits they issue. This data will enable the state to evaluate the program.

Applications to become a Specialist will require the necessary information for determining whether the applicant's qualifications meet the criteria for certification. Applicants will be able to attach pertinent information if necessary. The Department will ensure that the application process is not burdensome.

Duplication: This Rule does not duplicate any current state or federal laws. This Rule revises and expands an existing Rule that was not implemented previously, and seeks to encourage maximum participation by employers.

Alternatives: This Rule provides employers with several alternatives for receiving an incentive. Participation is voluntary. The Safety Incentive Program option addresses key components of a written safety and loss prevention program that are nationally recognized as the basis of an employer's efforts in providing a workplace free from recognized hazards. Option two, the Drug and Alcohol Prevention Program provides for the voluntary implementation of a variety of specifically designed, proven programs used to minimize the incidence and impact of drug and alcohol abuse in the workplace. Option three, the Return to Work Program, provides employers with an effective way to reduce the cost of a workers' compensation injury or illness claim by encouraging safe and timely return to work and by providing alternate forms of transitional employment.

The Department considered a number of alternatives in developing these regulations and carefully weighed the need to use incentives to motivate employers to voluntarily participate in the program with the need to ensure that employers who receive the incentives fully implement an effective program. This balance is attained by requiring employers to have their programs undergo a consultation and evaluation by a Specialist or Department staff prior to initial application, submit an outline of the program and an evaluation report with their application for the incentive, and implement any one or more of the programs prior to receiving an incentive. The components of each of the programs are spelled out in the regulations, but employers are given sufficient latitude to tailor each of the program requirements to their specific needs.

The Department will approve each program for three years; however, employers must submit a short yearly report so that the Department is assured that the program continues to be implemented and can measure the overall effectiveness of the programs. The Department originally considered requiring employers' programs to undergo an annual evaluation by a Specialist or a Department employee but concluded that such an evaluation would be too burdensome and costly. Requiring programs to undergo a consultation and review for the renewal application was considered as well, but the Department concluded that it should receive sufficient information from annual reports and the renewal application to make an informed judgment about the worthiness of the program. The Department also contemplated giving insurers the responsibility for verifying that employer programs continue to be in effect after the first year, but the Department rejected that proposal. Insurers objected to taking on that responsibility since they did not have input during the initial granting of the incentive, and employers were concerned that insurers would deny incentives unreasonably because the insurer had a vested interest in not granting credits.

The Department also took into account the cost and paperwork implications of annual reporting. The Department has determined that in order to ensure that the employer continues to maintain the program and to measure the overall effectiveness of this program that certain basic information should be provided by the employer to the Department. The Department considered simply having employers attest that they continue to implement the approved program, but, given the Department's limited resources to monitor the program, the Department did not believe that employer self-reporting was an effective way to ensure compliance. The Department considered requiring information from both employers and insurance carriers regarding the implementation of each specific WSLPIP, but opted to require reporting from the employer only, so as not to duplicate effort and because the employer could provide a more accurate description of the program's operation.

The Department was required to set fees below its anticipated costs. The Department considered trying to recoup its administrative costs through increased fees, but was concerned that the number of employers who will implement these programs would be reduced.

The Department weighed charging the same certification fees for Specialists as for the Consultants under the mandatory Safety and Loss Prevention Program. The Department lowered the cost of certification of Specialists to ensure that an adequate number of Specialists are available and to encourage employers, unions, and insurers to have their members seek this certification. The Department also considered having only one certification which would have allowed the Specialist to provide consulta-

tion and evaluation services for all of the three options, but the Department determined that each WSLPIP option requires distinct expertise and qualifications. The Department lowered the cost and streamlined the application procedures for Specialists who seek certification in more than one specialty.

Federal Standards: There are no federal standards which cover workplace safety incentives under a state-run workers' compensation system.

Compliance Schedule: Employers may implement any of the WSLPIP options immediately and may apply for the incentive upon adoption of these regulations, provided that the application is received by the Department no later than 120 days prior to the end of the employer's policy year, or 120 days prior to the end of the calendar year for self-insured employers. Employers that have implemented any of the three programs prior to this Rule may apply to receive the incentive. The application and renewal procedures provide sufficient time for an employer to implement, arrange for a consultation and evaluation, apply, and receive the credit by the next policy period. Employers will be granted the incentive approval for three years.

To receive the incentive in the second and third year of the approval period, employers must submit required reports at least 90 days before the start of the annual policy date in the second and third year. An employer may seek a renewal of the incentive for another three years, and the renewal application and subsequent reports must be submitted to the Department no later than 90 days before the annual policy renewal date in the third year.

The Department requires insurers to apply each incentive that is granted by the Department and the Superintendent to the employer's next policy renewal period following the date of the Department's approval certificate. Failure to apply the approved incentive within thirty calendar days of the employer's notification to the insurer may subject the insurer to penalties issued by the Superintendent. The Department believes that insurers will have sufficient time to meet this deadline.

Individuals seeking certification as Specialists may apply immediately to the Department upon adoption of these regulations. Applications for certification will be accepted throughout the year and are approved for three years. An individual, who has received certification under the mandatory safety and loss prevention program, Section 59-1.12 of the Labor Law, and has maintained the certification required by the Department, will be deemed qualified to provide the required consultation and evaluation of Safety Incentive Programs under this Rule provided that the individual notifies the Department of his or her intent to perform Specialist services under this Rule.

Revised Regulatory Flexibility Analysis

Effect of Rule: Section 134(6-10) of the Workers' Compensation Law (WCL) was amended in 2007 to restructure the process for providing incentives to employers that implement one or more voluntary safety and loss prevention programs. This Workplace Safety and Loss Prevention Incentive Program (WSLPIP) authorizes premium credits for participating employers whose experience modification rating is under 1.30 and who pay workers' compensation insurance premiums of at least five thousand dollars annually, and authorizes reductions in the required security deposit for participating self-insured employers who pay a security deposit. Section 134(1-5) of the WCL was amended as well. Section 134(1-5) established the mandatory safety and loss prevention program for employers with annual payrolls above \$800,000 whose most recent experience rating exceeds the level of 1.20; this program has been overseen by the Department of Labor for over ten years in accordance with Industrial Code Rule 59.

The experience rating thresholds for participation in both the voluntary and mandatory programs overlap; however, the Legislature gave the Department the responsibility and authority to draft clarifying language and regulations. There may be small employers and local governments with an experience rating between 1.20 and 1.30 who are not required to participate in the compulsory program and could be eligible for a WSPLIP credit. In order to maximize the number of eligible small employers, the Department revised its initial proposal and set the threshold for eligibility as those employers with an experience rating of under 1.3 and who are not mandated to have a safety and loss prevention program under Section 134 (1).

Approximately 77,000 employers have premiums of at least \$5,000 and experience modification factors at or below 1.20. Currently, 150 employers actively self-insure and these employers along with their 285 subsidiary companies would be eligible to apply for a reduction in their security deposit. Employers with experience ratings greater than 1.20 represent 1.7% of the total number of employers in New York State. Employers with experience ratings above 1.2 and an annual payroll above \$800,000 will not qualify for the voluntary safety and loss prevention incentive program because they would be subject to the mandatory program. Employers subject to the mandatory safety and loss program represent a small percentage of employers in New York State. The Department

decided to make smaller employers that have annual payrolls of less than \$800,000 and experience ratings between 1.2 and 1.3 eligible for the incentive in order to maximize the number of employers that could choose to have a WSLPIP approved.

Compliance Requirements: Employers, including small businesses and local governments, may voluntarily implement any one or more of the three options in the WSLPIP. To receive approval for the incentive, the eligible employer must develop and implement a written program that complies with the regulations promulgated by the Commissioner of Labor. The regulations provide guidance and flexibility to enable an employer to adopt a program tailored to its needs. Employers who have existing safety, alcohol and drug prevention, and/or return to work programs that meet the standards set in this Rule may apply immediately for the incentive.

There are many models that meet the standards set forth in the regulations. These models may be easily adapted to the needs of small businesses and local governments.

The Department has developed several model safety programs that have been provided to New York employers through its On-Site Consultation Program and for those employers required to have a safety program under Section 134(1-5). Model drug and alcohol prevention programs that conform to this Rule are being developed in consultation with the New York State Office of Alcoholism and Substance Abuse. A variety of specifically designed, nationally recognized programs used to address the incidence of drug and alcohol abuse in the workplace are available through this New York State agency as well as most federal agencies promoting safety, health or drug prevention programs. There are also many model programs that provide direction for employers who implement a return to work program. They include the necessary changes in company policy, employee notification and forms. Many insurers, including the New York State Insurance Fund, have model return to work programs available for employers. The Department has identified additional return to work programs through its research related to the Department's "Return to Work" report, as issued in March 2008.

An employer must implement the program at each work location prior to applying to the Department of Labor for a WSLPIP credit. Since the employer's incentive will be based on the entire premium paid, the Department requires employers to ensure that the approved program covers each employee.

In addition, prior to applying to the Labor Department for approval for the WSLPIP, the employer's program must undergo a consultation and evaluation by a Certified Specialist or a Department of Labor employee. The evaluation report issued by the Specialist or Department employee verifying that a WSLPIP has been implemented must accompany the application to the Department of Labor. The employer has several options for choosing who will conduct the consultation and evaluation. Employers, including small businesses and local governments, may have the consultation and evaluation conducted by one of their qualified employees who has been certified as a Specialist, or make arrangements with a private sector Specialist, a Specialist representing their insurance carrier or union, or the Department of Labor. This step ensures that the employer will receive an objective assessment of its WSLPIP plan as well as input on improving the program. The evaluation report will enable the Department to make a more accurate and timely decision on granting approval for the WSLPIP incentive.

An employer who chooses to participate in the voluntary program must have its WSLPIP undergo a consultation and evaluation prior to the initial application, and apply to the Department for one or more incentives. Thereafter, an employer must submit an annual WSLPIP report and verification that the program still complies with the regulations in order to receive the incentive for each year of the three year approval period. They must reapply for the incentive after the expiration of each three year approval period. The Department's application and reporting process will be as streamlined as possible, but an employer will be asked to provide sufficient information so that the Department can determine whether the program complies with the regulations and analyze the effectiveness of the program. Insurers and the Workers' Compensation Board are also asked to provide data that the State can use to evaluate the program and to ensure that the appropriate credits are being issued.

An employer must send copies of its application to the Department as well as its insurer or the Board. Furthermore, employers, including small businesses and local governments, must include relevant employee representatives in the consultation and evaluation discussions with the Department or a Specialist. The employer must share their plan documents and certificates of approval issued by the Department with the insurer or the Board, and with employee representatives. This is to ensure that all relevant parties are part of the process and included in the program.

New Certification requirements are outlined for Specialists for each of the three voluntary programs. The Department determined that each specialty required different qualifications, but lowered the cost and simplified the certification process for those seeking more than one Certification.

The Department provided an opportunity for the Consultants certified under the mandatory safety and loss prevention program established by WCL Section 134(1-5) to serve as Specialists under the voluntary safety and loss prevention program. The criteria for Certification as Specialists were developed to encourage representatives of employers and organizations such as insurers and unions to seek Certification.

Professional Services: Most employers, including small businesses and local governments, have access to a variety of professional services that address cost containment under the workers' compensation system. The amended Section 134(6-10) of the WCL creates additional options that an employer may choose from to lower costs when implementing an incentive. The employer may seek the certification of a qualified employee to implement and evaluate the appropriate program, contract with a Specialist in the appropriate safety or loss prevention field, have a representative of the employer's insurance carrier provide consultation and evaluation services, or have a Department of Labor employee conduct the consultation and evaluation. In addition, employer groups and employee organizations may have qualified members certified by the Department to perform the required evaluation. To reduce costs to taxpayers, the Department encourages local governments and small employers to consider co-operative arrangements for securing the services of a Specialist who can assist them in developing and implementing their programs. Members of professional organizations are given a discount for certification and re-certification.

Compliance Costs: If the employer uses a Specialist for consultation and evaluation, the cost will be determined by supply and demand. The Department anticipates that most insurers will seek Specialist Certification for staff and such Specialist will provide these services to their customers at little or no cost. The Department decided to lower its fees for consultation and evaluation services, to waive its application fees for employers who use the Department for consultation and evaluation, and to set its application fees below its administrative costs in order to make this program more cost effective for employers. To lower the cost for small employers, the cost of the consultation and evaluation services provided by the Department for the Return to Work Program and the Drug and Alcohol Prevention Program is limited to \$300 for employers with annual premium payments of less than \$50,000. The consultation and evaluation for the Safety Incentive Program is anticipated to require more hours of work by the Department staff, and, therefore, the Department did not cap that fee. An employer seeking an incentive for more than one program can lower costs by having all programs undergo the consultation and evaluation at the same time. Application fees per program are only \$100 with a discount of \$50 for employers with annual premiums between \$5,000 and \$10,000.

Employers will receive a premium credit or a reduction in their security deposit as determined by the Superintendent of Insurance and the Board respectively. These incentives are expected to offset the compliance costs of the programs. Employers with less than five thousand dollars in annual premium and self-insured employers who are not required to submit a security deposit do not qualify for the WSLPIP and will not incur any cost because of this legislation. Employers who do not choose to voluntarily participate in the incentive program will not incur any costs.

Economic and Technological Feasibility: The regulation does not require any use of technology to implement a WSLPIP. The Department will offer, but not mandate, on-line application and reporting. The Department will make every effort to assist small businesses and local governments in their effort to implement and maintain a successful WSLPIP.

Minimizing Adverse Impact: The Department does not anticipate any adverse impact on small businesses created by the implementation of a WSLPIP. To the contrary, the impact of implementing any of the options of this regulation will have a significantly positive effect on small businesses in New York. The Department is working with several agencies such as the New York State Insurance Fund, the Workers' Compensation Board, the Office of Alcoholism and Substance Abuse Services (OASAS) and the Insurance Department to minimize duplication.

The Department sought to increase the attractiveness of the program in several ways. It considered requiring that each WSLPIP receive an annual consultation and evaluation by a Specialist or Department employee, but determined that such a requirement would make the cost of the program prohibitive, especially for small employers and local governments. The Department structured its three year approval process to lower costs for employers while ensuring that approved WSLPIPs continue to comply with the regulations. The Department initially proposed requiring each program to undergo a consultation and evaluation upon renewal every three years, but determined that sufficient information was available through the employer's annual reports and renewal application to enable the Department to render an opinion regarding the employer's continued compliance, thereby minimizing the renewal application costs to employers. Paperwork requirements have been minimized to capture essential data to analyze the effectiveness and maintain the integrity of the program.

The Department lowered the cost of using the Department as a Specialist from the costs charged for the compulsory program. Discounts were established for Specialists seeking Certification in more than one specialty and for members of qualified organizations such as employers, insurers, and unions.

Small Business and Local Government Participation: The Department will seek feedback from small businesses and local governments during the rule making process. Notice of the rulemaking process will be distributed to business organizations and to government entities eligible for the WSLPIP. The Department has posted a notice on the website for employers to make comment. The proposed rule will be posted on the Department website with a reference to the rulemaking provisions in the State Register.

Revised Rural Area Flexibility Analysis

Effect of rule: The Article 7, Section 134(6-10) legislation established a voluntary program that applies to employers 1) whose workers' compensation experience modification rating is under 1.30 and who pay workers' compensation insurance premiums of at least five thousand dollars, or 2) are self-insured and required to pay a security deposit. Under this program, employers who implement a safety incentive program, a drug and alcohol prevention program and/or a return to work program may be eligible for a credit in their workers' compensation premiums or a reduction in their security deposit. Employers in rural areas may choose to participate.

Over 77,000 employers across the state have an experience modification factor at or below 1.2 and pay annual workers' compensation premiums of \$5,000 or more and, therefore, are eligible to apply for the incentive; the number of eligible employers operating in rural areas is unknown. Employers with experience ratings greater than 1.20 represent only 1.7% of the total number of employers in New York State. The pool of eligible employers will be slightly larger than the figures indicate, as the Department decided to make smaller employers that have annual payrolls of less than \$800,000 and experience ratings between 1.2 and 1.3 eligible for the incentive in order to maximize the number employers that could choose to have a WSLPIP approved. This policy is likely to increase the number of eligible employers in rural areas.

Reporting, recordkeeping and other compliance requirements; and professional services: The compliance requirements for rural employers are the same as for all employers. All employers who choose to implement a Workplace Safety and Loss Prevention Incentive Program (WSLPIP) must first file an application with the Department of Labor to be approved for an incentive. Prior to application, the employer's program shall undergo a consultation and evaluation by a Specialist or a Department employee. An evaluation report and a copy of the written program must be sent to the Department as part of the initial application and for renewal applications. This information will provide the Department with adequate data in order to assess whether the WSLPIP approval should be granted. This process also provides valuable feedback to the employer and will enhance program effectiveness. Employers must send a copy of the application to their insurer or the Board if they are self-insured.

Application materials developed by the Department will seek to minimize necessary paperwork. The Department will provide samples of model programs and make them accessible to employers.

Once the WSLPIP is approved, the employer must notify the insurer, or the Workers' Compensation Board if self-insured, and post the certificate of approval at the worksite. The Department also will send copies of the approval notice to the insurer, the Board and the Superintendent of Insurance, but the primary responsibility for notification rests with the employer.

Employers must also inform workers of the program and provide program documents to employee representatives, including the recognized collective bargaining representatives where applicable. Such provisions ensure the involvement of stakeholders in the implementation and oversight of the program.

Approval for each implemented program shall be extended for three years. In order for the employer to receive an incentive in the second and third year of the approval period, the employer shall submit a basic report to the Department so that the Department can ascertain whether the employer is continuing to implement the program and whether the program has had an impact. The renewal application procedures have been simplified and programs will not be required to undergo a consultation and evaluation upon renewal.

Each employer's annual WSLPIP report and the reports of each insurer will provide data for evaluating and determining compliance by individual programs as well as for measuring the effectiveness of the overall program. The Department will develop report forms that are streamlined and capture relevant data necessary to evaluate the program.

Applications to become a Specialist will require the necessary information for determining whether the applicant's qualifications meet the criteria for certification. Applicants will be able to attach pertinent information if necessary. The Department will design the application form to minimize any burden on the employer.

Costs: There should be no difference between the initial start-up costs of any of the WSLPIPs for an employer in a rural area as compared to one in a non-rural area. Implementation of the incentive programs are expected to lower the costs of employee injuries and illnesses that employers incur. Savings will be generated by reducing the cost of additional labor, overtime and employee turnover; savings will be generated on an annual basis as long as an incentive is implemented. To reduce costs to taxpayers, the Department encourages local governments in rural areas to consider cooperative arrangements for securing the services of a Specialist who can assist them in developing and implementing their plans. Likewise, private sector employers are encouraged to have an employee certified as a Specialist or to enter into cooperative arrangements through employer associations or their insurers to secure the services of a Specialist.

There are a variety of ways an employer may choose to implement any of the programs in this regulation. This includes seeking the certification of a qualified employee to implement and verify the appropriate program, contracting with a Specialist in the appropriate safety or loss prevention field, consulting a Specialist employed by the employer's insurance carrier who can evaluate the program, or having a Department staff conduct an evaluation. Employers also may operate a program in conjunction with the union that represents its employees. In most cases, program costs will be determined by supply and demand.

Implementation costs of each WSLPIP option are employer specific and based upon the size and location of the employer. It is anticipated that the cost of implementing any of the options of this regulation will be significantly lower than the cost that employers without such programs incur for employee injuries and illnesses. Application fees and costs are discounted for smaller employers.

The New York State Department of Labor's fees for consultation and evaluation services are below those statewide rates and usage already in place under the Mandatory Safety and Loss Prevention Program. The Department proposes to charge \$100.00 per hour for consultation and evaluation services for each of the three WSLPIPs. It is anticipated that the review of the Safety Incentive Programs will require several hours of staff time. Consultation and evaluation costs of the Drug and Alcohol Prevention Programs and the Return to Work Programs, as well as the credits given for such programs, are expected to be lower than those of the Safety Incentive Programs; therefore, the Department capped those charges at \$300.00 for employers with premiums of less than \$50,000 annually. The agency believes that its fees will be less than those charged by Specialists/Consultants in the private sector.

As an additional incentive for employers to apply for these credits, the Department proposed an application fee of \$100.00, which is discounted to \$50.00 for employers with annual policy premiums of \$10,000.00 or less. The fee is waived if the employer chooses to use DOL staff for the consultation and evaluation. The renewal application fee is set at \$100.00, and employers with annual policy premiums of \$10,000.00 or less are charged a discounted fee of \$50 for renewals. The discount will benefit small employers who are more likely to have annual premiums of less than \$10,000. These application fees are below the expected cost of administering this program.

The Department proposed application fees for Specialists that are below the Department's administrative costs in an effort to ensure that there would be an adequate supply of Specialists available to employers. Individuals who wish to be certified as a Specialist in one program area must submit a \$100.00 non-refundable application fee, which will be applied to the certification fee of \$800.00 if the applicant is approved. Individuals seeking certification in more than one program area would pay a discounted certification fee of \$200 for each additional incentive program certification. Specialists who seek certification in a second or third program area will be given credit for their prior experience as a Specialist, ensuring that an adequate pool of Specialists are available throughout the state and specifically in rural areas.

Costs of certification as a Safety and Loss Management Specialist will be incurred by those wishing to provide the appropriate services as described in this regulation. Renewal fees are minimal and scaled to the number of Specialists recertifying. Those currently certified by the Department as Safety and Loss Prevention Consultants under Code Rule 59 will incur no additional costs for certification as a Specialist for the Safety Incentive Program and will have the same renewal fees as Specialists. The Department had multiple alternative fee structures for certifying Specialists but opted for a lower fee schedule to minimize costs to those seeking certification, while providing some funds to cover the cost of the program.

The Department did not receive additional state funding to administer this program, and is, therefore, concerned that the increased administrative costs related to certifying Specialists and collecting fees will strain the Department's Licensing and Certification Unit resources as well as the one program manager assigned to the unit. The Department considered trying to recoup its administrative costs through increased fees, but determined that would have resulted in a reduction in the number of employers who would implement these programs.

Economic and technological feasibility: The legislation does not require any use of technology to implement a WSLPIP. Applications, report forms and model programs will be available on the Department's website, but on-line submission of paperwork will not be required. The Department will make every effort to assist rural and small employers in their efforts to implement and maintain a successful WSLPIP.

Minimizing adverse impact: There should be no adverse impact on rural areas. It is anticipated that the impact of implementing any of the options of this regulation will have a significant positive effect on rural businesses in New York. The Department is working with several agencies such as the New York State Insurance Fund, the Workers' Compensation Board, the Office of Alcoholism and Substance Abuse Services (OASAS) and the Insurance Department to minimize duplication.

The Department sought to increase the attractiveness of the program in several ways. It considered requiring that each WSLPIP receive an annual consultation and evaluation by a Specialist or Department employee, but determined that would make the cost of the program prohibitive for employers. The Department structured its three-year approval process to lower costs for employers while ensuring that approved WSLPIPs continue to comply with the regulations. The Department also significantly streamlined its renewal process for the incentive. Paperwork requirements have been minimized to capture essential data to analyze the effectiveness and maintain the integrity of the program. The Department lowered the cost of using the Department as a Specialist from those costs charged for the compulsory program. Discounts were established for Specialists seeking Certification in more than one specialty and for members of qualified organizations such as employers, insurers, and unions.

Rural area participation: Public and private interests in rural areas will have the opportunity to participate in the rule making process, public and/or direct notice, public hearings and/or meetings, and adoption or modification of procedural rules to minimize cost or complexity of this regulation. A period of comment will be offered where the Department will solicit feedback on this regulation. The Department will reach out to entities in rural areas during the public comment period.

Revised Job Impact Statement

Nature of impact: This Rule, pursuant to Article 7, Section 134(6-10) legislation, will have a positive effect by retaining and increasing job opportunities. This Workplace Safety and Loss Prevention Incentive Program (WSLPIP) was intended to help New York's businesses reduce costs and maintain a stable workforce, thereby keeping and growing jobs in the state. This Rule will help employers minimize the cost of workers' compensation in New York by providing an annual insurance credit or reduction in the employer's security deposit with the Workers' Compensation Board for the implementation of a WSLPIP. The savings to an employer are expected to be greater than the costs of implementation. These programs will increase productivity and improve the competitiveness of participating employers.

Article 7, Section 134(6-10) will expand the number of individuals seeking certification as Safety and Loss Prevention Specialists, creating more opportunity and jobs. Members of qualified organizations representing employers, labor organizations and insurers may seek certification as Specialists, thus enhancing their qualifications. This legislation creates employment opportunities for safety, health, environmental, drug and alcohol prevention and return to work professionals with qualified experience or professional designations. The legislation will also support the expansion of small businesses that will provide consultative and evaluative services to new and existing clients seeking help with the implementation of a WSLPIP.

Assessment of Public Comment

The Department received some comments following the May 20, 2009 publication of the Notice of Proposed Rule Making. Following is a summary of those comments and the Department's response.

§ 60-1.2

One stakeholder group commented that the definition of monitoring authority was excessively broad. The definition of monitoring already includes the provision limiting the Department's review to that information required to "determine whether an approved WSLPIP complies with this Part." The Department believes this clearly indicates the extent of the intended monitoring activities.

§ 60-1.4

One stakeholder thought that the \$5000 premium minimum threshold for incentive eligibility is discriminatory against small businesses that fall below this threshold. This provision was established by statute and cannot be removed.

One stakeholder thought the regulations should denote how much the Incentive reduction will be and/or the mechanism for calculating the reduction, but the Department of Insurance is responsible for developing the Incentive amounts.

One stakeholder commented that the exclusion of members of a safety

group is unfair. Safety groups, which already have programs in place and receive incentives, were excluded from this program by statute.

One stakeholder questioned the experience rating threshold overlap between this rule and the compulsory program under WCL § 134(1). The Department's intent is to maximize the number of employers eligible for the voluntary program by including small employers with experience ratings between 1.20 and 1.30 who are not required to participate in the compulsory program.

§ 60-1.5

One group commented that the Consultation and Evaluation process was overly complicated and unnecessary. While the group understood the requirement for an Evaluation, the group questioned why employers needed to undergo a mandatory process for obtaining recommendations on its program once it had been developed and implemented. The Department originally established this procedure based on the mandatory safety and loss prevention program established by Section 134(1-5) of the WC Law, where employers must undergo a Consultation and Evaluation because of safety problems. The Department agreed that this procedure is unnecessary in the voluntary program, and removed the term "Consultation" from the regulations, as the Evaluation is a form of consultation.

The Department amended language in this Section to say that an employer may use "any individual who is Certified as a Specialist by the Department," instead of listing options, and that "the Department may provide guidance to assist employers" at the suggestion of stakeholders.

§ 60-1.6

Commenters thought that the regulations should allow for electronic forms options. The Department is developing online forms and electronic submission abilities, and added language to allow the Department to develop such processes.

Stakeholders suggested changing the deadline for employers' applications to 180 days prior to policy expiration from 120 days and adding a provision requiring the Department to render decisions on a deadline. The Department believes the current deadlines provide sufficient time for all parties to meet their obligations.

One commenter noted that some employers have multiple FEINs, and wanted it to be clear that separate applications are not needed for programs that cover all locations. The Department added language to clarify the matter.

One group thought the Department should have responsibility for notifying the insurer or the Board when a Certificate of Approval or Renewal is issued. The Department believes such responsibility should rest with the employer who is seeking the discount.

The Department and the Workers' Compensation Board were concerned that self-insured employers would have to forego the credit for another year given the current regulatory timeframe. Language was added to allow existing programs to apply 90 days prior to their policy renewal date for the first year of this Program.

§ 60-1.7

One stakeholder suggested that credits should be available for a limited term of 4 years, because the program should be of sufficient benefit by that time in reducing experience rating and other costs. The Department disagrees and believes that limiting credit eligibility would serve as a disincentive to employers.

One group expressed confusion about the reference to the annual WSLPIP report in this Section. To clarify, the Department switched Section 1.7 - Renewal Application and Approval Procedures with Section 1.8 - Continuation of the Incentive During the Approval Period.

Stakeholders commented that employers should not be required to send a copy of their renewal application to the insurer or the Board, and suggested sending notice of the renewal instead. The Department maintains that this procedure is necessary and will enhance compliance with little burden to the employer.

§ 60-1.8

One stakeholder commented that to receive a continuation of the Safety Incentive, employers should be required to demonstrate a correlation between their Program and a reduction of injury and loss. This information will be available through the annual report required of employers for the Safety Incentive Program [§ 60-1.8(b)(4)].

One group commented that the procedures for submitting an annual report 90 days prior to the policy renewal date is confusing, and would result in an incomplete and partial year report. The Department agreed and changed the language to make the annual report due 90 days after the policy renewal date. The Department changed the language to clarify the data needed for the report.

Commenters suggested the language be amended to say "steps taken to minimize drug and alcohol abuse and related workplace injuries." The Department made this change.

One group believed that the annual report requirement to provide information on "the lost time incurred for each injury" is an overreach, as it would include injuries with minimum amounts of lost time. The Depart-

ment changed this to require the lost time for each employee participating in the return to work program.

In response to a Stakeholder suggestion, the Department changed language to say "the number of employees who did not return to work after suffering a workplace injury, and the number of employees that could not return to work because of such injury."

§ 60-1.10

One stakeholder group recommended requiring insurers to report any information that would impact a Program's certification to the Department. Although the insurer has no formal monitoring role laid out in the regulations, the Department welcomes reports related to program compliance.

Stakeholders suggested it would be more appropriate for the provisions covering both initial and renewal applications to be listed separately under Sections 60-1.6 and 60-1.7. The Department believes the provisions for approval, monitoring, and appeal relating to initial and renewal applications are appropriate in this Section.

Commenters thought that this Section should include a time frame for Departmental determinations of deficient applications. The Department does not agree that there should be a time frame for determining deficient applications, as a WSLPIP may become deficient or noncompliant at any point during its operation.

One stakeholder group commented that this section provides no due process provisions. Due process is provided for under Article 78 [§ 60-1.10(c)].

Stakeholders deemed the criterion listed under this section inappropriate for determining denial, revocation, or suspension of an Incentive and that consideration of past violations of State laws or regulations as excessive. The Department maintains that this information is relevant to its review.

§ 60-1.11

One group disagreed that employee representatives should be granted access to personnel, facilities, and records and objected to requiring HIPAA-compliant records access. The Department strongly believes that employees are central to maintaining an effective program and should have appropriate access to information which assists them in their roles. The Department removed the HIPAA reference, but cited conformance with federal and state confidentiality provisions.

The Department rejected the suggested that employers only be required to report change in ownership "that has resulted in issuance of a new federal ID number."

§ 60-1.12

One group was concerned about the time frame for insurers to apply the credit. The Department believes that insurers have sufficient time under the current application deadlines. The regulations also require employers to simultaneously send a copy of the application to the insurer and notify the insurer of an approved credit in a timely manner.

§ 60-1.13

One Stakeholder group objected to requiring employee participation. The Department believes the appointment of a representative of employees is integral to ensuring employee involvement in the program and is required by statute.

§ 60-1.14

Some stakeholders objected to the omission of drug and alcohol testing from this program. It was not the intent of the State Legislature to require drug testing. Although diverse views were expressed in developing the Rule, the Department's intent is for the incentive to be positive and beneficial to both employers and employees, rather than intrusive and burdensome. Fewer employers would participate in a program that required mandatory drug testing.

One group suggested changing the language to read "...use of alcohol and drugs in the workplace or during work hours is prohibited." The Department feels its use of "impairment" covers all situations in which alcohol or drug use would negatively impact the workplace.

§ 60-1.15

One stakeholder was concerned that the cost of reemploying someone with a permanent disability would be significantly more than for a temporary disability injury and commented that a Return to Work Program would be more cost effective if it excluded employees who sustain permanent injuries. The Department responded that a RTW Program must make reasonable efforts to accommodate an employee who is medically able to return to work.

Stakeholders suggested that the policy should be to return the employee to his or her pre-injury employment or accommodate his or her needs, rather than return and accommodate. However, accommodation is a tool used in returning an employee to pre-injury employment as well as other suitable employment.

Commenters said that the use of "treating physician" and "medical provider" interchangeably was confusing. The Department changed the language to read "treating physician" consistently.

One group commented that the Return to Work polices need to take into

account the availability of comparable work and suggested adding the language “to the extent practicable.” The Department believes the regulation does account for the availability of comparable work by mandating that the employer have a policy, rather than mandating a specific procedure.

Some stakeholders considered the requirement for employers to provide “vocational services” an excessive mandate. The Department believes its use of “vocational services” is broad enough to allow employers to assist an injured employee in obtaining alternative work according to its resources.

One group suggested adding an assessment of employee participation to the evaluation portion of this Section. The Department made this change.

§ 60-1.16

One group commented that the access to employer records and information given to Specialists is excessively broad. The Department believes Specialists must have access to all information required to ensure the WSLPIP is in compliance with this Part.

§ 60-1.17

One group wanted this Section to make clear that any individual, including employees of insurance companies and of employers seeking the incentive, may apply for Certification as a Specialist if they meet the criteria. The Department made this change.

One stakeholder suggested that individuals who were not Certified as a Specialist be allowed to conduct Evaluations under the supervision of a Certified Specialist. The Department expects there to be sufficient numbers of people qualified to obtain Certification to meet the demand for Evaluations and is concerned that Evaluations performed by someone other than a Certified Specialist would be of substandard quality.

Some stakeholders were concerned with how Specialist applicants could document five years of experience for Certification purposes. The Department will evaluate these applicants on a case-by-case basis.

One group proposed deleting the titles of Associate in Loss Control Management and Associate in Risk Management and adding the titles of Certified Loss Control Specialist and Certified Safety Professional. The Department added Certified Loss Control Specialist as a qualifying title under all three Programs.

Office of Mental Health

NOTICE OF ADOPTION

Prior Approval Review for Quality and Appropriateness

I.D. No. OMH-22-09-00012-A

Filing No. 943

Filing Date: 2009-08-12

Effective Date: 2009-09-02

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

Action taken: Amendment of Part 551 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 31.05 and 31.23

Subject: Prior Approval Review for Quality and Appropriateness.

Purpose: To streamline the process for agencies to obtain OMH project approval.

Substance of final rule: (Full text is posted at the following State website: www.omh.state.ny.us): This rule will amend 14 NYCRR Part 551, Prior Approval Review for Quality and Appropriateness, by streamlining the process for agencies to obtain project approval from the Office of Mental Health.

Overview

All programs requiring licensure (e.g., inpatient, community residences, outpatient) by the Office of Mental Health are required to obtain prior approval from the Office before a program can be developed or modified. The current regulatory requirements involve a comprehensive review process that does not necessarily reflect the scope of the proposed action; thus, changes that are relatively ministerial in nature require the same level of review as a more substantial project. The amendments will make better use of agency resources by categorizing projects requiring review into three distinct categories:

“Administrative Action”, “Comprehensive PAR” and “E-Z PAR”. The amendments will ultimately result in a reduction in the amount of time it takes for the Office of Mental Health to render a decision, as well as a reduction in the amount of paperwork necessary to be completed by providers. Ultimately, the streamlined process will allow the agency to more appropriately focus its resources on substantial projects and eliminate or reduce such focus on ministerial projects.

Requirements

Projects categorized as “Administrative Action” will not be subject to the prior approval review specified in Part 551 of Title 14 NYCRR; however, certain projects will require the submission of OMH-prescribed forms prior to the implementation of a proposed action.

Projects in the category of “Comprehensive PAR” review would include those that establish a new program which is not currently licensed by OMH or which has been licensed for less than six months; establishment of licensed psychiatric inpatient beds or expansion or reduction of licensed psychiatric inpatient beds by at least 15 percent of the licensed capacity of that site or by more than 10 beds, whichever is less; a change in sponsor of a program licensed by OMH where the new sponsor does not currently operate a program licensed by OMH or has been licensed for less than six months; closure of a licensed psychiatric inpatient program; capital projects that exceed \$600,000 (or a dollar amount determined by the Commissioner based upon average construction cost increases subsequent to 2010), and projects otherwise eligible for E-Z PAR review that are reclassified to Comprehensive PAR review pursuant to the regulation.

Projects classified as E-Z Par review would consist of outpatient program projects submitted by an applicant which currently operates an outpatient program that is currently licensed by OMH including: establishment of a new outpatient program; establishment of a new satellite, relocation of a licensed outpatient program or satellite to a location outside of the program’s current county; expansion or reduction of caseload or annual volume of services in a clinic treatment program over any contiguous 12-month period by more than 25 percent; expansion or reduction of the approved caseload or capacity of an outpatient program, excluding clinic treatment programs, over any contiguous 12-month period by more than 10 percent; closing an outpatient program; a substantial change in population served, services provided, or program type; and other projects that may have a substantial impact on outpatient mental health services. Other E-Z PAR projects would include licensed housing projects submitted by an applicant which currently operates a program which has been licensed by OMH including: expansion or reduction of licensed capacity; relocation of licensed housing, including community residences, crisis residences, single room occupancy residences; establishment of licensed housing operated by a business entity; establishment of licensed housing not selected through OMH’s request for proposal process; and closure of licensed housing programs. E-Z PAR projects also include inpatient projects that involve expansion or reduction of licensed inpatient beds by more than 5 percent up to 15 percent, or by a maximum of 10 beds, whichever is less; and requests for a waiver of the requirement that the program admit individuals in emergencies. A change of sponsor of a program currently licensed by OMH, when the new sponsor currently operates a program which has been licensed by OMH for at least six months and is in good standing would warrant an E-Z PAR process, as would a significant change in the terms and conditions of an operating certificate and capital projects falling within a prescribed dollar range.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 551.7(a)(11).

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cochjdd@omh.state.ny.us

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The language in Section 551.7(a)(11), which is reflected in the final, adopted version of the rulemaking, exists in the current version of Part 551. In the Notice of Proposed Rulemaking, OMH had removed certain requirements when a project proposes closure or termination. The agency has decided to use existing language and criteria when a project

proposes closure. The changes do not reflect a new concept, nor do they add requirements which had not previously existed.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis for small business and local governments is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The language in Section 551.7(a)(11), which is reflected in the final, adopted version of the rulemaking, exists in the current version of Part 551. In the Notice of Proposed Rulemaking, OMH had removed certain requirements when a project proposes closure or termination. The agency has decided to use existing language and criteria when a project proposes closure. The changes do not reflect a new concept, nor do they add requirements which had not previously existed.

Revised Rural Area Flexibility Analysis

A revised rural flexibility analysis is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The language in Section 551.7(a)(11), which is reflected in the final, adopted version of the rulemaking, exists in the current version of Part 551. In the Notice of Proposed Rulemaking, OMH had removed certain requirements when a project proposes closure or termination. The agency has decided to use existing language and criteria when a project proposes closure. The changes do not reflect a new concept, nor do they add requirements which had not previously existed.

Revised Job Impact Statement

A revised job impact exemption is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive and will have no adverse impact upon jobs and/or employment opportunities. The language in Section 551.7(a)(11), which is reflected in the final, adopted version of the rulemaking, exists in the current version of Part 551. In the Notice of Proposed Rulemaking, OMH had removed certain requirements when a project proposes closure or termination. The agency has decided to use existing language and criteria when a project proposes closure. The changes do not reflect a new concept, nor do they add requirements which had not previously existed.

Assessment of Public Comment

The agency received two letters of comment regarding the amendments to Part 551 of Title 14 NYCRR. The issues and responses are below:

Issue: One letter indicated strong support for the concept of streamlining the Prior Approval Review (PAR) process but raised some concerns regarding the Local Governmental Units (LGU) involvement. Specifically, concerns were expressed that changes in service capacity could be processed through the Administrative Action process without LGU input. The writers requested inclusion of a requirement in the Administrative Action process that the form be formally reviewed by the LGU to evaluate the possible impact to the local planning process. The writers also believe that the LGU should have the ability to require that an application processed as an Administrative Action be converted to an E-Z Par review if deemed appropriate, including a 10-day response time for Administrative Action projects.

Response: The LGU will receive an electronic submission of Administrative Action projects at the same time as OMH. Projects categorized as "Administrative Action" will not be subject to the prior approval review specified in Part 551 of Title 14 NYCRR; however, certain projects will require the submission of OMH-prescribed forms prior to the implementation of a proposed action. Therefore, the Administrative Action process is considered a notification process, not a review process. The regulations in Section 551.9(c) specifically provide an opportunity for the LGU to request that OMH reclassify a project for review.

Issue: The response timeframes for LGUs could be problematic. LGUs must respond to Comprehensive PAR applications within 20 days and E-Z Par applications within 10 days or it will be deemed that the LGU has no objection. These timeframes may be impossible for some counties to meet because the issues may have to be raised with the Community Services Board (CSB). Should the CSB meet only once a month, it may be impossible for the LGU to respond in a timely fashion. The writers requested a longer time period for LGU response and further request that the "clock" not begin until such time as OMH has provided the entire submission to the LGU.

Response: One of the goals of the streamlined PAR process is to

provide a more timely response to an entity submitting an application. An increase in the amount time for LGU response would be contrary to this goal. However, OMH does recognize that there may be cases where the allotted timeframes may be impossible for the LGU; therefore, OMH included language in the amended regulations which stated that reviewers may request an extension for cause (551.9(b)(1) and (2)). An occasional request from the LGU for an extension based on the CSB example mentioned above would be an illustration of a reasonable request for an extension for cause. In addition, the time spent in review ultimately should be lessened by these amended regulations because the applicant must provide a letter of intent to the LGU at the start of the process, and the LGU must provide a letter of support for such project prior to submission to OMH. Consistent with existing regulation, the timeframes for LGU review begin upon receipt of the packet by the LGU.

Issue: The word "population" is not defined in the regulation, while "caseload" is defined. The writers believe that "population" should be defined to ensure that there is no confusion between the two words. Also, the definition of "caseload" should be further expanded.

Response: There is a distinction between "population" and "caseload" but OMH believes that the term "population" is self evident within the regulation and, therefore, does not require definition. OMH also believes that the definition of "caseload" is sufficient within the regulation and does not require modification.

Issue: The term "special population" should be defined and all changes in "special populations" should be included in the E-Z Par review.

Response: OMH believes that the term "special population" is self-evident and does not require definition. The fact that a program proposes to serve a special population does not necessarily indicate that a particular population has a specialized clinical need or other characteristic that would require enhanced review. Such a determination can be made based upon the description of the special population in the project being proposed.

Issue: Section 551.9(g) should be modified to provide that in cases where OMH proposes a decision contrary to a recommendation of approval or disapproval by the LGU, the Commissioner shall afford the LGU an opportunity for a public hearing and not just an opportunity to request a public hearing.

Response: Mental Hygiene Law § 31.23 provides that the local Health Systems Agency (HSA) has an opportunity to request a public hearing, but it does not provide the LGU the right to request a public hearing. In recognition of the role of the LGU, OMH has previously included an opportunity for the LGU to request a public hearing. The statute as to the HSA provides that, "The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than family care homes, community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and if so requested, a public hearing shall be held." By regulation, OMH is granting the same right to LGU entities to request a public hearing.

Issue: LGUs should be given the opportunity to notify OMH that the LGU has determined not to submit a letter of support and that it will submit comments on the proposal in the normal course of review.

Response: The LGU will have the right to decide not to submit a letter of support and will have a copy of the application to review within the time period allowed. Extensions for cause are allowable under the regulation.

Issue: Applications submitted without prior consultation should be deemed incomplete and returned to applicant.

Response: Section 551.5(c) of the regulation states that, "The applicant shall consult with the local governmental unit through its director of community services or designee in the county or counties to be served by the project prior to submission of an application to the Office of Mental Health in accordance with this Part." In addition, a letter of support must be submitted by the applicant in order for processing to occur of E-Z Par applications.

Issue: A provision should be added to the regulations which states that projects should be subject to E-Z Par review not only when there

is a relocation outside of the area currently served by the program, but also outside of a service area as defined by the LGU. This will ensure LGU input.

Response: The agency feels this issue is addressed sufficiently by mandating that the applicant obtain a letter of support from the LGU and include that letter with the E-Z Par application.

Issue: Under the amended regulations, expansion or reduction of inpatient capacity of less than 5 percent or less than 10 beds (whichever is less), shall be processed as an Administrative Action and not subject to an E-Z Par or Comprehensive Review. The writer stated that the threshold bed levels should be measured over a prior 12-month period in order to avoid the potential for hospitals unbundling their reductions to avoid E-Z Par review.

Response: As stated above, the applicant must obtain a letter of support from the LGU. The LGU would be in the best position to determine if the scenario mentioned above regarding hospitals unbundling their reductions is actually occurring. The LGU could then advise OMH of the situation and request that OMH reclassify the project for review.

Issue: Under the amended regulations, regulatory compliance of existing programs and services will be taken into consideration during reviews of applications. Further, an applicant, who has a current operating certificate with a duration of less than 12 months, or who has had an operating certificate with a duration of less than 12 months within two years of filing the application, must demonstrate the ability to comply with regulatory requirements in currently licensed programs prior to OMH approving an application. The writer stated that it is unclear if these requirements pertain only to OMH-licensed programs or more generally New York State-licensed programs. The writer recommended that the most comprehensive review, the requirements pertain to the latter.

Response: OMH's scope of authority and expertise relates to the operation of mental health services and compliance with OMH regulations. It should be noted, however, that providers are required to demonstrate character and competence under this Part and a pattern of repeated violation of other regulatory authority would certainly be taken into account in determining whether the requisite character and competence are present.

Issue: A provision in the amended regulations which provides for the OMH Commissioner's approval of a project but denial of public funds is outmoded and should be repealed due to the repeal of Medicaid neutrality.

Response: The fact that OMH previously repealed the regulatory language related to Medicaid neutrality has no bearing on this regulatory amendment. In April, 2008, the agency repealed language which stated that in reviewing outpatient projects, the Office of Mental Health shall consider, for projects in which the proposed operating budget includes reimbursement from Medicaid or local assistance, the impact, source, and availability of the State share from such funds. However, there could potentially be a situation where a provider wishes to undertake a project that is worthwhile but which does not qualify for Medicaid or for which there are no other public funds available. The language which gives the OMH Commissioner the right to make a determination to approve a project while denying public funds is found in current regulation. It was not amended in this most recent version, and it is not arbitrary and capricious. Therefore, OMH does not intend to alter the language in the current rulemaking.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Amendment of Liability for Services Regulations

I.D. No. MRD-35-09-00005-E

Filing No. 945

Filing Date: 2009-08-12

Effective Date: 2009-08-12

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

Action taken: Amendment of Subpart 635-12 and section 671.7(h) of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The reason justifying the emergency adoption of these amendments to Subpart 635-12 and section 671.7(h) is the preservation of the health, safety and general welfare of persons in New York State who are receiving, or wish to receive certain developmental disabilities services provided under the auspices of OMRDD. The emergency amendments delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services. If OMRDD did not temporarily suspend full implementation of Subpart 635-12, effective August 12, 2009, for the services specified in the emergency amendments, some individuals in need of these services might be unable to access these services or be otherwise adversely affected.

Subject: Amendment of Liability for Services Regulations.

Purpose: To delay implementation of provisions of Subpart 635-12 for certain services.

Text of emergency rule: • Subdivision 635-12.1(e) is amended as follows:

(3) Services which an individual was receiving on a regular basis as of February 15, 2009, and receives from a different provider after February 15, 2009, where the individual's receipt of the Services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers [; and].

[(4) HCBS Waiver Respite Services which converted after February 15, 2009 from respite services funded as a type of family support services if:

(i) the individual received the Respite Services funded as a type of family support services on a regular basis as of February 15, 2009; and

(ii) the HCBS Waiver Respite Services are delivered by the same provider.]

• Subdivision 635-12.1(g) is amended as follows:

(g) "Services" means ICF/DD Services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681); the following HCBS Waiver Residential Habilitation Services: community (in a community residence), IRA, and family care; and HCBS Waiver Day Habilitation Services. [; Medicaid Service Coordination, Day Treatment Services, and the following HCBS Waiver Services: Residential Habilitation Services (community (in a community residence), IRA, family care, and at home), Day Habilitation Services, Prevocational Services, Supported Employment Services, and Respite Services. Blended and Comprehensive Services which are a combination of the Services listed above are also considered "Services."]

• Paragraph 635-12.3(b)(1) is amended as follows:

(1) Prior to the individual receiving Services, the provider shall take [all] such steps to obtain personal and financial information as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

- Subparagraph 635-12.3(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

- Paragraph 635-12.4(b)(1) is amended as follows:

(1) Prior to March 15, 2009 the provider shall take [all] such steps to obtain personal and financial information concerning individuals without Full Medicaid Coverage as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

- Subparagraph 635-12.4(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

- Paragraph 635-12.8(a)(5) is deleted as follows:

[(5) Medicaid Service Coordination (MSC). OMRDD may, subject to the availability of state funds, pay a provider for up to 3 months of MSC if:

(i) the individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage;

(ii) the individual is not paying for MSC and no one else is paying for MSC; and

(iii) the provider is meeting its obligations under this Subpart.]

- Subdivisions 635-12.9(e) and (f) are deleted as follows:

[(e) For At Home Residential Habilitation Services, the fee shall equal the Medicaid fee OMRDD established for the At Home Residential Habilitation Services for the dates the Services were provided.]

[(f) For Day Treatment Services, the fee shall equal the Medicaid fee OMRDD established for the day treatment facility for the dates the Services were provided.]

Note: Subdivisions (g) and (h) are renumbered as (e) and (f).

- Subdivision 635-12.9(e) is amended as follows:

(e) For an ICF/DD, the fee shall equal the Medicaid rate OMRDD established for the ICF/DD for the dates the Services were provided, *excluding any day program services add-on for education and related services in accordance with Title 8 NYCRR.*

- Subdivisions 635-12.9(i) through (m) are deleted as follows:

[(i) For Medicaid Service Coordination, the fee shall equal the payment level applicable to the individual's situation as stated in the Medicaid Service Coordination Vendor Contract between the provider and OMRDD in effect on the dates the Services were provided.]

[(j) For Prevocational Services, the fee shall equal the Medicaid price OMRDD established for the Prevocational Services on the dates the services were provided.]

[(k) For Supported Employment Services, the fee shall equal the Medicaid fee OMRDD established for the Supported Employment Services for the dates the Services were provided.]

[(l) For Respite Services, the fee shall equal the Medicaid price OMRDD established for the Respite Services for the dates the Services were provided.]

[(m) For Blended or Comprehensive Services, the fee shall equal the price OMRDD established for the Blended or Comprehensive Services for the dates the Services were provided.]

- Subdivision 671.7(h) is amended as follows:

(h) Reimbursement for persons ineligible for medical assistance.

(1) In order to receive other reimbursement for community resi-

dential habilitation services, the facility must meet the requirements of *Subpart 635-12 of this Title, and* section 671.1(d) of this Part, and ensure that all the requirements of section 671.6 of this part are satisfied.

(2) (Paragraph remains unchanged).

[(3) A person ineligible for medical assistance shall be charged for community residential habilitation services in accordance with a sliding fee scale.]

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 November 9, 2009.

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

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, as stated in the New York State Mental Hygiene Law Section 13.07.

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

2. Legislative objectives:

These emergency regulations further the legislative objectives embodied in Section 13.07 and 13.09(b) of the Mental Hygiene Law by amending newly promulgated Subpart 635-12 (Liability for Services) by the deletion of specific services. OMRDD determined that individuals in need of those services might have been unable to access the services or might have been otherwise adversely impacted if Subpart 635-12 had become effective without the amendments in this emergency regulation.

3. Needs and benefits:

OMRDD filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in OMRDD's Home and Community Based Services (HCBS) Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the proposed regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or

welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

In response to the concerns raised, OMRDD adopted emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The current emergency regulations, effective August 12, 2009, continue to exempt certain services from compliance with Subpart 635-12. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services. OMRDD intends to promulgate future regulations at a later date to include these services in Subpart 635-12.

The emergency regulation also clarifies that the provider's duty to gather information concerning liable parties and the ability to pay and qualify for Medicaid is limited to what is reasonably necessary to gather this information, not everything that is possible to gather the information. OMRDD made this clarification in response to provider concerns.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

Finally, this emergency adoption includes a conforming amendment to section 671.7(h), making that section consistent with the requirements of Subpart 635-12 for OMRDD payments.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD will not incur any new costs as a result of these amendments. OMRDD had originally estimated that full implementation of the Subpart 635-12 regulations would result in a saving to the State of approximately \$17.5 million as services currently funded with 100 percent State monies become funded with 50 percent participation of federal funds and some individuals or liable parties pay the fees established. While the emergency adoption of these amendments may subtract from the full amount of these savings, a reliable estimate of the shortfall is very difficult to quantify. OMRDD is strongly encouraging providers to maintain and even step up efforts to help individuals obtain Medicaid and enroll in the HCBS waiver for the services during the interval that implementation has been delayed. Although Subpart 635-12 will not apply to these services because of these emergency amendments, the State will experience much of the same savings through the compliance of individuals and providers with this request.

There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs to individuals and providers associated with implementation and continued compliance with the amendments.

5. Local government mandates:

There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork:

There will be no paperwork required as a result of the emergency amendments. The emergency amendments will instead decrease paperwork, since providers will not have to give the required notices to individuals and liable parties for the specified services.

7. Duplication:

The emergency amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited services for persons with developmental disabilities.

8. Alternatives:

OMRDD had considered delaying the application of Subpart 635-12 for only "preexisting services" (services delivered as of February 15, 2009) of the service types addressed. However, in response to concerns raised concerning "new" services started after February 15, particularly regarding the supported employment transition from VESID to OMRDD services and intermittent respite services, OMRDD decided to delay the application for these services as well as "preexisting services" in the same categories, in order to more fully evaluate the concerns raised with regard to these issues.

9. Federal standards:

The proposed regulations do not exceed any applicable federal standards.

10. Compliance schedule:

No specific compliance activities are necessary to implement the emergency regulations. On the contrary, the emergency regulations defer the compliance activities necessary to implement Subpart 635-12 for the specified services.

In order to inform providers about the change, OMRDD notified providers in the OMRDD system of its intention to delete the specified services on January 30, 2009, and also announced its intention during a provider association meeting in January. Similar emergency regulations were adopted effective February 15, 2009 and May 14, 2009. OMRDD received no formal, written, public or provider comment as a result of the original emergency adoption of these amendments, and informal reaction was positive.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide developmental disabilities services under the auspices of OMRDD. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of December, 2008, OMRDD estimates that there are approximately 274 provider agencies that would be affected by the emergency amendments.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that adoption of these emergency amendments is necessary for the health, safety and general welfare and that they will have a positive effect on the regulated parties, including small business providers of services, associated with the specific developmental disabilities services for which implementation of Subpart 635-12 is being delayed by these emergency amendments. The emergency amendments will have no effect on local governments.

OMRDD filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in the HCBS Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not previously subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the ef-

forts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

Finally, this emergency adoption includes a conforming amendment to section 671.7(h), making that section consistent with the requirements of Subpart 635-12 for OMRDD payments.

2. Compliance requirements: In response to the concerns raised, OMRDD promulgated emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The emergency amendments suspended the compliance requirements of Subpart 635-12 for certain developmental disabilities services. The present emergency regulations continue this suspension. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services.

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

4. Compliance costs: There will be no compliance costs for regulated parties or local governments as a result of the emergency amendments.

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

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts for small businesses, local governments and other regulated parties.

7. Small business and local government participation: OMRDD conducted extensive outreach to providers related to the proposed regulations adding the new Subpart 635-12. OMRDD facilitated discussions of the proposed regulations in numerous meetings including the provider associations, the Benefit Development Workgroup which includes regulated parties, and a subcommittee of the Commissioner's Advisory Council. OMRDD also informed all providers of the proposed regulations. The emergency rule responds to concerns raised during these discussions and in written comments addressing the proposed rule making during the comment period for the proposed Subpart 635-12.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this rule making is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. As discussed in the Regulatory Impact Statement, these emergency amendments temporarily delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services.

Job Impact Statement

A Job Impact Statement for this rule making is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment

opportunities. The emergency amendments temporarily delay implementation of Subpart 635-12 for certain developmental disabilities services.

Department of Motor Vehicles

NOTICE OF ADOPTION

Dealer Document Fee

I.D. No. MTV-26-09-00013-A

Filing No. 974

Filing Date: 2009-08-18

Effective Date: 2009-09-02

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

Action taken: Amendment of Parts 77 and 78 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 419(9)(d)

Subject: Dealer document fee.

Purpose: Raises the dealer document fee from \$45 to \$75.

Text or summary was published in the July 1, 2009 issue of the Register, I.D. No. MTV-26-09-00013-P.

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

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

Assessment of Public Comment

COMMENT: The Greater New York Automobile Dealer's Association wrote in support of the proposed regulation.

RESPONSE: The Department appreciates the support of the Association.

New York State 911 Board

INFORMATION NOTICE

NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board, established pursuant to County Law § 326, is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendments to Minimum Standards Regarding Staffing of Public Safety Answering Points (PSAPs); Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points; and Minimum Standards Regarding Jurisdictional Protocols.

At its meeting of March 10, 2009, the Board proposed amendments to the above-referenced standards, which are found in their present form in their entirety at Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR): Parts 5202, 5203 and 5250, respectively. The Notice of Proposed Amendment was published in the April 1, 2009 issue of the *State Register*.

The amendments to three of the existing standards were adopted by the Board as part of a regular cycle of reviewing and updating regulations. The amendments to Title 21 of the NYCRR include: Part 5202 in relation to designating one person as "in charge"; Part 5203 in relation to the "eJustice" system, written procurements for backup systems, maintenance of PSAP recordings for 90 days, enhanced system security, backup sites ability to receive and dispatch emergency calls, written continuity of operations plan and need for yearly exercise; and Part 5250 in relation to adding definitions of AVL and CAD, written jurisdictional protocols,

authority to dispatch closest car and removal of model jurisdictional protocol.

No written comments were received pertaining to the adopted standards. For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, One Commerce Plaza, 99 Washington Avenue, Albany New York, 12231, phone: 518-474-6746.

Text of amended rules: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York will read as follows:

21 NYCRR Part 5202 (Minimum Standards Regarding Staffing of Public Safety Answering Points):

§ 5202.1 Definitions.

(b) Call-taker/dispatcher means any person employed by or in any local or state government agency either full- or part-time whose duties include the answering of emergency telephone calls and/or the dispatching of emergency services personnel.

(c) Certified means having a formal program of related instruction and testing as provided either by a recognized organization or by the authority having jurisdiction over the PSAP.

(d) Qualified means that the employee has been properly trained and credentialed pursuant to all applicable laws and regulations.

§ 5202.2 Standards.

(a) All PSAPs shall be staffed 24 hours a day, seven days a week, by a minimum of two qualified, certified call-takers/dispatchers with at least one person designated as in charge.

(b) All PSAPs shall have staffing adequate to answer 90 percent of all incoming wireless 911 calls within ten seconds of connection.

(c) All wireless 911 requests shall be dispatched immediately, or as soon thereafter as possible within the practicalities of responding to other 911 calls, in accordance with the PSAP's written policies and procedures for prioritizing service needs.

§ 5202.3 Variances.

§ 5202.4 Appendix A.

21 NYCRR Part 5203 (Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points):

§ 5203.1 Definitions.

(m) eJusticeNY means the browser-based application for access to criminal justice information systems in New York State.

§ 5203.2 Equipment.

(a) Intelligent workstations (IWS).

(4) The authority shall have a written procedure for the use of a manual backup system in the case of failure of the CAD system.

(e) Recorder system. The authority shall:

(5) retain PSAP recordings for at least 90 days; and

(h) Criminal justice information system.

(1) All PSAPs shall have direct access to the NYSPIN or eJusticeNY systems.

(2) The authority shall have a written procedure for participation in the system or systems the PSAP utilizes.

§ 5203.4 Security.

(b) System protection. All PSAPs shall be equipped with software protection as required by the authority including a means of access that requires each authorized user to utilize unique identifiers to enter the systems.

§ 5203.5 General.

(a) Backup site. The authority shall:

(1) maintain a backup PSAP site, separate and apart from the primary PSAP site, wired and ready with the ability to receive and dispatch emergency calls, for use in case of the necessity to vacate the primary PSAP;

(2) have a written continuity of operations plan for evacuating the primary PSAP and transferring operations to the backup site; and

(3) conduct and document no less than one exercise per year that utilizes the continuity of operations plan.

Part 5250 (Minimum Standards Regarding Jurisdictional Protocols) is amended as follows:

§ 5250.2 Definitions.

(a) A jurisdictional protocol is a written agreement entered into by two or more law enforcement agencies setting forth procedures to ensure the organized, coordinated, and prompt mobilization of personnel, equipment, services, or facilities in order to achieve the fastest response to a 911 emergency.

(b) AVL means Automatic Vehicle Locator.

(c) CAD means Computer Aided Dispatch.

§ 5250.3 Contents.

The jurisdictional protocols utilized by the law enforcement agencies

shall be in the form of a written agreement that, at a minimum, includes or provides for the following:

(b) if the PSAP has the authority to do so, a method of providing for the dispatch of the closest police unit, which may be via any of the following:

(c) a method of transferring calls to the proper agency or jurisdiction;

(d) that the methods provided for pursuant to subdivisions (b) and (c) of this section shall be used in the case of all 911 calls, and all emergency calls received by any other means, dispatched for service;

(e) that the agreement shall be reviewed at least annually to ensure that the most efficient procedures are being used;

(f) that all investigative duties shall be conducted by a law enforcement agency having ordinary investigative jurisdiction in any area, regardless of initial response to an emergency, provided, that no law enforcement agency shall be prohibited from requesting assistance from any other agency as may be provided under current law or regulation; and

(g) a procedure for resolving all disputes among the parties relating to the operation of the protocol, which may include referral of such disputes to a body designated by agreement among the parties.

§ 5250.4 Model protocol.

The 911 Board has approved as a model the jurisdictional protocol titled "Memorandum of Understanding (Jurisdictional Protocol for Law Enforcement Agencies)."

Niagara Frontier Transportation Authority

NOTICE OF ADOPTION

NFTA's Procurement Guidelines

I.D. No. NFT-21-09-00003-A

Filing No. 975

Filing Date: 2009-08-19

Effective Date: 2009-09-02

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

Action taken: Amendment of sections 1159.3 and 1159.4 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e(5) and 1299-t

Subject: The NFTA's Procurement Guidelines.

Purpose: To amend the NFTA's Procurement Guidelines to make technical changes and conform to federal and state law.

Text or summary was published in the May 27, 2009 issue of the Register, I.D. No. NFT-21-09-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth_Keating@nfta.com

Assessment of Public Comment

The agency received no public comment.

Division of Probation and Correctional Alternatives

NOTICE OF ADOPTION

Sex Offender Housing Procedural Guidelines

I.D. No. PRO-25-09-00004-A

Filing No. 942

Filing Date: 2009-08-12

Effective Date: 2009-09-02

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

Action taken: Addition of Part 365 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1) and (4)

Subject: Sex Offender Housing Procedural Guidelines.

Purpose: To provide guidance and instruction to probation departments when investigating/approving residence of certain sex offenders.

Text or summary was published in the June 24, 2009 issue of the Register, I.D. No. PRO-25-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, NYS Division of Probation and Correctional Alternatives, 80 Wolf Road - Suite 501, Albany, New York 12205, (518) 485-2394, email: linda.valenti@dpc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Securities

I.D. No. PSC-35-09-00011-P

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

Proposed Action: The Commission is considering an amendment to the March 12, 2009 Order for Consolidated Edison Company of New York, Inc. (the Company) whereby the Company requests permission to issue and sell new preferred securities.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To permit the Company to issue and sell preferred stock.

Text of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a Petition by Consolidated Edison Company of New York, Inc. to amend Order Clause 1 of the Commission's March 12, 2009 order to read in its entirety as follow's: "Consolidated Edison Company of New York, Inc. is authorized to issue and sell, in one or more transactions, not later than December 31, 2012, up to a total of \$4.8 billion of its securities, of which up to \$550 million may be its Cumulative Preferred Stock (\$100 par value) and up to \$4.8 billion less the amount of any such preferred stock actually issued and sold pursuant to this Order may be its unsecured debt."

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

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

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

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

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

(08-M-1244SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of a Financing and a Transfer of Ownership Interests in Two 79.9 MW Generation Facilities

I.D. No. PSC-35-09-00012-P

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

Proposed Action: The Commission is considering a petition from PPL Generation LLC and J-POWER USA Generation, L.P. requesting approval of a financing and a transfer of ownership interests in two 79.9 MW generation facilities.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Approval of a financing and a transfer of ownership interests in two 79.9 MW generation facilities.

Purpose: Consideration of approval of a financing and a transfer of ownership interests in two 79.9 MW generation facilities.

Substance of proposed rule: The Public Service Commission is considering a petition from RPL Holdings, Inc, Power City Generating, Inc., Power City Partners, L.P., and MEG Development Company LLC (MEG) requesting approval of a transfer of ownership interests, to MEG from the other petitioners, in a 85 MW generation facility located in Massena, NY, and requesting approval of a financing that would increase MEG's existing \$19.3 million term loan facility by approximately \$13.0 million in an acquisition and working capital loan to finance the purchase. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(09-E-0539SP1)

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Amendments to the Traffic and Parking Regulations of the University at Albany, State University of New York

I.D. No. SUN-35-09-00002-P

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

Proposed Action: Amendment of section 561.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to the traffic and parking regulations of the University at Albany, State University of New York.

Purpose: To increase parking fines, establish late fees, and authorize an exemption for veterans attending the University at Albany.

Text of proposed rule: Subdivision (b) of Section 561.5 is amended to read as follows:

Violations, sanctions.

(b) Such fine for each violation shall be [\$20] as noted on the traffic violation notice [except that the fine shall be \$50 for each handicapped parking space violation]: \$20 for each violation involving no parking decal or an improperly displayed parking decal, \$30 for each violation involving expired meter parking, restricted parking, no parking and other parking violations, except \$150 for each violation of a stolen or altered parking decal, with the vehicle being immediately towed at the owner's expense, and \$100 for each handicapped parking space violation. Each fine not paid within thirty (30) days from the date of the traffic violation notice shall be assessed a late fee of \$10. However, any veteran, as defined in section 360 of the New York State Education Law, in attendance as a student at the University at Albany shall be exempt from registration and parking fees upon written certification by the veteran that such veteran

was honorably discharged or released under honorable circumstances from such service.

Text of proposed rule and any required statements and analyses may be obtained from: Janet M. Thayer, Associate University Counsel, University at Albany, State University of New York, 1400 Washington Avenue, Albany, New York 12222, (518) 956-8050, email: jthayer@uamail.albany.edu.

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law Section 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure will increase allowable fines for violation of parking regulations and allow for the imposition of a late fee for fines not paid in a timely manner. It will also provide an exemption for a veteran, who is in attendance at the University at Albany, from registration and parking fees.

3. Needs and benefits: Parking fine thresholds applicable to violation of campus parking regulations have not been changed for at least ten (10) years, and the citation amounts have lost much of their deterrent effect. Parking violations on the University at Albany campus have increased in the last few years, particularly violations involving cars not registered with the University. In addition, surrounding municipalities and institutions of higher education have increased parking fines of their respective parking ordinances. The increase proposed by the University at Albany will allow it to increase the fines to levels comparable to local municipal and other higher education institutions' rules, thus strengthening incentives to avoid violation of campus parking rules. In addition, the amendment brings the parking regulations into compliance with the amendment to section 360 of the Education law which allows for an exemption from registration and parking fees for veterans. The proposed effective date of the amendments is January 1, 2010.

4. Costs: Parking violators will experience higher fines and a late fee if the violation is not paid in a timely manner. Veterans will incur registration and parking fees for parking on the campus.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: The University at Albany will notify those affected as soon as the rule is effective, with the effective date as proposed of January 1, 2010. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the University at Albany.

Rural Area Flexibility Analysis

No rural flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the University at Albany.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the University at Albany.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-22-09-00001-A

Filing No. 946

Filing Date: 2009-08-12

Effective Date: 2009-08-12

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivided First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2009, through September 30, 2009.

Text or summary was published in the June 3, 2009 issue of the Register, I.D. No. TAF-22-09-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment

An assessment is not required because this action is for a "rate making" as defined in SAPA § 102(2)(a)(ii).

NOTICE OF ADOPTION

Farming and Commercial Horse Boarding Operations

I.D. No. TAF-22-09-00002-A

Filing No. 944

Filing Date: 2009-08-12

Effective Date: 2009-09-02

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

Action taken: Amendment of section 528.7(a) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivison First, 1142(1) and (8), and 1250 (not subdivided)

Subject: Farming and commercial horse boarding operations.

Purpose: To update section 528.7(a) to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law.

Text or summary was published in the June 3, 2009 issue of the Register, I.D. No. TAF-22-09-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Outdated List of Sales and Compensating Use Taxes

I.D. No. TAF-35-09-00003-P

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

Proposed Action: This is a consensus rule making to amend section 525.1 of Title 20 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subdivided First, 1142(1) and (8) and 1250 (not subdivided)

Subject: Outdated list of sales and compensating use taxes.

Purpose: To update and condense section 525.1 of the sales and compensating use tax regulations.

Text of proposed rule: Section 1. Subdivisions (b) and (c) of section 525.1 of the regulations are REPEALED, and subdivision (d) of such section is relettered to be subdivision (b).

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.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.

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 7, 2009, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 1999 and 2004, and a notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 30, 2008, this information was also posted on the department's web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). Comments from the public concerning the continuation or modification of these rules were invited until February 23, 2009.

No public comments were received by the department concerning the 1999 amendments that were made to the "General" provisions found in Part 525 of the Sales and Use Taxes Regulations. Those amendments updated and simplified Part 525 by deleting text that merely repeated the statute or that was superfluous, unnecessarily complex, or no longer applicable. The amendments were adopted by the commissioner on July 26, 1999, and published in the State Register on August 11, 1999, (TAF 22-99-00001 A). The amendments were previously reviewed as part of the department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review of the 1999 amendments, a Rule Review notice indicating that the amendments were being continued without modification was published in the State Register on April 21, 2004.

This notwithstanding, the department has determined as a result of its 2009 review that section 525.1, "Imposition of tax," is now dated and cannot be continued without modification. On July 31, 2008, the temporary municipal assistance taxes imposed under section 1107 of the Tax Law terminated, and the local taxes in New York City imposed under section 1210 of the law that had been suspended resumed (as amended by Part SS-1 of Chapter 57 of the Laws of 2008). Because section 525.1(b) of the regulations (as added by the 1999 amendments) currently provides that "[s]ales and compensating use taxes are imposed by section[s]... 1107," this subdivision cannot be continued. Moreover, because this subdivision now includes other unnecessary citations and excludes citations to sections of the Tax Law that have been recently added, rather than maintain the subdivision, it is being repealed in its entirety by this rule. The delineation of the specific sections of law in this subdivision is not essential to the regulation because subdivision (a) of section 525.1 provides that the taxes are "imposed by article 28 and pursuant to the authority of article 29 of the Tax Law." For this reason, the references to the specific sections of law in subdivision (c) of section 525.1 are also being repealed by the rule. The rule is in accord with the original intent of the 1999 amendments, which was to make the regulations more concise.

It is noted that the remainder of the amendments made in 1999 to these regulations are valid and are continued without modification.

Consensus Rule Making Determination

The Department of Taxation and Finance has determined that no person is likely to object to the adoption of this rule as written because the amendments merely repeal certain regulatory provisions that are no longer applicable to any person and conform to non-discretionary statutory provisions. The amendments update and condense section 525.1 of the sales and compensating use tax regulations by making technical changes, particularly to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law. These amendments are not controversial in nature.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter that the rule will have no impact on jobs or

employment opportunities. The purpose of the rule is simply to update and condense section 525.1 of the sales and compensating use tax regulations by making technical amendments, particularly to reflect the termination of the taxes imposed in New York City by section 1107 of the Tax Law.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-35-09-00004-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivided First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2009, through December 31, 2009.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lvi) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lv) July-September 2009					
13.7	21.7	38.8	14.7	22.7	38.05
(lvi) October - December 2009					
15.6	23.6	40.7	15.6	23.6	38.95

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

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

Office of Temporary and Disability Assistance

ERRATUM

A Notice of Adoption, I.D. No. TDA-07-09-00014-A, pertaining to Utility Service, published in the July 15, 2009 issue of the *State Register* contained an error in the purpose of the rule. Following is the corrected purpose:

Purpose: To permit social services districts to suspend the enforcement of utility repayment agreements during periods of cold weather in order to provide districts with the flexibility to assist households during periods of high energy costs.

The Department of State apologizes for any inconvenience this may have caused.

ERRATUM

A Notice of Adoption, I.D. No. TDA-17-08-00032-A, pertaining to State Confirmed Human Trafficking Victims, published in the April 22, 2009 issue of the *State Register* contained an error in section 765.2(f) of the Text of the final rule. Following is the corrected text:

Section 765.2(f) The term "State-confirmed human trafficking victim" shall mean a human trafficking victim referred by a statutory referral source who appears to meet the criteria for certification as a victim of a severe form of trafficking in persons pursuant to the federal Trafficking Victims Protection Act set forth in section 7105 of 22 U.S.C. (United States Code Annotated, Title 22, § 7105; Thomson West, West Headquarters, 610 Opperman Drive, Eagan, Minnesota 55123. Copies may be obtained from the Office of Temporary and Disability Assistance, Public Information Office, 40 North Pearl Street, Albany, New York 12243-0001) or appears to be otherwise eligible for any federal, state, or local benefits and services, in the judgment of the Division, in consultation with the Office and statutory referral source.

The Department of State apologizes for any inconvenience this may have caused.

Urban Development Corporation

EMERGENCY RULE MAKING

Downstate Revitalization Fund Program

I.D. No. UDC-35-09-00013-E

Filing No. 977

Filing Date: 2009-08-18

Effective Date: 2009-08-18

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

Action taken: Addition of Part 4249 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, section 5(4); L. 1968, ch. 174 and L. 2008, ch. 57, part QQ, section 16-r

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

Specific reasons underlying the finding of necessity: Effective provision of economic development assistance in accordance with the enabling legislation requires the creation of the Rule. Program assistance will address the dangers to public health, safety and welfare by providing financial, project development, or other assistance for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community and technology-based development and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Subject: The Downstate Revitalization Fund Program.

Purpose: Provide the basis for administration of The Downstate Revitalization Fund including evaluation criteria and application process.

Text of emergency rule: Part 4249

DOWNSTATE REVITALIZATION FUND PROGRAM

Section 4249.1 General

These regulations set forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund (the "Program"). The Program was created pursuant to § 16-r of the New York State Urban Development Corporation Act, as added by Chapter 57 of the Laws of 2008 (the "Act") for the purposes of supporting investment in distressed communities in the downstate region and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

Section 4249.2 Definitions

For purposes of these regulations, the terms below will have the following meanings:

(a) "Corporation" shall mean the New York State Urban Development Corporation doing business as Empire State Development Corporation.

(b) "Distressed communities" shall mean areas as determined by the Corporation meeting criteria indicative of economic distress, including land value, employment rate; rate of employment change; private investment; economic activity, percentages and numbers of low income persons; per capita income and per capita real property wealth; and such other indicators of distress as the Corporation shall determine.

(c) "Downstate" shall mean the geographical area defined by the Corporation. The defined geographical area will be disseminated to eligible parties by the Corporation.

Section 4249.3 Types of Assistance

The Program offers assistance in the form loans and/or grants to for-profit businesses, not-for-profit corporations, public benefit corporations, municipalities, and research and academic institutions, for activities including, but not limited to, the following:

(a) support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited, to smart growth and energy efficiency initiative; intellectual capital capacity building;

(b) support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law;

(c) support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery and equipment associated with a project; and

(d) support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the General Municipal Law.

4249.4 Eligibility

(a) Eligible applicants shall include, but not be limited to, business improvement districts, local development corporations, economic development organizations, for profit businesses, not-for-profit corporations, public benefit corporations, municipalities, counties, research and academic institutions, incubators, technology parks, private firms, regional planning councils, tourist attractions and community facilities.

(b) The Corporation shall be eligible for assistance in the form of loans, grants, or monies contributing to projects for which the Corporation or a subsidiary act as developer.

(1) The Corporation may act as developer in the acquisition, renovation, construction, leasing or sale of development projects authorized pursuant to this Program in order to stimulate private sector investment within the affected community.

(2) In acting as a developer, the Corporation may borrow for purposes of this subdivision for approved projects in which the lender's recourse is solely to the assets of the project, an may make such arrangements and agreements with community-based organizations and local development corporations as may be required to carry out the purposes of this section.

(3) Prior to developing and such project, the Corporation shall secure a firm commitment from entities, independent of the Corporation, for the purchase or lease of such project. Such firm commitment shall be evidenced by a memorandum of understanding or other document describing the intent of the parties.

(4) Projects authorized under this subdivision whether developed by the Corporation or a private developer, must be located in distressed communities, for which there is demonstrated demand within the particular community.

(c) No full-time employee of the state or full-time employee of any agency, department, authority or public benefit corporation (or any subsidiary of a public benefit corporation) of the state shall be eligible to receive assistance under this initiative, nor shall any business, the majority ownership interest of which is beneficially controlled by any such employee, be eligible for assistance under this initiative.

Section 4249.5 Evaluation criteria

(a) The Corporation shall give priority in granting assistance to those projects:

(1) with significant private financing or matching funds through other public entities;

(2) likely to produce a high return on public investment;

(3) with existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties;

(4) deemed likely to increase the community's economic and social viability;

(5) with cost benefit analysis that demonstrates increased economic activity, sustainable job creation and investments;

(6) located in distressed communities;

(7) whose application is submitted by multiple entities, both public and private; or

(8) such other requirements as determined by the Corporation as are necessary to implement the provisions of the Program.

Section 4249.6 Application and Approval Process

(a) The Corporation may, at its discretion and within available appropriations, issue requests for proposals and may at other times accept direct applications for program assistance.

(b) Promptly after receipt of the application, the Corporation shall review the application for eligibility, completeness, and conformance with the applicable requirements of the Act and this Rule. Applications shall be processed in full compliance with the applicable provisions of the Act's 16-r.

(c) If the proposal satisfies the applicable requirements and initiative funding is available, the proposal may be presented to the Corporation's directors for adoption consideration in accordance with applicable law and regulations. The directors normally meet once a month. If the project is approved for funding and if it involves the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of any property, the Corporation will schedule a public hearing in accordance with the Act and will take such further action as may be required by the Act and applicable law and regulations. After approval by the Corporation and a public hearing the project may then be reviewed by the State Public Authorities Control Board ("PACB"), which also generally meets once a month, in accordance with PACB requirements and policies. Following directors' approval, and PACB approval, if required, documentation will be prepared by the Corporation. Notwithstanding the foregoing, no initiative project shall be funded if sufficient initiative monies are not received by the Corporation for such project.

Section 4249.7 Confidentiality

(1) To the extent permitted by law, all information regarding the financial condition, marketing plans, manufacturing processes, production costs, customer lists, or other trade secrets and proprietary information of a person or entity requesting assistance from the Corporation, which is submitted by such person or entity to the Corporation in connection with an application for assistance, shall be confidential and exempt from public disclosures.

Section 4249.8 Expenses

(a) An application fee of \$250 must be paid to the Corporation for projects that involve acquisition, construction, reconstruction, rehabilitation alteration or improvement of real property, the financing of machinery and equipment and working capital loans and loan guarantees before final review of an application can be completed. This fee will be refunded in the event the application is withdrawn or rejected.

(b) The Corporation will assess a commitment fee of up to two percent of the amount of any Program loan involving projects for acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property, the financing of machinery and equipment and working capital payable upon acceptance of commitment with up to 1 percent rebated at closing. No portion of the commitment fee will be repaid if the commitment lapses and the project does not close. The Corporation will assess a fee of up to 1 percent, payable at closing, of the amount of any Program grant involving the acquisition, construction, reconstruction, rehabilitation, alteration or improvement of real property or the financing of machinery and equipment or any loan guarantee.

(c) The applicant will be obligated to pay for expenses incurred by the Corporation in connection with the project, including, but not limited to, expenses related to attorney, appraisals, surveys, title insurance, credit searches, filing fees, public hearing expenses and other requirements deemed appropriate by the Corporation.

Section 4249.9 Affirmative action and non-discrimination

Program applications shall be reviewed by the Corporation's affirmative action department, which shall, in consultation with the applicant and/or proposed recipient of the program assistance and any other relevant involved parties, develop appropriate goals, in compliance with applicable law (including section 2879 of the public authorities law, article fifteen-A of the executive law and section 6254(11) of the unconsolidated laws) and the Corporation's policy, for participation in the proposed project by minority group members and women. Compliance with laws and the Corporation's policy prohibiting discrimination in employment on the basis of age, race, creed, color, national origin, gender, sexual preference, disability or marital status shall be required.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 15, 2009.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, New York State Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@empire.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968, as amended (the "Act"), provides, in part, that the corporation shall, assisted by the commissioner of economic development and in consultation with the department of economic development, promulgate rules and regulations in accordance with the state administrative procedure act.

Section 12 of the Act provides that the corporation shall have the right to exercise and perform its powers and functions through one or more subsidiary corporations.

Section 16-r of the Act provides for the creation of the downstate revitalization fund. The corporation is authorized, within available appropriations, to provide financial, project development, or other assistance from such fund to eligible entities as set forth in this subdivision for the purposes of supporting investment in distressed communities in the downstate region, and in support of such projects that focus on: encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation and small business growth.

2. Legislative Objectives: Section 16-r of the Act sets forth the Legislative intent of the Downstate Revitalization Fund to provide financial assistance to eligible entities in New York with particular emphasis on: supporting investment in distressed communities in the downstate region, and in support of projects that focus on encouraging business, community, and technology-based development, and supporting innovative programs of public and private cooperation working to foster new investment, job creation, and small business growth.

It further states such activities include but are not limited to: support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including, but not limited to, smart growth and energy efficiency initiatives, intellectual capital capacity building; support for the attraction or expansion of a business including, but not limited to, those primarily engaged in activities identified as a strategic industry and minority-owned and women-owned business enterprises as defined by subdivisions (c) and (g) of section nine hundred fifty-seven of the general municipal law; support for land acquisition and/or the construction, acquisition or expansion of buildings, machinery, and equipment associated with a project; and support for projects located in an investment zone as defined by paragraph (i) of subdivision (d) of section 957 of the general municipal law.

The Legislative intent of Section 16-r of the Act is to assist business in downstate New York in a time of need and to promote the retention and creation of jobs and investment in the region.

The adoption of 21 NYCRR Part 4249 will further these goals by setting forth the types of available assistance, evaluation criteria, application and project process and related matters for the Downstate Revitalization Fund.

3. Needs and Benefits: Chapter 53 of the Laws of 2008, page 884, lines 5 thru 15 allocated \$35 million to support investment in projects that would promote the revitalization of distressed areas in the downstate region. As envisioned, the program would focus new investments on business, community and technology-based development. While the downstate region has experienced relatively strong growth in recent years, there still remain a significant number of areas that demonstrate high levels of economic distress. As measured by the poverty rate, the Bronx, at over 30%, ranks as the poorest urban county in the U.S. Brooklyn (Kings County) continues to rank among the top ten counties with the highest poverty rates in the country (22.6%). Overall, the poverty rate in New York City is just over 20%. The Community Service Society study, Poverty in New York City, 2004: Recovery?, concluded that if the number of New York City residents who live in poverty resided in their own municipality, they would constitute the 5th largest city in the U.S. Beyond the New York metro area in the Hudson Valley, the poverty rate exceeds 9%. Disproportionate levels of unemployment, population and job loss have left significant areas of the downstate region with shrinking revenue bases and opportunities for economic revitalization.

If it is assumed that at least half of the \$35 million allocation to the Fund is used for new capital investment, this would support approximately 160 construction-related jobs, generating an additional \$10 million in personal income in downstate distressed areas. The Corporation used the Implan® regional economic analysis system to model employment and personal income multipliers for construction spending to estimate the direct, indirect and induced jobs related to the Fund amounts assumed to be devoted to capital spending on infrastructure and construction-related activity.

New York State may collect approximately \$0.66 million in personal income tax and sales tax on income spending. To estimate the personal income tax revenues generated by this spending, the Corporation assumed the tax calculation for single or married filing separately on taxable income over \$20,000, using the standard deduction and 6.85% on income over \$20,000. Sales tax was estimated on taxable disposable income earned by wage earners. The Corporation assumed that 75% of gross income is disposable income and 40% of that is taxable.

This level of capital spending (assumed to be primarily on site development, infrastructure, building rehabilitation and new construction) will provide the basis for further investment in a broad range of economic activity.

4. Costs: The Fund as identified in Chapter 53 of the Laws of 2008, page 884, lines 17 thru 27 will be funded through the issuance of Personal Income Tax bonds. In addition to the interest costs, it is expected that fees

and costs associated with issuing bonds, including the Corporation's fee, underwriting, banking and legal fees, will be approximately 1.6%.

The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development. Participation is voluntary and would be considered on a case-by-case basis depending on the location of the municipality involved.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule on regulated parties. Standard applications used for most other Corporation assistance will be employed keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients. The rule provides that the Corporation may, however, require applicants to submit materials prior to submission of a formal application to determine if a proposal meets eligible criteria for Fund assistance.

6. Local Government Mandates: The Fund imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district. To the contrary, the Fund offers local governments potentially enhanced resources, either directly or indirectly, to encourage economic and employment opportunities for their citizens. Participation in the program is optional; local governments who do not wish to be considered for funding do not need to apply.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: The Fund proposed regulations provide for a variety of potential program outcomes, by type of assistance, eligible applicants, and eligible uses. These program criteria were informed through an extensive strategic planning process managed for Downstate ESDC by the management consultant A. T. Kearney. Their report, *Delivering on the Promise of New York State*, developed a strategy for the State to capitalize on its rich and diverse assets to encourage the growth of the Innovation Economy.

The following are three examples of alternatives that were provided during the outreach portion of the rulemaking process. All of the suggestions offered were from members of the small business community and local governments who responded to the Corporations request for input. All of the suggestions were included in the rules and regulations submitted with this Regulatory Impact Statement.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effects of Rule: "Small business" is defined by the State Economic Development law to be an enterprise with 100 or fewer employees. The vast majority - roughly 98 percent - of New York State businesses are small businesses.

We applied this criterion to ESD's models of the Downstate economy to determine how many small businesses could benefit from the Downstate Revitalization Fund. We limited the analysis to industries that are likely to have eligible businesses: manufacturing, transportation and warehousing, information, finance and insurance, professional and technical services, management of companies and enterprises, and arts, entertainment and recreation.

Across these 7 broad sectors our analysis indicates that approximately 115,000 small businesses will be eligible for funding under the Downstate Revitalization Fund.

In addition approximately 2,000 municipalities and local economic development-oriented organizations will be eligible for funding.

2. Compliance Requirements: There are no compliance requirements for small businesses and local governments in these regulations.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: To the extent that there are existing capabilities at the local level to administer projects involving Downstate Revitalization Fund investments, there should be relatively little, if any additional administration costs.

5. Economic and Technological Feasibility: Compliance with these regulations should be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide financing for joint discretionary and competitive economic development projects for distressed communities. In addition the rule specifies that project evaluation criteria include significant support from the local business community, local government, community organizations, academic institutions, and other regional parties. Because this program is open to for-profit businesses confidentiality features are included in the application process.

7. Small Business and Local Government Participation: The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also notified.

ESDC received 10 responses to its outreach to interested parties on the proposed regulations. Much of the responses received consisted of general supporting statements for the programs or critique of the enabling legislation.

Listed are several comments received on the proposed rules related to the Downstate Revitalization Fund and our response to the comment.

1. Regulations should be drafted to give priority to projects in developed areas that use smart growth principles, and that promote energy efficiency and conservation.

Section 4249.3, Part (a) provides for "support for projects identified through collaborative efforts as part of the overall growth strategy for the local economy, including but not limited to, smart growth and energy efficiency initiatives."

2. Regulations should clearly define "distressed communities" using specific, objective criteria.

Section 4249.2, Part (a) defines "Distressed Communities"

3. A streamlined application and reporting process is important to encourage small business participation.

ESDC uses one standard application for this, and many other economic development programs. The information required under Section 4249.6 "Application and approval process" from all applicants is needed for the corporation to make sound investment decisions. Private financing institutions request similar, if not more robust information from their applicants.

4. Regulations should allow for municipal comments when the applicant is not a municipality.

Section 4249.5, Part 3 gives preference to projects with the "existence of significant support from the local business community, local government, community organizations, academic institutions and other regional parties."

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: The ESD Downstate region is almost non-rural character. Of the 44 counties defined as rural by the Executive Law § 481(7), none are in the Downstate region. Of the 9 counties that have certain townships with population densities of 150 persons or less per square mile, only two counties - Dutchess and Orange - are in the Downstate region.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements; no affirmative acts will be needed to comply; and, it is not anticipated that applicants will have to secure any professional services in order to comply with this rule.

3. Costs: The costs to municipalities and other regulated parties involved would depend on the extent to which they participate in and support the proposed projects. For municipalities, this may involve matching funds or the commitment of other public resources for project development.

4. Minimizing Adverse Impact: The purpose of the Downstate Revitalization Fund Program is to maximize the economic benefit of new capital investment in distressed areas of the downstate region. The statute stipulates that projects must be located in distressed communities for which there is a demonstrated demand. This suggests that cooperation among state, local, and private development entities will seek to maximize the Program's effectiveness and minimize any negative impacts.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those only in urban areas or only in rural areas, except for the requirement that applicants must be in downstate counties and be in distressed communities. The extent of local government support for a project is a significant criteria for project acceptance. A

public hearing may also be required under the NYS Urban Development Corporation Act. The National Federation of Independent Business, New York Farm Bureau, and the New York Conference of Mayors were consulted during this rulemaking and comments requested. In addition, 17 rural organizations, cooperatives, and agricultural groups and 10 local government associations were also asked for their review and comment.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of Downstate New York through strategic investments to support investments in distressed communities in downstate regions and to support projects that focus on encourage responsible development.

There will be no adverse impact on job opportunities in the state.