

# 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.

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## Department of Audit and Control

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

#### Compliance with Internal Revenue Code Sections 401(a) and 415(b)

I.D. No. AAC-19-12-00007-P

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

**Proposed Action:** This is a consensus rule making to add Part 379 to Title 2 NYCRR.

**Statutory authority:** Retirement and Social Security Law, sections 11 and 311

**Subject:** Compliance with Internal Revenue Code sections 401(a) and 415(b).

**Purpose:** To require compliance with Internal Revenue Code sections 401(a) and 415(b).

**Text of proposed rule:** PART 379. COMPLIANCE WITH INTERNAL REVENUE CODE SECTIONS 401(a) AND 415(b) PROVISIONS

*Sect. 379.1 Background*

The New York State and Local Retirement System's qualified plan status pursuant to the Internal Revenue Code affords certain deferred tax benefits on contributions and investment gains and refunds of tax withholdings on the plans' international investments. In order to protect its qualified plan status and ensure continued tax-favorable benefits the New York State and Local Retirement System is required to adopt changes and update plan documents according to the changes periodically made to the Internal Revenue Code that apply to governmental retirement plans. This

part is being promulgated to comply with the Internal Revenue Code and ensure maintenance of the plans' qualified status.

*Section 379.2 Required Minimum Distribution*

Notwithstanding any other provision of law to the contrary, the Retirement System shall comply with Internal Revenue Code section 401(a)(9), including the minimum distribution incidental benefits rule of Internal Revenue Code section 401(a)(9)(G), pursuant to a reasonable and good faith interpretation of Internal Revenue Code section 401(a)(9) in accordance with Treasury Regulation § 1.401(a)(9)-1.

*Section 379.3 Internal Revenue Code 415 and cost-of-living adjustments*

(a) The defined benefit payable to a member of the Retirement System shall not exceed the applicable limits under Internal Revenue Code section 415(b), as periodically adjusted by the Secretary of the Treasury pursuant to Internal Revenue Code section 415(d). The limitation year is the calendar year. This limit shall apply to a member who has had a severance from employment or, if earlier, an annuity starting date. Benefits that are subject to Internal Revenue Code section 415(b) shall comply with the foregoing limit in each year during which payments are made. The foregoing limit shall be adjusted pursuant to the requirements of Code sections 415(b)(2)(C) and (D) relating to the commencement of benefits at a date prior to age 62 or after age 65, subject to other applicable rules under Internal Revenue Code section 415. No adjustment shall be required to a benefit subject to an automatic benefit increase feature described in Treasury Regulation section 1.415(b)-1(c)(5). To the extent that Internal Revenue Code section 415 and the Treasury Regulations thereunder require that an interest rate under Internal Revenue Code section 417(e) apply, the applicable lookback month shall be the calendar month preceding the current month and the applicable stability period is one calendar month.

(b) If a member is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the member's employer, as determined pursuant to Internal Revenue Code sections 414(b), 415(c), and 415, the sum of the participant's benefits payable annually in the form of a straight life annuity from all such plans may not exceed the limit described in subdivision (a) of this section. Where the member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the limit described in subdivision (a) of this section applicable at that age, the benefits accrued under all such other plans shall be reduced first in order to avoid exceeding the limit and only to the extent that the reduction under such other plans is insufficient to avoid exceeding the limit.

*Section 379.4 Use of Forfeitures*

Forfeitures arising under the Retirement System for any reason may not be applied to increase the benefits of any members at any time prior to the termination of the Retirement System within the meaning of Internal Revenue Code section 401(a)(8) or any successor thereto. In the event of the termination of the Retirement System or a complete or permanent discontinuance of contributions thereunder, any individual who is a member at such time shall be 100% vested in his or her accrued benefits under the Retirement System to the extent required by Internal Revenue Code section 401(a)(7) as in effect on September 1, 1974.

*Section 379.5 Exclusive Benefit*

Notwithstanding any other provision of law, no funds of the Retirement System shall be expended for any purpose other than the expense of administration of the Retirement System, investments for the benefit of the Retirement System, and the provision of benefits to the members and retired members of the Retirement System and their survivors and beneficiaries; provided, however, that reversions will be permitted to the extent allowed under the Internal Revenue Code and any related guidance thereunder, including, but not limited to, a mistake of fact as permitted under applicable Internal Revenue Service guidance.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

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

#### **Consensus Rule Making Determination**

This is a consensus rulemaking proposed for the purpose of maintaining the system's qualified plan status by requiring compliance with sections 401(a) and 415(b) of the Internal Revenue Code of 1986, as amended. These amendments solely relate to such procedural rules and it has been determined that no person is likely to object to the adoption of the rule as written.

## Department of Economic Development

### EMERGENCY RULE MAKING

#### **Excelsior Jobs Program**

**I.D. No.** EDV-19-12-00003-E

**Filing No.** 397

**Filing Date:** 2012-04-23

**Effective Date:** 2012-04-23

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

**Action taken:** Addition of Parts 190-196 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 17; L. 2010, ch. 59; and L. 2011, ch. 61

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

**Specific reasons underlying the finding of necessity:** Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and recently amended by Chapter 61 of the Laws of 2011. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. Recent amendment to the law extends the current benefit period from five to ten years and offers an enriched package of tax credits. It is imperative that the amended Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This emergency rule is necessary because, in addition to establishing the application process, standards for application evaluation and procedures for businesses claiming the tax credit, it now incorporates recent statutory amendments which are designed to strengthen the Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

**Subject:** Excelsior Jobs Program.

**Purpose:** Administer the Excelsior Jobs Program.

**Substance of emergency rule:** The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and

Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. Per recent statutory changes to the Program, when determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated

return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. Of note are the following changes made as a result of recent changes to the statute: the Excelsior Jobs Program Credit has been amended to be calculated as the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit has been increased from ten to fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is now based on the value of the property after improvements have been made. Under the amended program, a participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits has been lengthened from five years to ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

16) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

17) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 21, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: [tregan@esd.ny.gov](mailto:tregan@esd.ny.gov)

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program. Chapter 61 of the Laws of 2011 recently amended the statute to strengthen the Program.

##### **LEGISLATIVE OBJECTIVES:**

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of

public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

##### **NEEDS AND BENEFITS:**

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating and recently amending the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program. The rule implements the amendments to the statute which extend the current tax benefit period from five to ten years and offer an enriched package of tax credits. In addition, the rule adds the recommendation of the relevant regional council as an evaluation criterion for determining whether to admit an applicant into the Program.

##### **COSTS:**

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

##### **LOCAL GOVERNMENT MANDATES:**

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

##### **PAPERWORK:**

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

##### **DUPLICATION:**

The emergency rule does not duplicate any state or federal statutes or regulations.

##### **ALTERNATIVES:**

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

##### **FEDERAL STANDARDS:**

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

**COMPLIANCE SCHEDULE:**

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

**Regulatory Flexibility Analysis**

## 1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

## 2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

## 3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

## 4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

## 5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

## 6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

## 7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

**Rural Area Flexibility Analysis**

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and

employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

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## Education Department

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### EMERGENCY RULE MAKING

#### Annual Professional Performance Reviews for Classroom Teachers and Building Principals

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

**Filing No.** 399

**Filing Date:** 2012-04-24

**Effective Date:** 2012-04-24

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

**Action taken:** Amendment of section 100.2(o); and addition of Subpart 30-2 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and 3012-c(1)-(9), as added by L. 2010, ch. 103 and amended by L. 2012, ch. 21 (as enacted by S.6732/A.9554)

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012 (as enacted by S.6732/A.9554), relating to the annual professional performance review of classroom teachers and building principals. The proposed rule implements the statute by adding a new Subpart 30-2 to the Rules of the Board of Regents to establish the requirements for the evaluation system pursuant to the statute and make conforming amendments to section 100.2(o) of the Regulations of the Commissioner of Education.

On May 28, 2010, the Governor signed Chapter 103 of the Laws of 2010, which added a new section 3012-c to the Education Law, establishing a comprehensive evaluation system for classroom teachers and building principals. An emergency rule was adopted at the May 2011 Regents meeting to implement Chapter 103 of the Laws of 2010, with the provisions regarding a new Subpart 30-2 becoming effective on May 20, 2011 and the amendments to section 100.2(o) becoming effective on July 1, 2011.

On June 28, 2011, litigation was commenced against the proposed rule in State Supreme Court. On August 24, 2011, State Supreme Court, Albany County (Lynch, J.) issued a Decision and Order in New York State United Teachers, et al. v. Board of Regents, et al. finding sections 30-2.4(c)(3)(d), 30-2.4(d)(1)(iii), 30-2.4(d)(1)(iv)(c), 30-2.12(b), 30-2.1(d) and 2.11(c), and 30-2.6(a)(1) of the proposed regulations invalid to the extent set forth in the Decision and Order. An appeal is being taken from that Decision and Order. The appeal has been held in abeyance due to settlement negotiations and in anticipation of legislation to address the issues in the litigation.

The proposed rule was subsequently readopted by emergency action at the July 18-19, 2011, September 12-13, 2011, November 14, 2011, January 9-10, 2012 and March 19-20 Regents meetings.

Substantial revisions have now been made to the proposed rule in order to conform the rule to and implement the provisions of Chapter 21 of the Laws of 2012 as enacted in S.6732/A.9554, which was signed into law by the Governor on March 27, 2012 and is made immediately effective; except for the appeals process in the City of New York as prescribed in the law, which is generally made effective on January 16, 2013, subject to collective bargaining. The appeals process in the city of New York is not included in the proposed rule.

Since the Board of Regents meets only at prescribed intervals, the earliest the revised proposed rule can be presented for adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202(4-a), is the May 21-22, 2012 Regents meeting. If adopted at the May meeting, the earliest the proposed rule could take effect pursuant to the section 202(5) of the State Administrative Procedure Act is June 6, 2012. However, the March emergency action will expire on June 2, 2012. A lapse in the rule's effective date will disrupt administration of the annual professional performance

review of classroom teachers and building principals required under Education Law section 3012-c. Another emergency adoption is therefore necessary at the April 23-24, 2012 Regents meeting to ensure the emergency rule, as revised, remains continuously in effect until it can be adopted as a permanent rule.

The rule is being adopted as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately revise the rule to conform to and implement the provisions of Chapter 21 of the Laws of 2012 (as enacted in S.6732/A.9554) relating to the annual professional performance review of classroom teachers and building principals and thereby ensure that school districts and BOCES are given sufficient notice of the new APPR requirements to timely implement them in accordance with the statute, and to otherwise ensure that the emergency rule, as revised, remains continuously in effect until it can be adopted as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at a subsequent meeting after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed in State Administrative Procedure Act section 202(4-a).

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

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

**Substance of emergency rule:** The Commissioner of Education proposes to amend section 100.2(o) of the Commissioner's Regulations and add a new Subpart 30-2 to the Rules of the Board of Regents, to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the Laws of 2012 (S.6732/ A.9554), by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services.

The following is a summary of the substance of the revised proposed rule.

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

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

Section 30-2.1 sets forth applicability provisions. For the 2011-2012 school year, school districts shall ensure that the APPR of all classroom teachers of common branch subjects or English language arts or mathematics in grades four to eight, and of all building principals of schools in which such teachers are employed, are conducted in accordance with the requirements of section 3012-c and Subpart 30-2; and that reviews of classroom teachers and building principals (other than classroom teachers in the common branch subjects or English language arts (ELA) or mathematics in grades four to eight) are conducted in accordance with section 100.2(o) of the Commissioner's regulations.

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

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

This section further provides that nothing shall be construed to affect the statutory rights of a school district or BOCES to terminate a probationary teacher or principal for statutorily and constitutionally permissible reasons other than the performance of the teacher or principal in the classroom or school, including but not limited to misconduct.

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

Section 30-2.3 sets forth the content requirements for APPR plans submitted under Subpart 30-2. By September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers of common branch subjects, ELA or mathematics in grades four to eight and building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt and submit an APPR plan to the Commissioner for approval, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all of its classroom teachers and building principals. The Commissioner shall be required to approve or reject the plan by September 1, 2012. To the extent that by July 1, 2012 or by July 1 of any subsequent year, any of the items required to be included in the plan are not finalized by such date, as a result of unresolved collective bargaining negotiations, the entire plan shall be submitted to the Commissioner upon resolution of its terms.

Section 30-2.4 sets forth requirements for evaluating classroom teachers of common branch subjects, ELA or mathematics in grades four to eight for the 2011-2012 school year. 20 points of the evaluation will be based on student growth on State assessments or other comparable measures and 20 points will be based on locally selected measures as described in the section. 60 points of the evaluation will be based on multiple measures of teacher and principal effectiveness as described in this section. A teacher's performance must be assessed based on a teacher practice rubric(s) approved by the Department. A principal's performance must be assessed based on an approved principal practice rubric. Provision is made for granting a variance for use of existing rubrics. At least 31 of the 60 points for teachers shall be based on multiple classroom observations. At least 31 of the 60 points for principals shall be based on a broad assessment of the principal's leadership and management actions by the principal's supervisor or a trained independent evaluator. This section also prescribes options for any remaining points of the 60 points.

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

Section 30-2.6 describes the procedures for scoring and rating the evaluations, including a requirement that the rating category ("Highly Effective", "Effective", "Developing", or "Ineffective") assigned to teacher and building principal is determined by a single composite effectiveness score that is calculated based on the scores received by the teacher or principal in each of the subcomponents. This section prescribes specific scoring ranges for each rating category for the State assessment subcomponent and the locally selected measures subcomponent and the overall rating categories.

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

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

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

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

Section 30-2.11 describes requirements for appeals procedures through which an evaluated teacher or principal may challenge their APPR and provides that appeals must be timely and expeditious.

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-23-11-00006-EP, Issue of June 8, 2011. The emergency rule will expire June 22, 2012

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 112, Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

**Regulatory Impact Statement****1. STATUTORY AUTHORITY:**

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

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

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

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

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

**2. LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3012-c, as amended by Chapter 21 of the Laws of 2012, by prescribing criteria for APPR of classroom teachers and building principals.

**3. NEEDS AND BENEFITS:**

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

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

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

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

**4. COSTS:**

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

b. Costs to local government: Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the laws of 2012 as proposed by S.6732/A.9554, establishes requirements for the conduct of annual professional performance reviews (APPR) of classroom teachers and building principals employed by school districts and boards of cooperative educational services (BOCES).

The estimated value of staff time discussed here are based on the following: (1) an estimated hourly rate for teachers of \$46.46 (based on an average annual teacher salary of \$66,902 divided by 1,440 hours per school year); (2) an estimated hourly rate for principals of \$71.90 (based on an average annual principal salary of \$126,544 divided by 1,760 hours per school year); and (3) an estimated hourly rate for superintendents of \$85.71 (based on a median annual superintendent of schools salary of \$150,850 divided by 1,760 hours per school year). The Department anticipates that the proposed rule will require the estimated value of staff time of school districts/BOCES employees. The estimated value of staff time below assume that school districts and BOCES employees will need to dedicate extra time to accomplish the duties required by the statute and/or the proposed rule. However, most districts and BOCES are or should be performing these activities currently, but the State does not have data on the amount of hours currently dedicated to these activities. Moreover, in 2010, the Department was awarded a nearly \$700 million in Race to the Top grant award, of which it is estimated that approximately \$460 million of these funds have been or will be made available to school districts and BOCES and portions of those monies will be available to offset some of the estimated value of staff time.

State assessments or Other Comparable Measures

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

For non-tested subjects where there is no approved growth or value-added model for such grade/subject, the proposed amendment requires the district/BOCES to evaluate teachers and principals using a State-determined district- or BOCES-wide student growth goal setting process with an approved student assessment or a district, BOCES or regional assessment provided that it is rigorous and comparable across classrooms. The Department estimates that for non-tested subjects, a teacher or principal will spend approximately 4 hours to set his/her goals for the year and that a principal/superintendent will take approximately 1 hour per year to work with a teacher/principal on the goal setting process. Based on the estimated hourly rates described above, the Department estimates that the goal-setting process will require an estimated value of school district/BOCES staff time of \$257.74 per teacher (4 teacher hours to set goals plus 1 principal hour to review goals with teacher) and \$373.31 per principal (4 principal hours to set goals plus 1 superintendent hour to review goals with principal).

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

**Locally Selected Measures**

An additional 20% of the evaluation must be based on locally selected measures. The statute provides districts/BOCES with several options for this component in the 2012-2013 school year (decreases to 15% upon implementation of a value-added growth model). For teacher evaluations in the 2012-2013 school year and thereafter, the statute provides the following options: approved third-party assessments; district-, regional- or BOCES-developed assessments; a school-wide measure of student growth or achieved based on prescribed options; student achievement or growth on State assessments, Regents examinations and/or Department approved alternative examinations based on prescribed options listed in the statute, using a measure that is different from the growth score used for purposes of the state assessment or other comparable measures component; and where applicable, for teachers in any grade or subject where there is no growth or value-added growth model approved by the board of regents at that grade level or in that subject, a structured district-wide student growth goal-setting process to be used with any State assessment, or an approved student assessment or a district, regional or BOCES developed assessment. The proposed amendment does not impose costs beyond those costs imposed by the statute. If districts/BOCES select the State assessment option or use of the group or team metric, the Department estimates that there are no additional costs or estimated value of staff time. If the district/BOCES uses the goal-setting process, the estimated value of staff time is the same as those described above for a goal-setting process. If the district/BOCES already uses a student assessment from the State's approved list, which the Department expects will be the case in many instances, there will be no additional costs imposed by the proposed amendment. If a district/BOCES does not already use an approved local assessment and does not opt to use a measure based on a State assessment, the Department estimates the cost of purchasing a third-party student assessment will cost approximately \$10-\$20 per student, depending on the particular assessment selected.

For principals, the statute provides many options for the locally selected measures subcomponent for the 2012-2013 school year, which include, but are not limited to, student achievement on State assessments in grades 4-8 ELA and/or math for certain subgroups and/or based on the percentage of students in the school at certain performance levels and/or for students in each of the performance levels on the State assessments (proficient or advanced), student performance on district-wide locally selected measures approved for use in teacher evaluations, graduation and drop out rates for high school grades, progress toward graduation, etc. The proposed amendment does not impose costs or staff time beyond those imposed by the statute. As described above, if the district/BOCES selects a locally selected measure based on State assessments, Regents examinations, graduation rates, the percent of students who earn a Regents diploma, Department approved alternative examination or progress toward

graduation rates, the Department expects these costs and staff time to be negligible and to be absorbed by existing staff. If the district/BOCES selects student performance on any or all of the district-wide locally selected measures for teachers, the Department expects that there will be no additional cost or estimated value of staff time for principals if the costs or estimated value of staff time were already incurred for teachers.

#### Other Measures

For the remaining 60% of the evaluation, the statute requires that a majority (31) of a teacher's 60 points be based on multiple classroom observations for teachers by a principal or other trained administrator, at least one of which must be unannounced in the 2012-2013 school year and a majority (31) of a principal's 60 points be based on a broad assessment of the principal's leadership and management actions by the building principal's supervisor, a trained administrator or a trained independent evaluator which incorporates multiple school visits, with at least one visit by the supervisor, and at least one unannounced visit in the 2012-2013 school year. The statute also prescribes specific requirements for the remaining portion of the 60 points for teachers and principals and the proposed amendment merely reiterates those requirements. Therefore, the proposed amendment does not impose any additional estimated value of staff time beyond that staff time imposed by statute.

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

#### Reporting and Data Collection

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

The proposed amendment also requires that every teacher and principal be provided an opportunity to verify the subjects and/or student rosters assigned to them. The Department estimates that it will take a teacher 4 hours to review his/her student roster. This will require an estimated value of staff time of \$185.84 per teacher. For principals, the Department estimates that it will take a principal 8 hours to review his/her student roster. This will require an estimated value of staff time of \$575.20 per principal.

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

#### Vested Interest

The proposed amendment also requires that districts certify that teachers and principals do not have a vested interest in the test results of students whose assessments they score. The Department believes that most districts already have this security mechanism in place. However, in the event a district currently allows a teacher to score their own assessment, the Department expects that districts/BOCES can assign other teachers or faculty to score such assessments. Therefore, the Department believes that estimated value of staff time imposed by this requirement, if any, are minimal.

#### Scoring

The statute requires that a teacher receive a teacher or principal composite effectiveness score based on their score on three subcomponents (student growth on State assessments or other comparable measures; locally selected measures of student achievement and other measures of teacher and principal effectiveness). The proposed amendment sets forth

the scoring ranges for the rating categories in two of these subcomponents and overall rating categories as prescribed by the statute. The proposed amendment does not require any additional staff time beyond that time imposed by statute.

#### Training

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

#### Teacher and Principal Improvement Plans and Appeal Procedures

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

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

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

#### 5. LOCAL GOVERNMENT MANDATES:

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

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

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

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

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

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

#### 6. PAPERWORK:

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

Section 30-2.3 of the proposed amendment requires that by September

1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

The proposed amendment also requires a school district or BOCES that selected certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

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

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

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

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

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

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

The regulations also require the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

The above changes require that the "Compliance Schedule" section of

the previously published Regulatory Impact Statement" be revised to read as follows:

**7. DUPLICATION:**

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

**8. ALTERNATIVES:**

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

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

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

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

**9. FEDERAL STANDARDS:**

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

**10. COMPLIANCE SCHEDULE:**

The proposed amendment will become effective on its stated effective date. No further time is needed to comply. By September 1, 2011, each school district shall adopt a plan for the APPR of its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed, and by July 1, 2012, each school district and BOCES shall adopt a plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for the APPR of all classroom teachers and building principals and submit such plan to the Commissioner for approval.

**Regulatory Flexibility Analysis**

**(a) Small businesses:**

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and amended by Chapter 21 of the Laws of 2012, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

**(b) Local governments:**

**1. EFFECT OF RULE:**

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

**2. COMPLIANCE REQUIREMENTS:**

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

The statute requires each classroom teacher and building principal to

receive an APPR resulting in a single composite effectiveness score and rating of “highly effective,” “effective,” “developing,” or “ineffective.” The composite score is determined as follows:

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor or a trained administrator or other trained evaluator.

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

The proposed amendment also prescribes the following requirements:

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

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

The proposed amendment also requires a school district or BOCES that uses certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

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

rubric that was self-developed or developed by a third-party or a newly developed rubric, the school district or BOCES must seek a variance from the Department for the use of such rubric.

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

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

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

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

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

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

### 3. PROFESSIONAL SERVICES:

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

### 4. COMPLIANCE COSTS:

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

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

### 6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and as amended by Chapter 21 of the Laws of 2012 (S.6732/A.9554). The rule has been carefully drafted to meet statutory requirements while providing flexibility to school districts and BOCES.

### 7. LOCAL GOVERNMENT PARTICIPATION:

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

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

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor’s Office, the Council of School Supervisor & Administrators,

New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments have been incorporated in the proposed amendment or will be addressed in guidance.

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

#### **Rural Area Flexibility Analysis**

##### **1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

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

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

Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010, and as amended by a Chapter of the Laws of 2012 (S.6732/A.9554) establishes a comprehensive evaluation system for classroom teachers and building principals. The majority of the requirements in the proposed amendment do not impose any program, service, duty or responsibility on school districts and BOCES beyond those imposed by the statute.

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

- 20% is based on student growth on State assessments or other comparable measures of student growth (increased to 25% upon implementation of a value-added growth model).
- 20% is based on locally-selected measures of student achievement that are determined to be rigorous and comparable across classrooms as defined by the Commissioner (decreased to 15% upon implementation of value-added growth model). The rule provides a list of local options/measures for the evaluation of teachers and principals under this subcomponent.
- The remaining 60% is based on other measures of teacher/principal effectiveness consistent with standards prescribed by the Commissioner in regulation. The rule requires that, for teachers, at least 31 of the 60 points be based on multiple classroom observations conducted by a principal or other trained administrator and, for principals, at least 31 of the 60 points be based on a broad assessment of leadership and management actions by the supervisor, a trained administrator or other trained evaluator.

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

The proposed amendment also prescribes the following requirements:

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

Section 30-2.3 of the proposed amendment requires that by September 1, 2011, each school district shall adopt an APPR plan for its classroom teachers in the common branch subjects or English language arts or mathematics in grades 4-8 and its building principals of schools in which such teachers are employed. By July 1, 2012, each school district/BOCES shall adopt an APPR plan, on a form prescribed by the Commissioner, which may be an annual or multi-year plan, for all of its classroom teachers and building principals and shall submit the plan to the Commissioner

for approval. The Commissioner shall approve or reject the plan by September 1, 2012, or as soon as practicable thereafter. The Commissioner may reject a plan that does not rigorously adhere to the regulations and the law. Should any plan be rejected, the Commissioner shall describe each deficiency in the submitted plan and direct that each such deficiency be resolved through collective bargaining to the extent required under article 14 of the Civil Service Law.

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

The proposed amendment also requires a school district or BOCES that select certain locally selected measures to certify, in its annual professional performance review plan, that the measure is rigorous and comparable across classrooms and explain how the locally selected measure meets these requirements. For school districts or BOCES that use more than one locally selected measure for a grade/subject, they must certify in their APPR plan that the measures are comparable, in accordance with the Testing Standards.

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

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

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

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

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

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

The regulations also requires the Commissioner to annually monitor and analyze trends and patterns in teacher and principal evaluation results and data to identify districts, BOCES and/or schools where evidence suggests a more rigorous evaluation system is needed to improve educator effectiveness and student learning outcomes. A school district or BOCES identified by the Department in one of the categories enumerated above may be highlighted in public reports and/or the Commissioner may order a corrective action plan, which may include, but not be limited to, requirements that the district or BOCES arrange for additional professional development, provide additional in-service training and/or utilize independent trained evaluators to review the efficacy of the evaluation system.

##### **3. COSTS:**

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

##### **4. MINIMIZING ADVERSE IMPACT:**

The rule is necessary to implement Education Law section 3012-c. The rule has been carefully drafted to meet statutory requirements while

providing flexibility to school districts and BOCES. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

#### 5. RURAL AREA PARTICIPATION:

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

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

On April 15, 2010, the Department posted draft regulatory language on our website for the public to review and provide informal comment. The Department received and reviewed over 250 comments on the proposed amendment, including comments from district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Many of these comments were incorporated in the proposed amendment adopted in May 2011 or have been addressed in guidance.

At their March meeting, the Board of Regents adopted revised regulations to implement the provisions of Chapter 21 of the Laws of 2012, which amended Education Law § 3012-c. Prior to adopting these revised regulations, the Department sent the draft regulatory language for comment to the members of the Task Force, which included district superintendents, the Council of School Superintendents, the School Boards Association, the Governor's Office, the Council of School Supervisor & Administrators, New York City, the Conference of Big 5 School Districts NYSUT, SAANYS and teachers and administrators and public interest groups across the State. Some of these comments were incorporated into the proposed amendment.

#### **Job Impact Statement**

The purpose of the proposed rule is to implement Education Law section 3012-c, as added by Chapter 103 of the Laws of 2010 and Chapter 21 of the Laws of 2012, by establishing standards and criteria for conducting annual professional performance reviews of classroom teachers and building principals employed by school districts and boards of cooperative educational services. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Assessment of Public Comment**

The agency received no public comment.

### **EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED**

#### **Relating to Hearings on Charges of Tenured School Employees**

**I.D. No.** EDU-19-12-00004-EP

**Filing No.** 400

**Filing Date:** 2012-04-24

**Effective Date:** 2012-04-24

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

**Proposed Action:** Amendment of Subpart 82-1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(1) and (2) and 3020-a, as amended by L. 2012, ch. 57, part B

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement Education Law section 3020-a, as amended by

Part B of Chapter 57 of the Laws of 2012, relating to hearings on charges against tenured school employees.

As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law § 3020-a to address spiraling costs and the extraordinary length of time arbitrators utilized to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor's proposed 2012-13 State Budget incorporated some of these reforms, and the State Budget as adopted by the Legislature incorporated a number of important programmatic and fiscal reforms.

The changes take place immediately, and apply to all charges against tenured educators filed with the clerk or secretary of the school district or employing board on or after April 1, 2012.

The new amendments modify the manner in which an arbitrator is selected if the parties fail to agree on an arbitrator selection within 15 days of receipt of the list. Education Law § 3020-a(3)(b)(iii) states that "[i]f the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list." This provision authorizes the Commissioner to select the arbitrator if the parties fail to agree within 15 days of receipt of the list. It does not apply to NYC where there is an alternative procedure.

The proposed amendment requires the Commissioner to establish a schedule for "maximum rates of compensation of hearing officers based on customary and reasonable fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed" (emphasis added). The purpose of this amendment is to give the Commissioner the authority to control costs.

Pursuant to Education Law § 3020-a(3)(c)(i)(B), the proposed amendment authorizes the Department to monitor and investigate a hearing officer's compliance with the timelines set forth in the statute. The Commissioner may exclude any hearing officer who has a record of continued failure to commence and conclude hearings within the timelines prescribed in the statute.

The proposed amendment continues the requirement that an accurate "record" of the proceedings be kept at the expense of the Department and furnished upon request to the employee and the board of education. However, in accordance with the new law, the proposed amendment permits the Department to take advantage of any new technology to transcribe or record the hearings in an accurate, reliable, efficient and cost effective manner.

In conformity with the new law, the amendment also imposes a one year limitation for the submission of claims for reimbursement for services rendered. The purpose of this amendment is to encourage timely submission of claims so that accurate budget assumptions can be made and claims can be paid for in a reasonable time.

The rule is being adopted as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to immediately revise Subpart 82-1 of the Commissioner's regulation to conform to and implement the provisions of section 3020-a of the Education Law, as amended by Chapter 57 of the Laws of 2012. Emergency action is also necessary to give employees and employing boards sufficient notice of the new requirements to timely implement them in accordance with the statute.

It is anticipated that the proposed rule will be presented for adoption as a Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act section 202(4-a).

**Subject:** Relating to hearings on charges of tenured school employees.

**Purpose:** To implement the provisions of the new law relating to the appointment of hearing officers and reimbursement of hearing expenses.

**Text of emergency/proposed rule:** 1. Subdivision (b) of section 82-1.3 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

(b) A copy of a written statement specifying in detail each charge as to which the board finds probable cause exists[, and a copy of the vote of the board on each charge,] shall be *immediately* forwarded [at once] to the employee by certified or registered mail, return receipt re-

quested, or *by personal delivery to the employee* and to the commissioner by first class mail. Such statement shall state the maximum penalty which will be imposed by the board if the employee does not request a hearing or that will be sought by the board if the employee is found guilty of the charge after a hearing and shall outline the employee's rights under section 3020-a, including the right to request a hearing and the right to choose either a single hearing officer or a three member panel when the charges involve pedagogical incompetence or issues involving pedagogical judgment.

2. Section 82-1.4 of the Regulations of the Commissioner of Education shall be amended, effective April 24, 2012, to read as follows:

Section 82-1.4. Request for a hearing

Where the employee desires a hearing, he or she may file a written request for a hearing with the clerk or secretary of the employing board within 10 days of receipt of the charges, and where the charges concern pedagogical incompetence or issues involving pedagogical judgment, the employee shall choose either a single hearing officer or a three member panel. In the request for a hearing, the employee may designate an attorney who will represent the employee at the hearing *and who shall be authorized to receive correspondence from the commissioner pertaining to the 3020-a proceeding on his or her behalf.*

3. Section 82-1.5 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, as follows:

Section 82-1.5. Notice of need for hearing

(a) The notification [to the commissioner] of the need for a hearing shall *be sent to the commissioner within three working days of the request for a hearing with a copy to the employee, or the employee's designated attorney, and shall* contain the following information:

(1) . . .

(2) . . .

(3) . . .

(4) the name and [address of] *contact information for the attorney, if any, who will represent the board at the hearing;*

(5) . . .

(6) . . .

(7) the name of the panel member selected by the board, if applicable; and

(8) where the board has received written notice that the employee will be represented by an attorney at the hearing, the name and [address of] *contact information for such attorney.*

(b) . . .

(c) [At the same time that the notification is sent to the commissioner, the board shall, by certified mail return receipt requested, send to the employee the information provided in paragraphs (a)(3), (4), (5), (6) and (7) of this section.

(d) Separate notification of the need for a hearing shall be given with respect to each employee against whom charges have been filed.

[(e) (d) Whenever an employee shall be deemed to have waived his/her right to a hearing, the clerk or secretary of the board shall immediately file notice of such waiver with the commissioner.

(e) *Where the matter is resolved prior to the decision of the hearing officer, the board shall notify the commissioner and send a copy of such resolution to the commissioner within ten days of the resolution.*

4. Section 82-1.6 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

Section 82-1.6. Appointment of hearing officer and notice of prehearing conference

(a) . . .

(b) [Not later than 10 days from the mailing of the list] *Within 15 days after receiving the list of potential hearing officers, the parties or their agents or representatives shall by agreement select a hearing officer and each party shall notify the commissioner thereof.*

(c) If the parties fail to notify the commissioner of [an agreed upon hearing officer within the time] *a selection within the 15 day time period prescribed by subdivision (b) of this section, the commissioner shall [request the association to select a hearing officer from said list] appoint a hearing officer from the list. The provisions of this subdivi-*

*tion shall not apply in cities with a population of one million or more with alternative procedures specified in section 3020 of the Education Law.*

(d) . . .

(e) . . .

5. Subdivisions (a) and (b) of section 82-1.7 of the Regulations of the Commissioner of Education shall be amended, effective April 24, 2012, to read as follows:

(a) The commissioner shall maintain a list of persons eligible to serve as panel members pursuant to Education Law, section 3020-a(3)(b)(iv), which list shall be updated [at least annually] *as necessary.*

(b) Copies of such list of panel members appointed by the commissioner [shall be filed in the office of the school district clerk or secretary of the board of each district and] shall be available for public inspection *upon request to the commissioner.*

6. Section 82-1.10 of the Regulations of the Commissioner of Education is amended, effective April 24, 2012, to read as follows:

Section 82-1.10. Conduct of hearings

(a) . . .

(b) . . .

(c) . . .

(d) If the hearing officer determines that the absence of a hearing panel member is likely to delay unduly the prosecution of the hearing, he or she shall order the replacement of such panel member. If the party who selected such panel member fails to select a replacement within two business days, the commissioner shall select such replacement. If the hearing officer needs to be replaced and [if the commissioner determines that] the parties [cannot agree on a replacement] *fail to notify the commissioner of their mutually agreed upon replacement within two business days, the commissioner shall [request the association to select a replacement from the list of hearing officers] select the replacement. In no event shall a panel hearing proceed except in the presence of two panel members and the hearing officer.*

(e) . . .

(f) *All evidence shall be submitted by all parties within one hundred twenty five days of the filing of charges and no additional evidence shall be accepted after such time, absent extraordinary circumstances beyond the control of the parties.*

(g) *The hearing officer shall have the power to regulate the course of the hearing, set the time and place for continued hearings, and direct the parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after one hundred twenty five days.*

(h) At the conclusion of the testimony, the hearing officer may adjourn the hearing to a specified date after conclusion of the testimony, to permit preparation of the [transcript] *record, submission by the parties of memoranda of law, and deliberation; provided that such specified date may not be more than 60 days after the prehearing conference unless the hearing officer determines that extraordinary circumstances warrant a later date. [The] Upon request, the hearing officer shall arrange for the preparation and delivery of one copy of the [transcript] record of the hearing to each panel member, to the employee and the board.*

[(g) (i) The hearing officer or hearing panel shall render a written decision within 30 days of the last day of the final hearing, or within 10 days of the last day of an expedited hearing and shall forthwith forward a copy to the commissioner, *in a manner prescribed by the commissioner, who shall send copies to [the employee and the clerk or secretary of the employing board] the parties and/or their designated attorneys.* Such written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on such findings and shall state the penalty or other action, if any, which shall be taken by the board, provided that such findings, conclusions and penalty determination shall be based solely upon the record in the proceedings before the hearing officer or panel, and shall set forth the reasons and the factual basis for the determination.

7. A new section 82-1.11 of the Regulations of the Commissioner of Education shall be added, effective April 24, 2012, to read as follows:

*Section 82-1.11 Monitoring and Enforcement of Timelines*

*The Department will monitor and investigate a hearing officer's compliance with the timelines prescribed in Education Law section 3020-a. A record of continued failure to commence and complete hearings within the time periods prescribed in this section shall be considered grounds for the commissioner to exclude such individual from the list of potential hearing officers for these hearings.*

8. The existing section 82-1.11 of the Regulations of the Commissioner of Education shall be renumbered as section 82-1.12 of the Regulations of the Commissioner of Education and is amended, effective April 24, 2012, to read as follows:

[Section 82-1.11] *Section 82-1.12. Reimbursable hearing expenses*

(a) [The] *Except as otherwise provided in this section, the commissioner shall compensate the hearing officer with the customary fee paid for service as an arbitrator for each day of actual service rendered by the hearing officer. For [this purpose] hearings commenced by the filing of charges prior to April 1, 2012, a day of actual service shall be five hours. In the event a hearing officer renders more or less than five hours of service on a given calendar day, the per diem fee shall be prorated accordingly. For hearings commenced by the filing of charges on or after April 1, 2012, a day of actual service shall be defined in guidelines prescribed by the commissioner. Any late cancellation fee charged by the hearing officer shall be paid by the party or parties responsible for the cancellation.*

(b) In addition to the statutory fees payable to the hearing officer and panel members for each day of actual service, the commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses [incurred at rates not to exceed the rates] *in accordance with the rules and limits on travel applicable to state employees.*

(c) The commissioner shall arrange for the preparation of [a hearing transcript by a competent stenographer and shall compensate the stenographer for the cost of preparing the transcript and copies thereof for the hearing officer, each panel member, the department, the employee and the board] *an accurate record of the proceedings. Upon request, a copy of the record shall be provided by the commissioner to the hearing officer, panel members and/or the parties at the department's expense. Upon request of one or more parties, the commissioner may arrange to have a daily copy of the [transcript] record prepared and distributed to each party making such request and to the hearing officer, in addition to [the] any final copies [to be] provided by the commissioner after conclusion of the hearing. Any incremental cost incurred for preparing a daily copy for a party and the hearing officer that is in addition to the base amount payable by the commissioner for preparation of the final [transcript] record shall be paid by the party requesting daily copy, or shall be shared equally by the parties where both parties request daily copy.*

(d) . . .

(e) *Limitations on fees for hearing officers. For hearings commenced by the filing of charges on or after April 1, 2012, a hearing officer shall be not be reimbursed beyond the maximum rates of compensation of hearing officers, as set forth in a schedule prescribed by the commissioner, based on customary and reasonable fees for service as an arbitrator and shall not be reimbursed for more than a certain amount of study hours, as prescribed by the commissioner.*

(f) *Limitation on claims. No payments shall be made by the department on or after April 1, 2012 for the following if they are on a claim submitted later than one year after the final disposition of the hearing by any means, including settlement, or within 90 days after April 1, 2012 whichever is later; provided that no payment shall be barred or reduced where such payment is required as a result of a court order or judgment or a final audit:*

- (1) *compensation of a hearing officer or hearing panel member;*
- (2) *reimbursement of such hearing officers or panel members for necessary travel or other expenses incurred by them, or*
- (3) *for other hearing expenses.*

***This notice is intended:*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 22, 2012.

***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 473-2183, email: mgammon@mail.nysed.gov

***Data, views or arguments may be submitted to:*** Peg Rivers, New York State Education Department, 89 Washington Avenue, Albany, New York 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

***Regulatory Impact Statement***

**1. STATUTORY AUTHORITY:**

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

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

Education Law section 305(1) authorizes the Commissioner to enforce laws relating to the State educational system and execute Regents educational policies.

Section 305(2) provides the Commissioner with general supervision over schools and authority to advise and guide school district officers in their duties and the general management of their schools.

Education Law section 3020-a, as amended by Part B of Chapter 57 of the Laws of 2012, establishes requirements for hearings on charges of tenured school employees.

**2. LEGISLATIVE OBJECTIVES:**

The proposed rule is consistent with the above authority vested in the Regents and Commissioner to carry into effect State educational laws and policies, and is necessary to implement Education Law section 3020-a, as amended by Part B of the Chapter 57 of the Laws of 2012, by prescribing criteria for hearings on charges of tenured school employees.

**3. NEEDS AND BENEFITS:**

As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law § 3020-a to address spiraling costs and the extraordinary length of time to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor's proposed 2012-13 State Budget included some of these reforms and the State Budget as adopted by the Legislature included a number of important programmatic and fiscal reforms.

Below is a summary of the major Education Law § 3020-a revisions and a description of where changes were made to existing regulations to conform to the new statutory requirements.

**Prohibition on Introduction of Evidence After 125 days**

A significant change is the prohibition on the introduction of evidence more than 125 days after the filing of charges unless there are extraordinary circumstances beyond the control of the parties. Proceedings under § 3020-a have traditionally taken far too long to resolve and this provision is designed to ensure timely resolution by prohibiting the introduction of evidence beyond a certain point in the proceeding. This means that once the charges are filed, all parties should work expeditiously and cooperatively to complete the case in a timely manner. After 125 days, no additional evidence shall be accepted unless there are extraordinary circumstances beyond control of the parties. The "extraordinary circumstances" rule is meant to provide for that rare occasion when evidence truly can not be introduced within the prescribed time limit.

**Department Selects Arbitrator When Parties Can Not Agree**

The new amendments also modify the manner in which an arbitrator is selected if the parties fail to agree on an arbitrator selection within 15 days of receipt of the list. Education Law § 3020-a(3)(b)(iii) states that "[i]f the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the Commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list." This provision authorizes the Commis-

sioner to select the arbitrator if the parties fail to agree by the 15th day. It does not apply to NYC where there is an alternative procedure.

**Department Can Establish Maximum Arbitrator Rates and Study Hours**

An amendment to Education Law § 3020-a(3)(b)(i)(B) requires the Commissioner to establish a schedule for “maximum rates of compensation of hearing officers based on customary and reasonable fees for service as an arbitrator and provide for limitations on the number of study hours that may be claimed” (emphasis added). The purpose of this amendment is to give the Commissioner the authority to control costs.

**Department Can Exclude Arbitrators For Untimeliness**

Pursuant to Education Law § 3020-a(3)(c)(i)(B) the Department is authorized to monitor and investigate a hearing officer’s compliance with the timelines set forth in the statute. The Commissioner may exclude any hearing officer who has a record of continued failure to commence and conclude hearings within the timelines prescribed in the statute.

**New Technology for Recording Hearings is Allowed**

Education Law § 3020-a(3)(c)(i)(D) continues the requirement that an accurate “record” of the proceedings be kept at the expense of the Department and furnished upon request to the employee and the board of education. The statutory changes, however, permit the Department to take advantage of any new technology to transcribe or record the hearings in an accurate, reliable, efficient and cost effective manner. The Department will explore other cost-effective alternatives to recording and producing transcripts for these proceedings, however, there will be no immediate change to the manner in which these hearings are recorded.

**One-Year limitation on Claims**

Education Law § 3020-a(3)(d) imposes a one-year limitation, following the final disposition of the hearing, for the submission of claims for reimbursement for services rendered. The purpose of this amendment was to encourage timely submission of claims so that accurate budget assumptions can be made and claims can be paid for in a reasonable time.

**Other Changes**

A few other technical changes were made to clarify existing regulations, including, but not limited to, the following changes: (1) elimination of the requirement to include a copy of the vote of the board for each charge with the written statement of charges; (2) clarification that the notice of a need for hearing shall be sent to the Commissioner within three working days of the request for a hearing, with a copy to the employee or the employee’s attorney; and (3) a provision to authorize the Commissioner to select a replacement hearing officer if the parties fail to notify the Commissioner within two business days of their mutually-agreed-upon replacement. The amendment also provides the hearing officer with the power to regulate the course of the hearing, including scheduling the hearing dates and directing parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after 125 days and clarifies that the Commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses in accordance with the rules and limits on travel for State employees.

**5. LOCAL GOVERNMENT MANDATES:**

The compliance requirements set forth above apply to school districts and BOCES that initiate hearings to terminate tenured school employees.

**6. PAPERWORK:**

The proposed amendment does not contain any additional paperwork requirements, beyond those imposed by statute.

**7. DUPLICATION:**

The rule is necessary to implement Education Law section 3020-a and does not duplicate existing State or Federal requirements.

**8. ALTERNATIVES:**

No alternatives were provided because these changes were necessary to implement the statute.

**9. FEDERAL STANDARDS:**

The rule is necessary to implement Education Law section 3020-a. There are no applicable Federal standards concerning hearings for tenured school employees.

**10. COMPLIANCE SCHEDULE:**

Section 3020-a of the Education Law, as amended by Part B of Chapter 57 of the Laws of 2012, became effective on April 1, 2012. If adopted at the April Regents meeting, the proposed amendment will become effective on April 1, 2012.

**Regulatory Flexibility Analysis**

(a) Small businesses:

The purpose of the proposed rule is to implement Education Law section 3020-a, as added by Part B of Chapter 57 of the Laws of 2012, by establishing standards and criteria for hearings on charges of tenured school employees. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

**1. EFFECT OF RULE:**

The rule applies to all school districts and boards of cooperative educational services (“BOCES”) in the State, except where otherwise indicated.

**2. COMPLIANCE REQUIREMENTS:**

As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law § 3020-a to address spiraling costs and the extraordinary length of time to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor’s proposed 2012-13 State Budget included some of these reforms and the State Budget as adopted by the Legislature included a number of important programmatic and fiscal reforms.

Below is a summary of the major Education Law § 3020-a revisions and a description of where changes were made to existing regulations to conform to the new statutory requirements.

**Prohibition on Introduction of Evidence After 125 days**

A significant change is the prohibition on the introduction of evidence more than 125 days after the filing of charges unless there are extraordinary circumstances beyond the control of the parties. Proceedings under § 3020-a have traditionally taken far too long to resolve and this provision is designed to ensure timely resolution by prohibiting the introduction of evidence beyond a certain point in the proceeding. This means that once the charges are filed, all parties should work expeditiously and cooperatively to complete the case in a timely manner. After 125 days, no additional evidence shall be accepted unless there are extraordinary circumstances beyond control of the parties. The “extraordinary circumstances” rule is meant to provide for that rare occasion when evidence truly can not be introduced within the prescribed time limit.

**Department Selects Arbitrator When Parties Can Not Agree**

The new amendments also modify the manner in which an arbitrator is selected if the parties fail to agree on an arbitrator selection within 15 days of receipt of the list. Education Law § 3020-a(3)(b)(iii) states that “[i]f the employing board and the employee fail to agree on an arbitrator to serve as a hearing officer from the list of potential hearing officers, or fail to notify the Commissioner of a selection within such fifteen day time period, the commissioner shall appoint a hearing officer from the list.” This provision authorizes the Commissioner to select the arbitrator if the parties fail to agree by the 15th day. It does not apply to NYC where there is an alternative procedure.

**Department Can Establish Maximum Arbitrator Rates and Study Hours**

An amendment to Education Law § 3020-a(3)(b)(i)(B) requires the Commissioner to establish a schedule for “maximum rates of compensation of hearing officers based on customary and reasonable fees for service as an arbitrator and provide for limitations on the number of

study hours that may be claimed” (emphasis added). The purpose of this amendment is to give the Commissioner the authority to control costs.

#### Department Can Exclude Arbitrators For Untimeliness

Pursuant to Education Law § 3020-a(3)(c)(i)(B) the Department is authorized to monitor and investigate a hearing officer’s compliance with the timelines set forth in the statute. The Commissioner may exclude any hearing officer who has a record of continued failure to commence and conclude hearings within the timelines prescribed in the statute.

#### New Technology for Recording Hearings is Allowed

Education Law § 3020-a(3)(c)(i)(D) continues the requirement that an accurate “record” of the proceedings be kept at the expense of the Department and furnished upon request to the employee and the board of education. The statutory changes, however, permit the Department to take advantage of any new technology to transcribe or record the hearings in an accurate, reliable, efficient and cost effective manner. The Department will explore other cost-effective alternatives to recording and producing transcripts for these proceedings, however, there will be no immediate change to the manner in which these hearings are recorded.

#### One-Year limitation on Claims

Education Law § 3020-a(3)(d) imposes a one-year limitation, following the final disposition of the hearing, for the submission of claims for reimbursement for services rendered. The purpose of this amendment was to encourage timely submission of claims so that accurate budget assumptions can be made and claims can be paid for in a reasonable time.

#### Other Changes

A few other technical changes were made to clarify existing regulations, including, but not limited to, the following changes: (1) elimination of the requirement to include a copy of the vote of the board for each charge with the written statement of charges; (2) clarification that the notice of a need for hearing shall be sent to the Commissioner within three working days of the request for a hearing, with a copy to the employee or the employee’s attorney; and (3) a provision to authorize the Commissioner to select a replacement hearing officer if the parties fail to notify the Commissioner within two business days of their mutually-agreed-upon replacement. The amendment also provides the hearing officer with the power to regulate the course of the hearing, including scheduling the hearing dates and directing parties to appear, so that no party is unduly prejudiced by the prohibition on the submission of evidence after 125 days and clarifies that the Commissioner shall reimburse hearing officers and panel members for their necessary travel and other related reasonable expenses in accordance with the rules and limits on travel for State employees.

#### 3. PROFESSIONAL SERVICES:

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

#### 4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments beyond those imposed by statute.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES.

#### 6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 3020-a, as added by Part B of Chapter 57 of the Laws of 2012. The rule is necessary to implement the provisions of the new law. Therefore, no alternatives were considered.

#### 7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the development of the proposed amendment have been solicited from district superintendents across the State and the Big 5 city school districts.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards

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

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

As part of its 2011 legislative agenda, the Board of Regents sought a number of modifications to the tenured teacher hearing process set forth in Education Law § 3020-a to address spiraling costs and the extraordinary length of time to conduct hearings. This legislation was introduced in the Assembly and Senate. The Governor’s proposed 2012-13 State Budget included some of these reforms and the State Budget as adopted by the Legislature included a number of important programmatic and fiscal reforms.

Below is a summary of the major Education Law § 3020-a revisions and a description of where changes were made to existing regulations to conform to the new statutory requirements.

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**Other Changes**

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**3. COSTS:**

There are no additional costs imposed beyond those imposed by statute.

**4. MINIMIZING ADVERSE IMPACT:**

The rule is necessary to implement Education Law section 3020-a, as amended by Part B of Chapter 57 of the Laws of 2012. Since the statute applies to all school districts and BOCES throughout the State, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

**5. RURAL AREA PARTICIPATION:**

Comments on the development of the proposed amendment have been solicited from district superintendents across the State, the Big 5 City School districts and the Department's Rural Advisory Committee, all of which have representatives who live and work in rural areas.

**Job Impact Statement**

The purpose of the proposed rule is to implement Education Law section 3020-a, as added by Part B of Chapter 57 of the Laws of 2012, relating to hearings on charges of tenured school employees. The proposed amendment prescribes criteria and standards for the conduct of hearings, selection of hearing officers and reimbursable hearing expenses. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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

**Establish the Approval Standards and Procedures for International Medical Schools**

**I.D. No.** EDU-19-12-00005-EP

**Filing No.** 401

**Filing Date:** 2012-04-24

**Effective Date:** 2012-04-24

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

**Proposed Action:** Addition of section 60.10 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a) and 6508(1)

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

**Specific reasons underlying the finding of necessity:** The proposed amendments to the Regulations of the Commissioner of Education are necessary to establish a process and standards for the approval of international medical schools to place students in long-term clinical clerkships in New York.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the Advisory Committee on Long-Term Clinical Clerkships to evaluate pending applications by international medical schools to place students in long-term clinical clerkships in New York State in a timely manner. Such applications have been on hold pending a review of the process and standards used to approve such applications, and it is now necessary to formally approve the new process and standards, which are designed both to protect the health and safety of patients in the facilities in which the clinical clerkships will be conducted and to assure that the students in the international medical schools placing students in such clerkships are receiving an appropriate medical education before and during their participation in such clerkships.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the June 2012 Regents meeting, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

**Subject:** Establish the approval standards and procedures for international medical schools.

**Purpose:** Establish the approval standards and procedures for international medical schools to place students in long term clerkships in NY.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.op.nysed.gov](http://www.op.nysed.gov)):** The Commissioner of Education proposes to add a new section, 60.10, related to the standards and process for the approval of international medical schools to place students in long-term clinical clerkships in New York State. The following is a summary of the substance of the regulations:

(a) General requirements. To meet the requirements for approval to place students in long-term clinical clerkships in New York State, an international medical school shall meet the requirements in this section.

(b) Duration of approval. Initial and subsequent approvals of a school shall be for a term of 7 years unless otherwise limited to a lesser period for good cause, and such approvals may be subject to certain limitations and restrictions as determined by the Board of Regents. The term of approval may be extended by the Board of Regents on one or more occasions for a period not to exceed 12 months on each occasion for good cause.

(c) Approval standards. In addition to any applicable requirements in section 60.2 of this Part, in order to be approved to place students in long-term clinical clerkships in New York State, the institution shall meet the following requirements:

(1) Recognition by appropriate authorities of country. The international medical school shall be recognized by the appropriate civil authorities of the country in which the school is located as an acceptable educational program for physicians, and graduates of the program shall be eligible to pursue licensure or other authorization to practice medicine in such country.

(2) Institutional mission and objective.

(i) The medical school shall be organized and have in place a planning process that sets forth the responsibilities of all sectors of the school community and that sets the direction for its program and results in measurable outcomes.

(ii) The medical school shall have in place a system with central oversight to define the objectives of its program in outcome-based terms that facilitate assessment of student progress in developing essential physician competencies.

(3) Faculty. The medical school shall have a sufficient number of appropriately qualified faculty members to meet the needs and missions of the program.

(4) Curriculum.

(i) The medical education program shall provide at least 130 weeks of instruction, and the curriculum of the medical school shall provide

a general professional education and prepare medical students for entry into graduate medical education in any discipline.

(ii) The curriculum of the medical school shall incorporate the fundamental principles of medicine and its underlying scientific concepts; promote the development of skills of critical judgment based on evidence and experience; and develop medical students' abilities to use such principles and skills in solving problems of health and disease.

(iii) The medical school curriculum shall include didactic and clinical instruction necessary for students to become competent practitioners of contemporary medicine, including communication skills as they relate to physician responsibilities.

(iv) The medical school curriculum shall include clinical experience in a broad cross-section of areas, including, but not limited to, primary care.

(v) The medical school shall provide instruction in medical ethics and human values, including, but not limited to, ethical principles in caring for patients and in relating to patients' families and to others involved in patient care.

(vi) The medical school shall demonstrate that there is integrated institutional responsibility for the overall design, management, and evaluation of a coherent and coordinated curriculum.

(vii) The medical school shall demonstrate that it provides comparable educational experiences and equivalent methods of assessment across all instructional sites within a given discipline.

(5) Assessment of student performance. The medical school shall have a system in place for the effective assessment of medical student performance throughout the program.

6) Administration.

(i) Responsibilities.

(a) The chief academic officer of the medical school shall be responsible for the conduct and quality of the educational program and for ensuring the adequacy of resources, including faculty, at all instructional sites, and shall be given explicit authority to facilitate change in the medical program and to otherwise carry out his or her responsibilities for management and evaluation of the curriculum.

(b) The medical school shall collect and use a variety of outcome data, including accepted norms of accomplishment, to demonstrate the extent to which its educational objectives are being met, and shall engage in an ongoing systematic process to assess student achievement, program effectiveness, and opportunities for improvement.

(c) At least every other year, the medical school shall publish, either in print or online, information on policies and procedures on academic standards, grading, attendance, tuition and fees, refund policy, student promotion, retention, graduation, academic freedom, students' rights and responsibilities.

(d) The medical school shall provide clinical clerkships in accordance with affiliation agreements that define the responsibilities of each party related to the educational program for medical students and section 60.2(d) of this Part. Such clerkships shall be conducted at health care settings in which there is appropriate oversight and supervision. The medical school shall inform the Department of the clinical facilities with which it has affiliation agreements and of anticipated changes in its affiliation agreements or the affiliation status the clinical facilities.

(ii) The chief official of the medical school and the other members of the school administration shall be qualified by education and experience to provide leadership in medical education, scholarly activity, and patient care and shall have a sufficient number of appropriately qualified administrators.

(7) The medical school shall develop criteria, policies, and procedures for the selection of medical students that are readily available to potential and current applicants and their collegiate advisors.

(8) The medical school shall have an effective system of academic advising and personal and career counseling for medical students that integrates the efforts of faculty members, course directors, and student affairs officers with its counseling and tutorial services.

(9) (i) The medical school shall establish, and make available to all

sectors of the school community, policies regarding the standards of conduct for the faculty-student relationship, the standards and procedures for the assessment, advancement, and graduation of its medical students, and the standards and procedures for disciplinary action.

(ii) Medical student educational records shall be confidential and shall be maintained in a manner that will ensure confidentiality as well as the accuracy of such records. A medical student enrolled in the medical school shall be allowed to review the content and challenge information contained in his or her records if he or she considers the information contained therein to be inaccurate, misleading, or inappropriate.

(10) Resources. The medical school shall have sufficient resources to achieve its educational and other goals.

(d) Procedures for approval.

(1) Application.

(i) In order to obtain approval by the Board of Regents to place students in long-term clinical clerkships in New York State, an international medical school shall submit an application, on a form prescribed by the Department. Applications shall remain in active status for three years from the date of receipt of such application.

(ii) Self-study. A school shall be required to conduct and submit with its application for approval a self-study, substantiating compliance with the standards for approval set forth in this section and plans for improvements pertinent to such standards.

(2) Site visit.

(i) When the Advisory Committee has made a preliminary determination that the application has adequately addressed the standards for approval set forth in this section, a site visit will be scheduled, and the Advisory Committee will designate a site visit team of no less than three members, selected from a list of qualified medical education program evaluators developed and maintained by the Department.

(ii) During the site visit, the medical school and its program will be reviewed to verify, clarify and update the representations contained within the application and any supporting documents. The medical school will bear the burden of demonstrating satisfactory compliance with the approval standards set forth in this section.

(3) Site visit report and recommendation. The site visit team shall prepare a site visit report and recommendation and provide a copy to the medical school prior to review by the Advisory Committee. The school shall be provided with an opportunity to respond to such report and recommendation.

(4) Advisory Committee.

(i) The Advisory Committee shall review the site review team's report and recommendation and any written submission by the school and the record upon which the site review team made its recommendation, including, but not limited to, the institution's self-study, the institution's application for approval, and any additional documentation submitted by the institution in support of the application. The Advisory Committee shall base its determination only upon the record before it.

(ii) Upon completion of its review, the Advisory Committee shall forward a report and recommendation to the Board of Regents. The report shall include a recommendation to approve or deny the authority of the school to place students in long-term clinical clerkships in New York State and provide the rationale for the recommendation, reflecting majority and minority opinions.

(6) Board of Regents.

(i) The Board of Regents may review:

(a) the report and recommendation of the Advisory Committee;

(b) the record upon which the Advisory Committee made its recommendation, including, but not limited to, the site visit report and recommendation, the self study, the school's application for approval, and any additional documentation submitted by the institution in support of the application;

(c) any response submitted by the school to the report and recommendation of the Advisory Committee, provided that such submission shall be limited to a discussion of the documentary material already submitted and shall not contain new documentary material.

(ii) Based on the record described in subparagraph (i) of this paragraph, the Board of Regents will make a final determination on the application.

(e) Annual Report. No later than September 30 of each year, an international medical school that has been approved to place its students in long-term clinical clerkships in New York shall submit an annual report in a form prescribed by the Department.

(f) Revocation of approval or placement in probationary status. Upon a finding of substantial non-compliance with the approval standards set forth in this section, the Department or Advisory Committee may at any time during the approval period recommend to the Board of Regents that the approval be revoked or that the school be placed in probationary status in accordance with the following procedure:

(1) The Department or the Advisory Committee shall provide written notice to the school of its recommendation to revoke the school's approval or place the school in probationary status and the reasons therefore.

(2) The school may reply to such notification within 30 days.

(3) If a reply is received, such reply and the Department's or Advisory Committee's recommendation shall be forwarded to the Board of Regents for action thereon. Based on such recommendation and/or reply, the Board of Regents may:

(i) revoke the school's approval, subject to any conditions set by the Board of Regents;

(ii) continue its approval;

(iii) modify the time period for approval; and/or

(iv) place the school in probationary status.

(4) For purposes of this section, placement in probationary status shall mean the continued approval of the school by the Board of Regents for a specified period of time and subject to certain limitations, restrictions and/or remediation action as prescribed by the Board of Regents.

(g) Reporting requirements.

(1) The institution and/or school shall submit any reports requested by the Department, the Advisory Committee and/or the Board of Regents.

(2) The institution and/or school shall notify the Department of any denial, withdrawal, suspension, revocation, or termination of recognition, approval, accreditation or any other adverse action by any other body against the institution and/or school within 72 hours after receiving official notification of that action by providing to the Department a copy of such action.

**This notice is intended:** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 22, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, NYS Education Department, Office of Counsel, 89 Washington Avenue, Room 138, Albany, NY 12234, (518) 473-2183, email: mgammon@mail.nysed.gov

**Data, views or arguments may be submitted to:** Douglas E. Lentivech, New York State Education Department, 89 Washington Avenue, 2nd Floor, Albany, New York 12234, (518) 474-3817, email: www.op.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.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules relating to the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

##### **2. LEGISLATIVE OBJECTIVES:**

The proposed amendment establishes the standards for the approval of international medical schools to place students in long-term clinical clerkships in New York. The standards require that the school be recognized by the appropriate civil authorities in the country in which it is located as an acceptable education program for physicians in that country. In addition, the school must have in place institutional policies and leadership to prepare students effectively for the practice of medicine and must have sufficient resources to achieve its goals. The school must provide at least 130 weeks of instruction, and the curriculum must incorporate the fundamental principles of medicine, promote the development of skills of critical judgment, and develop the ability of students to use such principles and skills effectively. The proposed regulation requires schools to provide clinical, as well as didactic instruction, and the clinical experiences must provide for students to undertake appropriate and progressive responsibilities. To be approved, a school must also provide instruction in ethics and human values and must have in place systems for the effective assessment of student achievement. The school must also have a sufficient number of qualified faculty members and provide appropriate assessment and development opportunities for them. With regard to clinical clerkships, the school must have affiliation agreements with the facilities providing such clerkships, and the clerkships must be provided at facilities where there is appropriate oversight and supervision. The medical school is required to inform the Department of the facilities with which it has affiliation agreements and of anticipated changes in its agreements.

The proposed amendment also establishes the application and approval process for these schools. Schools seeking approval would be required to submit to the Department an application, on a form prescribed by the Commissioner, which shall include a self-study. Once a determination is made that the application adequately addresses the approval standards, a site visit would be conducted. The school would be provided with a copy of the site visit report and have an opportunity to respond. The Advisory Committee would then make findings with respect to compliance with the approval standards and submit a report and recommendation to the Board of Regents. The report shall include a recommendation to approve or deny the application and provide the rationale for the recommendation, reflecting majority and minority opinions. The Board of Regents would then make a final determination on the application. Any approvals may be subject to certain limitations and restrictions imposed by the Board of Regents.

Schools would be required to submit an annual report. Upon receipt of the annual report, if the Advisory Committee determines that there has been a substantial change in the approved medical program that is not in compliance with the approval standards set forth in this section, the Advisory Committee may recommend corrective action which may include a site visit, additional reporting requirements, submission of a new application and/or self-study, or revocation by the Board of Regents or placement in probationary status.

The proposed amendment would also authorize the Advisory Committee or the Department to recommend to the Board of Regents at any time the revocation of a medical school's approval to place students in New York clinical clerkships and/or placement of the medical school in probationary status and establishes procedures for such actions.

##### **3. NEEDS AND BENEFITS:**

Between November 2010 and January 2011, the Professional Practice Committee of the Board of Regents engaged in discussions with Department staff and the Chair of the New York State Board for Medicine regarding the oversight of dual-campus international medical schools that seek authorization to place students in long-term clinical clerkships in NYS hospitals. The discussions with the PPC incorporated input from the Study Group on International Medical

Schools which included representation from a broad spectrum of the medical education and hospital services communities, including representatives from the affected schools. After consideration of certain changes that had taken place in the provision of medical education, the Board of Regents concluded that it was time to review the applicable regulations and policies governing the standards for placement of international medical students in long term clerkships in New York State. Accordingly, the Board of Regents established an Advisory Committee to provide advice on matters related to the evaluation and approval of dual-campus international medical schools seeking authorization to place students in long-term clinical clerkships in New York State. The plan approved by the PPC at its meeting in February 2011 specifically provided for the Advisory Committee to examine the standards and processes for such evaluations and approvals. The proposed addition of section 60.10 reflects the approval standards and procedures recommended by the Committee.

#### 4. COSTS:

(a) Costs to State government: There are no additional costs to the government. Any costs related to the conduct of site visits will be borne by the medical school seeking authorization to place students in long-term clinical clerkships.

(b) Cost to local government: The proposed amendment establishes the standards and process for approval of international medical schools that seek authorization to place students in long-term clinical clerkships. Local governments play no role in the process of evaluating international medical schools. As such, there will be no cost to local government.

(c) Cost to private regulated parties: The proposed regulation will not impose any new costs on applicants for approval to place students in long-term clinical clerkships. Such applicants will continue to pay for the costs of site visits, as they have under previous regulations.

(d) Cost to the regulatory agency: See Cost to State Government above.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendments to the Rules and the Regulations are applicable to international medical schools only and do not impose any program, service, duty or responsibility upon local governments.

#### 6. PAPERWORK:

The school will be required to submit an application, a self-study and will be required to notify the Department of any denial, withdrawal, suspension, revocation, or termination of recognition, approval, accreditation or any other adverse action by any other body against the institution and/or school within 72 hours after receiving official notification of that action by providing to the Department a copy of such action. The school will also be required to submit such other reports as may be requested by the State Education Department, the Advisory Committee, and/or the Board of Regents.

#### 7. DUPLICATION:

The proposed amendments to the Rules and the Regulations do not duplicate other existing State or Federal requirements.

#### 8. ALTERNATIVES:

The proposed amendments to the Rules and the Regulations are necessary to update the standards and process for the approval of international medical schools to place students in long-term clinical clerkships in New York State. Because changes in foreign medical education and the availability of limited resources make continuation of the existing process problematic, there are no viable alternatives to the proposed amendments.

#### 9. FEDERAL STANDARDS:

There are no Federal standards applicable to approval of international medical schools to place students in long-term clinical clerkships.

#### 10. COMPLIANCE SCHEDULE:

Compliance with the standards and processes included in the amendment will be required immediately upon adoption.

#### *Regulatory Flexibility Analysis*

The purpose of the proposed amendment is to establish the standards and process for approval of international medical schools that

seek approval to place students in long-term clinical clerkships in New York State hospitals.

The amendments are applicable to international medical schools only. Small businesses and local governments will not be impacted by the proposed amendment. Accordingly, no further steps were needed to ascertain the impact on small businesses and local governments.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The purpose of the proposed amendment is to establish the standards and the procedures for the evaluation of international medical schools that seek authorization to place students in long-term clinical clerkships in New York State.

These amendments will not be applicable to any New York State medical schools, including any that provide services 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.

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

The school will be required to submit an application and a self-study and to notify the Department of any denial, withdrawal, suspension, revocation, or termination of recognition, approval, accreditation or any other adverse action by any other body against the institution and/or school within 72 hours after receiving official notification of that action by providing to the Department a copy of such action. The school will also be required to submit such other reports as may be requested by the State Education Department, the Advisory Committee, and/or the Board of Regents.

##### 3. COSTS:

The proposed amendment does not impose any costs on individuals or entities located in rural areas.

##### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendments are intended to ensure competent medical education for international medical students undertaking clinical training in New York State and thereby protect the health of the public. Due to the nature of the proposed amendment, there would be no reason to establish different requirements for institutions located in rural areas in New York, if there were any.

##### 5. RURAL AREA PARTICIPATION:

Comments on the development of the proposed amendment were solicited from the State Board for Medicine and from statewide professional associations, hospital organizations and medical schools, who collectively represent or include individuals and entities located in rural areas.

#### *Job Impact Statement*

The purpose of the proposed amendment is to establish the standards and procedures for the evaluation of international medical schools that seek authorization to place students in long-term clinical clerkships in New York State.

Because it is evident from the nature of the proposed amendment that there will be no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## Department of Environmental Conservation

### EMERGENCY RULE MAKING

#### 326.2(b)(4)(ii) is Amended to Allow Use of Fluridone Pellets in Waters Less Than Two Feet Deep

**I.D. No.** ENV-19-12-00001-E

**Filing No.** 394

**Filing Date:** 2012-04-19

**Effective Date:** 2012-04-19

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

**Action taken:** Amendment of section 326.2(b)(4)(ii) of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 33-0303

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

**Specific reasons underlying the finding of necessity:** Subparagraph 326.2(b)(4)(ii) of 6 NYCRR prohibits fluridone applications of pellet formulations in waters less than two feet deep. A change to the regulation will allow certified applicators to use fluridone pellets in waters less than two feet to adequately control invasive plant species. Hydrilla (*Hydrilla verticillata*) is considered among the most invasive aquatic plants in North America, and has resulted in significant ecological, recreational and economic impacts in other regions of the country. Its biological traits enable it to out-compete native species and dominate aquatic ecosystems, due to its ability to grow in a variety of environmental settings and to propagate and spread from fragments, turions (overwintering buds) and tubers (reproductive structures attached to plant rhizomes).

The plant was first discovered in New York in 2008. Prior to 2011, this plant was limited in New York to small isolated occurrences in Long Island and Orange County, where the populations can be contained and the risk of spread is greatly reduced. However, dense stands of hydrilla were found in the Cayuga Inlet in late summer of 2011, near the Allen Treman Marine State Park and several private boatyards. The plant has been found throughout this area, ranging in densities from sparse to dense, and in depth from water less than 1 foot deep to the center of the Inlet, in water 8-12 feet deep. Rooted plants have not been found in Cayuga Lake, although floating fragments were observed during the fall 2011 surveys. If this plant escapes from an approximately 166 acre infestation zone within Cayuga Inlet and its tributaries, it will be extremely difficult to prevent its rapid spread throughout the Finger Lakes and Great Lakes regions.

The areas affected by this emergency rule making correspond to very shallow regions where hydrilla tubers have been found. These areas are flow-isolated from the rest of the Inlet and are therefore not likely to be exposed to adequate herbicide from the proposed metered distribution ports in three locations throughout the treatment area. These areas also tend to have warmer water and sediments due to depth and flow isolation, so it is anticipated that hydrilla germination will occur at a different time scale than in the rest of treatment area. This will require the use of direct application pellets to prevent this growth.

If fluridone pellets cannot be applied to shallow waters, hydrilla tubers will not likely be exposed to sufficient herbicide migration from deeper waters to effectively prevent germination. This could lead to production of hydrilla biomass that will quickly reach the water surface, significantly increasing the likelihood of fragmentation and spread from boat traffic, waterfowl, or even wind. This fragmentation will substantially increase the risk of hydrilla spread to Cayuga Lake and to surrounding waterways visited by boaters using Cayuga Inlet.

**Subject:** 326.2(b)(4)(ii) is amended to allow use of fluridone pellets in waters less than two feet deep.

**Purpose:** Allow the use of fluridone pellets in waters less than two feet deep to control hydrilla, an invasive plant.

**Text of emergency rule:** Subparagraph 326.2(b)(4)(ii) is amended to read as follows:

(ii) applications of pellet formulations are not permitted in waters less than two feet deep. *The use of pellet formulations in waters less than two feet deep may be authorized for the control of invasive species. This use will be authorized by the issuance of an Article 15 permit and the pellet formulations shall only be applied in accordance with label and label-*

*ing directions or as modified and approved by the Department of Environmental Conservation.*

**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 July 17, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Anthony Lamanno, Department of Environmental Conservation, Division of Materials Management, 625 Broadway, 9th Floor, Albany, NY 12233-7254, (518) 402-8781, email: pestmgt@gw.dec.state.ny.us

#### **Regulatory Impact Statement**

##### 1. Statutory Authority

Section 33-0303(3)(d),(e) of the Environmental Conservation Law (“ECL”) authorizes the Department of Environmental Conservation (department) to promulgate a list of restricted use pesticides and the usages of such pesticides that may be permitted subject to whatever conditions or limitations which the commissioner deems appropriate to fully protect the public interest. In addition, rules and regulations may be promulgated to prescribe methods to be used in the application of pesticides, including the time, place, manner and method of application and equipment used, and may restrict or prohibit use of materials in designated areas to prevent damage or injury to health, property and wildlife.

##### 2. Legislative Objectives

Promulgating regulations that limit or restrict where pesticides may be used is an important and valuable function of the department, consistent with the intent of the Legislature to protect property, health and welfare. The limitation placed on the use of fluridone pellets resulted from a concern by New York State Department of Health that the use of pellets in less than two feet of water may be an attractive nuisance to children wading or swimming in the water body. The use of fluridone pellets could prove very effective for the long-term control of invasive aquatic plants, such as hydrilla. When the department confirms the presence of an invasive species, immediate action may be necessary. A regulatory change will allow the use of fluridone pellets in waters less than two feet deep to control hydrilla.

##### 3. Needs and Benefits

Subparagraph 326.2(b)(4)(ii) of 6 NYCRR prohibits fluridone applications of pellet formulations in waters less than two feet deep. A change to the regulation will allow certified applicators to use fluridone pellets in waters less than two feet to adequately control invasive plant species. Hydrilla (*Hydrilla verticillata*) is considered among the most invasive aquatic plants in North America, and has resulted in significant ecological, recreational and economic impacts in other regions of the country. Its biological traits enable it to out-compete native species and dominate aquatic ecosystems, due to its ability to grow in a variety of environmental settings and to propagate and spread from fragments, turions (overwintering buds) and tubers (reproductive structures attached to plant rhizomes).

The plant was first discovered in New York in 2008. Prior to 2011, this plant was limited in New York to small isolated occurrences in Long Island and Orange County, where the populations can be contained and the risk of spread is greatly reduced. However, dense stands of hydrilla were found in the Cayuga Inlet in late summer of 2011, near the Allen Treman Marine State Park and several private boatyards. If this plant escapes from an approximately 166 acre infestation zone within Cayuga Inlet and its tributaries, it will be extremely difficult to prevent its rapid spread throughout the Finger Lakes and Great Lakes regions.

Immediately after the initial discovery of hydrilla in August of 2011, State and local Task Forces were established to coordinate the response effort, including committees addressing management, surveys and monitoring, and outreach and prevention. The 2011 management plans were limited by the timing of discovery, and informed by the primary goal of reducing biomass and preventing spread of the known infestation. Endothal treatments for the initially discovered 73 acres of the Inlet took place in mid-October, and diver assisted hand harvesting occurred in late November/early December for a portion of the infestation discovered too late for the herbicide regulatory permit. The endothal treatment substantially reduced plant biomass and appeared to prevent continuing production of reproductive tubers and turions, but did little to control the existing tuber bank in the sediments. The reduction in biomass also prevented the fragmentation and spread of plants through the balance of the growing season. The deepest portions of the Inlet will be subject to navigational dredging starting in the fall of 2012; this will have little effect on the hydrilla populations in the majority of the proposed treatment area.

The hydrilla was found within a 166 acre area associated with the Cayuga Inlet north of the fish ladder, Cascadilla Creek west of the Route 13 overpass, and Linderman Creek to the Route 89 culvert. The plant has been found throughout this area, ranging in densities from sparse to dense, and in depth from water less than 1 foot deep to the center of the Inlet, in

water 8-12 feet deep. Rooted plants have not been found in Cayuga Lake, although floating fragments were observed during the fall 2011 surveys.

The areas affected by this emergency rule-making correspond to very shallow regions where hydrilla tubers have been found. These areas are flow-isolated from the rest of the Inlet and are therefore not likely to be exposed to adequate herbicide from the proposed metered distribution ports in three locations throughout the treatment area. These areas also tend to have warmer water and sediments due to depth and flow isolation, so it is anticipated that hydrilla germination will occur at a different time scale than in the rest of treatment area. This will require the use of direct application pellets to prevent this growth.

If fluridone pellets cannot be applied to shallow waters, hydrilla tubers will not likely be exposed to sufficient herbicide migration from deeper waters to effectively prevent germination. This could lead to production of hydrilla biomass that will quickly reach the water surface, significantly increasing the likelihood of fragmentation and spread from boat traffic, waterfowl, or even wind. This fragmentation will substantially increase the risk of hydrilla spread to Cayuga Lake and to surrounding waterways visited by boaters using Cayuga Inlet.

#### 4. Costs

Enactment of the emergency regulation described herein allowing the use of fluridone pellet in waters less than two feet will not result in any cost to regulated parties, State or local governments, or the general public.

#### 5. Local Government Mandates

The amendment of Subparagraph 326.2(b)(4)(ii) of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district, or fire district.

#### 6. Paperwork

No additional paperwork will be required as a result of this change in regulation.

#### 7. Duplication

There are no other state or federal regulations which govern the use of fluridone pellets in waters less than two feet.

#### 8. Alternatives

Options that have been evaluated by the Task Force and the external reviewers include the use of the just the contact herbicide endothal, diver assisted hand removal and benthic mats. While the fall 2011 Hydrilla treatment for Cayuga Lake Inlet consisted of only endothal treatment, this is not the most ideal long term approach as it does not adequately address the large tuber bank produced by this aquatic invasive species. The systemic herbicide fluridone does impact the tuber bank, thus more effectively controlling hydrilla and reducing the long-term use of herbicides, but requires a long exposure/contact time at a low dosage rate. A balance of endothal and fluridone applications takes advantage of the benefits from both control strategies. The use of diver assisted hand harvesting removed a small percentage of the biomass, but significant turbidity and hard clay substrates prevented effective removal via this method. Small scale use of benthic mats is being considered for 2012, but only in areas that will be challenging to address via herbicide application. High boater usage of these waters makes large scale use of this approach challenging. The department does not see any viable alternative to the emergency rule making to deal with this invasive aquatic weed.

#### 9. Federal Standards

There are no minimum federal standards that apply to use of fluridone pellets in waters less than two feet.

#### 10. Compliance Schedule

This regulation will take effect immediately upon filing with the Department of State. The use of fluridone pellets in waters less than two feet can be applied by certified applicators when the proper permits have been obtained from the department.

#### Regulatory Flexibility Analysis

This rule making will not impose an adverse impact on small businesses or local governments. In addition, it will not impose reporting, recordkeeping or other compliance requirements on small businesses or local government.

The new regulation will give certified applicators the ability to use fluridone pellets in waters less than two feet deep in order to control an invasive aquatic weed. The regulation, on its face, will not require any reporting or recordkeeping requirements for anyone. Certified applicators that use fluridone pellets in waters less than two feet deep will need to comply with permitting requirements and obtain a permit for such application.

However, since the regulation will not apply to small businesses or local government, there will be no adverse effect. For these reasons, the Department of Environmental Conservation has determined that a regulatory flexibility analysis for small businesses and local government is not required.

#### Rural Area Flexibility Analysis

This rule making will not impose any adverse impacts on rural areas and will not impose any additional reporting, recordkeeping or other

compliance requirements on public and private entities in rural areas. There will be no initial capital costs or any annual costs to comply with the rule.

The new regulations will give certified applicators the ability to use fluridone pellets in waters less than two feet deep in order to control an invasive aquatic plants in waters across New York. The regulation, on its face, will not require any additional reporting or recordkeeping requirements. Certified applicators that use fluridone pellets in waters less than two feet deep will need to comply with permitting requirements and obtain a permit for such application, which is an existing requirement.

However, since the regulation will apply equally to all certified applicators in rural areas Statewide, there will be no adverse effect. For these reasons, the Department of Environmental Conservation has determined that rural area flexibility analysis is not required.

#### Job Impact Statement

The Department of Environmental Conservation (department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. There are no jobs or employment opportunities that will be affected, since the nature and purpose of the emergency rule making is simply to allow the use of fluridone pellets in waters less than two feet to control invasive aquatic weeds.

This rule will not eliminate any jobs or limit what a certified applicator can apply. The rule making will allow the use of fluridone pellets in waters less than two feet, which will not affect applicator certification requirements. Therefore, the department has determined that a job impact statement is not required.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Medicaid Managed Care Programs

**I.D. No.** HLT-43-11-00019-E

**Filing No.** 403

**Filing Date:** 2012-04-24

**Effective Date:** 2012-04-24

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

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

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

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

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

**Subject:** Medicaid Managed Care Programs.

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

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

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

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

#### 360-10.1 Introduction

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

#### 360-10.2 Scope

This section identifies the topics addressed by the Subpart.

#### 360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

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

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

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

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

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

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

#### 360-10.7 Good cause for changing primary care providers

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

#### 360-10.8 Fair Hearing Rights

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

#### 360-10.9 Appeal Rights for Recipients Enrolled in Medicaid Advantage

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

#### 360-10.10 Marketing/Outreach

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

#### 360-10.11 MCO unacceptable practices

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

#### 360-10.12 MCO sanctions and due process

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a

notice of proposed rule making, I.D. No. HLT-43-11-00019-P, Issue of October 26, 2011. The emergency rule will expire June 22, 2012.

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

### Regulatory Impact Statement

#### Statutory Authority:

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

#### Legislative Objectives:

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

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

#### Needs and Benefits:

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

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

#### Costs:

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

#### Local Government Mandates:

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

#### Paperwork:

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

#### Duplication:

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

#### Alternative Approaches:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which

balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

**Federal Standards:**

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

**Compliance Schedule:**

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

**Regulatory Flexibility Analysis**

**Effect on Small Businesses and Local Governments:**

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

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

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

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Economic and Technological Feasibility:**

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

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

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

**Minimizing Adverse Impact:**

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

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

**Small Business and Local Government Participation:**

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

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

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

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Minimizing Adverse Impact:**

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

**Feasibility Assessment:**

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

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

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

**Rural Area Participation:**

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

**Job Impact Statement**

**Nature of Impact:**

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

**Categories and Numbers Affected:**

Not applicable.

**Regions of Adverse Impact:**

None.

**Minimizing Adverse Impact:**

Not applicable.

**Self-Employment Opportunities:**

Not applicable.

**Assessment of Public Comment**

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

## EMERGENCY RULE MAKING

### Authority to Collect Pharmacy Acquisition Cost

**I.D. No.** HLT-19-12-00006-E

**Filing No.** 402

**Filing Date:** 2012-04-24

**Effective Date:** 2012-04-24

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

**Action taken:** Amendment of section 505.3 of Title 18 NYCRR.

**Statutory authority:** Public Health Law, sections 201(1)(v) and 206; and Social Services Law, sections 363-a(2) and 367-a(9)(b)

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

**Specific reasons underlying the finding of necessity:** Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The change to SSL section 367-a, which incorporates the use of Average Acquisition Cost (AAC) in the drug reimbursement methodology takes effect April 1, 2011. Without actual acquisition cost data, the Department is unable to move forward with development of AAC. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file this regulation on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions.

**Subject:** Authority to Collect Pharmacy Acquisition Cost.

**Purpose:** Establishes a requirement that each enrolled pharmacy report actual acquisition cost of a prescription drug to the Department.

**Text of emergency rule:** Paragraphs (3) through (6) of subdivision (a) of section 505.3 are renumbered as paragraphs (4) through (7) and new paragraph (3) is added to read as follows:

(3) *Drug acquisition cost means the invoice price to the pharmacy of a prescription drug dispensed to a Medicaid recipient, minus the amount of all discounts and other cost reductions attributable to such dispensed drug.*

Paragraph (4) is added to subdivision (f) of section 505.3 to read as follows:

(4) *Each pharmacy enrolled in the Medicaid program shall provide the department, in such manner, for such periods, and at such times as the department may require, with the drug acquisition cost, as defined in paragraph 505.3(a)(3), of prescription drugs.*

**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 July 22, 2012.

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

#### Regulatory Impact Statement

##### Statutory Authority:

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

##### Legislative Objective:

On April 1, 2011, the Legislature and Medicaid Redesign Team adopted a proposal to amend Medicaid drug payment methodology, as defined in SSL section 367-a(9)(b), to include average acquisition cost (AAC), when available. To meet Legislative objectives, a rule is needed to require each enrolled pharmacy to report actual acquisition cost of a prescription drug to the Department in a manner specified by the Department. This rule will enable the Department to collect actual acquisition cost, analyze the data and establish a statistically valid and transparent AAC.

##### Needs and Benefits:

The requirement to report acquisition cost is necessary in order to effectuate the inclusion of AAC in the New York State Medicaid drug reimbursement methodology. Under the fee-for-service pharmacy program, Medicaid reimburses pharmacy services based on a "lower of" methodology that includes the pharmacy's usual and customary charge;

Estimated Acquisition Cost (EAC); Federal Upper Limit (FUL); State Maximum Allowable Cost (SMAC); Average Wholesale Price (AWP) minus a percentage; Wholesale Acquisition Price (WAC) plus a percentage; or AAC, if available.

Once a valid AAC and appropriate dispensing fee is established, the Department intends to seek approval to replace the "lower of" methodology with AAC as the pricing threshold. The rationale for moving to AAC is to establish a transparent pharmacy reimbursement system and to do so with stakeholder involvement and support. There are numerous rulings in both state and federal courts that solidly establish a pattern of inflated, inaccurate or fraudulent pricing resulting from current standard reimbursement benchmarks supplied by drug manufacturers, such as AWP or WAC. Once established, use of AAC allows the State to set reimbursement rates based on an actual acquisition cost (invoice data) and an appropriate dispensing fee. The comprehensive, statewide data collection resulting from the reporting of acquisition cost will allow for a thorough, statistically valid analysis of pricing, including an evaluation of outliers, and the development of a legitimate AAC. Without this data, AAC cannot be established.

##### COSTS:

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

Regulated entities could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs.

##### Costs to State and Local Government:

This amendment will not increase costs to the State or local governments.

##### Costs to the Department of Health:

The Department could incur minimal administrative costs related to the collection, analysis and maintenance of acquisition costs.

##### Local Government Mandates:

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

##### Paperwork:

This amendment could potentially impose additional paperwork for regulated entities if collection of acquisition cost is done through the use of a hard copy survey tool rather than electronic submission.

##### Duplication:

There are no duplicative or conflicting rules identified.

##### Alternatives:

The only potential alternative to requiring the reporting of acquisition cost is a voluntary survey, which is not considered feasible as it would not provide a statistically valid sample of costs.

##### Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

##### Compliance Schedule:

The Department will work closely with regulated entities to ensure they are able to comply with the proposed regulation when it becomes effective.

#### Regulatory Flexibility Analysis

##### Effect of Rule:

This amendment affects the approximately 4,400 pharmacy providers enrolled in the Medicaid program that actively bill Medicaid for drugs. This amendment will require these businesses, some of which are small, to identify and report the acquisition cost of drugs dispensed to fee-for-service Medicaid beneficiaries. Medicaid will ultimately address additional costs with the development of an increased dispensing fee that regulated entities will participate in establishing.

The fifty-eight local social services districts share in the costs of services provided to eligible beneficiaries who receive Medicaid through their districts and would therefore benefit from a more transparent pharmacy reimbursement benchmark.

##### Compliance Requirements:

Small businesses will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. This amendment does not impose any new reporting, recordkeeping or other compliance requirements on local governments.

##### Professional Services:

No new professional services are required as a result of this amendment.

##### Compliance Costs:

No initial capital costs will be imposed as a result of this rule. However, regulated entities, which include small businesses, could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs for regulated entities will vary and will be dependent on each entity's product wholesalers and/or software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated small businesses will participate in establishing.

There are no direct costs associated with this amendment for local governments.

**Economic and Technological Feasibility:**

The amendment requires regulated entities to submit additional information for drugs billed under the fee-for-service Medicaid program but will not affect the way local districts contribute their local share of Medicaid expenses for drugs. Therefore, there should be no technological difficulties associated with compliance with the proposed regulation for local governments and minimal, if any, technological difficulties for small businesses.

**Minimizing Adverse Impact:**

By engaging regulated entities in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact on small businesses. Additionally, the Department will work with small businesses to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

**Small Business and Local Government Participation:**

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). Both of these groups have been informed of the proposed changes and have expressed concerns over administrative burdens. However, representatives of regulated entities have also welcomed the opportunity to collaborate with the Department in development of the proposed process. Upon promulgating the regulation, the Department will continue to work with the industry and assist as necessary with implementation of the new requirement.

Local government officials have consistently urged the Department to implement Medicaid cost savings programs.

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

The proposed amendment will apply to approximately 4,400 Medicaid enrolled pharmacy providers. These regulated entities are located in rural, as well as suburban and metropolitan areas of the State.

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

Regulated entities in rural areas will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. No new professional services will be required as a result of this amendment.

**Costs:**

Regulated entities in rural areas could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs will vary and will be dependent on each entity's product wholesalers and software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated entities in rural areas will participate in establishing.

**Minimizing Adverse Impact:**

By engaging regulated entities in rural areas in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact. Additionally, the Department will work with regulated entities in rural areas to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

**Rural Area Participation:**

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). While both of these groups have expressed concerns over administrative burdens, representatives of regulated entities have welcomed the opportunity to collaborate with the Department in development of the proposed process and an appropriate dispensing fee. Upon promulgating the regulation, the Department will continue to work with the regulated entities in rural areas and assist as necessary with implementation of the new requirement.

**Job Impact Statement**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulation, that there will not be a substantial adverse impact on jobs or employment opportunities.

## Public Service Commission

### NOTICE OF ADOPTION

**Denying Castleview Development Water-Works's Initial Tariff Schedule**

**I.D. No.** PSC-28-07-00014-A

**Filing Date:** 2012-04-23

**Effective Date:** 2012-04-23

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

**Action taken:** On 4/19/12, the PSC adopted an order denying Castleview Development Water-Works's Initial Tariff Schedule P.S.C No.1—Water, Leaf Nos. 1 - 12 due to financial difficulties and a delay in the construction of the development.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and 89-e(2)

**Subject:** Denying Castleview Development Water-Works's Initial Tariff Schedule.

**Purpose:** To deny Castleview Development Water-Works's Initial Tariff Schedule due to financial difficulties and a delay in the construction.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order denying Castleview Development Water-Works's Initial Tariff Schedule P.S.C No.1—Water, Leaf Nos. 1 - 12 due to financial difficulties and a delay in the construction of the development.

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

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

**Assessment of Public Comment**

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

(07-W-0753SA1)

### NOTICE OF ADOPTION

**Denying the Request to Transfer Certain Assets Consisting of Pipelines 2, 3 and 6 to a Subsidiary Corporation**

**I.D. No.** PSC-47-09-00009-A

**Filing Date:** 2012-04-23

**Effective Date:** 2012-04-23

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

**Action taken:** On 4/19/12, the PSC adopted an order denying Corning Natural Gas Corporation's request to transfer certain assets consisting of pipelines 2, 3 and 6 to a subsidiary corporation.

**Statutory authority:** Public Service Law, sections 66, 70, 107 and 110

**Subject:** Denying the request to transfer certain assets consisting of pipelines 2, 3 and 6 to a subsidiary corporation.

**Purpose:** To deny the request to transfer certain assets consisting of pipelines 2, 3 and 6 to a subsidiary corporation.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order denying Corning Natural Gas Corporation's request to transfer certain assets consisting of pipelines 2, 3 and 6 to a subsidiary corporation, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(09-G-0790SA1)

## NOTICE OF ADOPTION

**National Fuel Gas Distribution Corporation's Request for an Extension to Its Area Development Program****I.D. No.** PSC-02-11-00007-A**Filing Date:** 2012-04-20**Effective Date:** 2012-04-20

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

**Action taken:** On 4/19/12, the PSC adopted an order approving National Fuel Gas Distribution Corporation's request for an extension to its Area Development Program.

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

**Subject:** National Fuel Gas Distribution Corporation's request for an extension to its Area Development Program.

**Purpose:** To approve National Fuel Gas Distribution Corporation's request for an extension to its Area Development Program.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving National Fuel Gas Distribution Corporation's request for an extension to its Area Development Program, thereby allowing National Fuel Gas Distribution Corporation to transfer \$1.5 million from the Tennessee Gas Pipeline refund to the Area Development Program Fund and authorizing a waiver of 16 NYCRR 720-6.5(f), subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(04-G-1047SA8)

## NOTICE OF ADOPTION

**Cancellation of Amendments to PSC 1—Gas****I.D. No.** PSC-18-11-00015-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order directing Chautauqua Utilities, Inc. to file a supplement cancelling amendments to PSC 1—Gas that would have increased annual revenues.

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

**Subject:** Cancellation of amendments to PSC 1—Gas.

**Purpose:** To cancel amendments to PSC 1—Gas.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order directing Chautauqua Utilities, Inc. to file a supplement cancelling amendments to PSC 1—Gas and to file on not less than one day's notice further revisions to effectuate the directives in the order which will result in an annual revenue decrease of \$18,190, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0142SA1)

## NOTICE OF ADOPTION

**Approval of a Multi-Year Rate Plan to be Established Through April 30, 2015****I.D. No.** PSC-32-11-00013-A**Filing Date:** 2012-04-20**Effective Date:** 2012-04-20

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

**Action taken:** On 4/19/12, the PSC adopted an order approving terms of a joint proposal by Corning Natural Gas Corporation, PSC Staff, Multiple Intervenor, Village of Bath Electric, Gas & Water Systems, and Utility Intervention Unit NYS DOS for a multi-year rate plan.

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

**Subject:** Approval of a multi-year rate plan to be established through April 30, 2015.

**Purpose:** To approve a multi-year rate plan to be established through April 30, 2015.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving the terms of a joint proposal by Corning Natural Gas Corporation, Department of Public Service Staff, Multiple Intervenor, the Village of Bath Electric, Gas, and Water Systems, and the Utility Intervention Unit of the New York State Department of State for a multi-year rate plan to be established through April 30, 2015, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0280SA1)

## NOTICE OF ADOPTION

**Transfer of Issued and Outstanding Capital Stock****I.D. No.** PSC-43-11-00013-A**Filing Date:** 2012-04-20**Effective Date:** 2012-04-20

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

**Action taken:** On 4/19/12, the PSC adopted an order approving a Joint Proposal, with exceptions, for transfer of the capital stock of Aqua New York, Inc., a wholly owned subsidiary of Aqua Utilities, Inc., to American Water Works Company, Inc.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h

**Subject:** Transfer of issued and outstanding capital stock.

**Purpose:** To approve the transfer of issued and outstanding capital stock.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving a Joint Proposal, with exceptions, for the transfer of capital stock of Aqua New York, Inc., a wholly owned subsidiary of Aqua Utilities, Inc. to American Water Works Company, Inc., subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-W-0472SA1)

## NOTICE OF ADOPTION

**Request to Extend the Deadline to Complete the Bath Electric, Gas & Water Systems Reliability Project****I.D. No.** PSC-45-11-00017-A**Filing Date:** 2012-04-23**Effective Date:** 2012-04-23

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Corning Natural Gas Corporation's request to extend the deadline to complete the Bath Electric, Gas and Water Systems Reliability Project, from November 1, 2012 to November 1, 2013.

**Statutory authority:** Public Service Law, section 66

**Subject:** Request to extend the deadline to complete the Bath Electric, Gas and Water Systems Reliability Project.

**Purpose:** To approve a request to extend the deadline to complete the Bath Electric, Gas and Water Systems Reliability Project.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Corning Natural Gas Corporation's request to extend the deadline to complete the Bath Electric, Gas and Water Systems Reliability Project, from November 1, 2012 to November 1, 2013, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(08-G-1137SA7)

## NOTICE OF ADOPTION

**Authorizing an Incremental RPS Production Incentive and Modification of Existing Maintenance Contract****I.D. No.** PSC-02-12-00013-A**Filing Date:** 2012-04-20**Effective Date:** 2012-04-20

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

**Action taken:** On 4/19/12, the PSC adopted an order authorizing ReEnergy Holdings LLC an incremental RPS production incentive of \$11.00 per MWh and a modification of its existing RPS maintenance resource contract for its Chateaugay facility.

**Statutory authority:** Public Service Law, sections 4(1), 5(2), 66(1) and (2)

**Subject:** Authorizing an incremental RPS production incentive and modification of existing maintenance contract.

**Purpose:** To authorize an incremental RPS production incentive and modification of existing maintenance contract.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order authorizing ReEnergy Holdings LLC an incremental Retail Renewable Portfolio Standard (RPS) production incentive of \$11.00 per MWh and a modification of its existing RPS maintenance resource contract for its Chateaugay facility, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0706SA1)

## NOTICE OF ADOPTION

**Reporting Requirements Regarding the On-Bill Recovery Program for Reporting Content and Frequency****I.D. No.** PSC-04-12-00007-A**Filing Date:** 2012-04-24**Effective Date:** 2012-04-24

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

**Action taken:** On 4/19/12, the PSC adopted an order approving, with modifications, a PSC Staff proposal for reporting requirements regarding the On-Bill Recovery program for reporting content and frequency by the NYSEDA and the applicable utilities.

**Statutory authority:** Public Service Law, sections 5(2) and 66-m

**Subject:** Reporting requirements regarding the On-Bill Recovery program for reporting content and frequency.

**Purpose:** To approve reporting requirements regarding the On-Bill Recovery program for reporting content and frequency.

**Substance of proposed rule:** The Commission, on April 19, 2012 adopted an order approving, with modifications, a Department of Public Service Staff proposal for reporting requirements regarding the On-Bill Recovery program for reporting content and frequency by the New York State Energy Research Authority (NYSEDA) and the applicable utilities, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-M-0007SA1)

## NOTICE OF ADOPTION

**Request to Modify the Isolation Transformer Installation Program****I.D. No.** PSC-07-12-00013-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order granting Consolidated Edison Company of New York Inc.'s request to modify the isolation transformer installation program.

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

**Subject:** Request to modify the isolation transformer installation program.

**Purpose:** To approve the request to modify the isolation transformer installation program.

**Substance of final rule:** The Commission, on April 19, 2012, adopted an order granting Consolidated Edison Company of New York Inc.'s (company) request to modify the isolation transformer installation program, to provide for targeted installations based on risk factors identified by the company, including locations with multiple stray voltage findings and preemptive installations in high density population areas, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(07-E-0523SA10)

## NOTICE OF ADOPTION

**Reallocate \$19,093,556 in Unencumbered RPS Customer-Sited Tier 2011 Program Funds for the 2012 Program****I.D. No.** PSC-07-12-00014-A**Filing Date:** 2012-04-20**Effective Date:** 2012-04-20

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

**Action taken:** On 4/19/12, the PSC adopted an order authorizing NYSERDA to reallocate \$19,093,556 in unencumbered Renewable Portfolio Standard Customer-Sited Tier 2011 program funds to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories.

**Statutory authority:** Public Service Law Sections 4(1), 5(2) and 66(1)

**Subject:** Reallocate \$19,093,556 in unencumbered RPS Customer-Sited Tier 2011 program funds for the 2012 program.

**Purpose:** To authorize the reallocation of \$19,093,556 in unencumbered RPS Customer-Sited Tier 2011 program funds for the 2012 program.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order authorizing The New York State Energy Research and Development Authority (NYSERDA) to reallocate \$19,093,556 in unencumbered Renewable Portfolio Standard (RPS) Customer-Sited Tier 2011 program funds to enhance program funding in 2012 for the Solar Photovoltaic and Small Wind categories, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(03-E-0188SA30)

## NOTICE OF ADOPTION

**Raise the Maximum Assistance Per Farm for the Agriculture Disaster Energy Efficiency Program****I.D. No.** PSC-08-12-00004-A**Filing Date:** 2012-04-23**Effective Date:** 2012-04-23

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

**Action taken:** On 4/19/12, the PSC adopted an order approving the petition of the New York State Energy Research and Development Authority to raise the maximum assistance from \$100,000 to \$250,000 per farm for its Agriculture Disaster Energy Efficiency Program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** To raise the maximum assistance per farm for the Agriculture Disaster Energy Efficiency Program.

**Purpose:** To approve a raise in the maximum assistance per farm for the Agriculture Disaster Energy Efficiency Program.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving the petition of the New York State Energy Research and Development Authority to raise the maximum assistance from \$100,000 to \$250,000 per farm for its Agriculture Disaster Energy Efficiency Program, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(07-M-0548SA49)

## NOTICE OF ADOPTION

**Amendments to PSC No. 220 — Electricity, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00007-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 — Electricity, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 220 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 220 — Electricity, effective 5/1/12 to effectuate the On-Bill Recovery program.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 — Electricity, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0456SA2)

## NOTICE OF ADOPTION

**Amendments to PSC No. 15 — Electricity, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00008-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 — Electricity, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 15 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 15 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Substance of proposed rule:** The Commission, on April 19, 2012 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15 — Electricity, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0454SA2)

**NOTICE OF ADOPTION****Amendments to PSC No. 19 — Electricity, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00009-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19 — Electricity, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 19 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 19 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19 — Electricity, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0458SA2)

**NOTICE OF ADOPTION****Amendments to PSC No. 9 — Electricity Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00010-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc's amendments to PSC No. 9 — Electricity, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 9 — electricity effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 9 — electricity, effective 5/1/12 for the removal of late payment charges.

**Substance of proposed rule:** The Commission, on April 19, 2012 adopted an order approving Consolidated Edison Company of New York, Inc's amendments to PSC No. 9 — Electricity, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0452SA2)

**NOTICE OF ADOPTION****Amendments to PSC No. 119 — Electricity, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00011-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119 — Electricity, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 119 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 119 — Electricity, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119 — Electricity, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0460SA2)

**NOTICE OF ADOPTION****Amendments to PSC No. 2 — Electricity, Effective 5/2/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00013-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Orange and Rockland Utilities, Inc's amendments to PSC No. 2 — Electricity, effective 5/2/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 2 — Electricity, effective 5/2/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 2 — Electricity, effective 5/2/12 for the removal of late payment charges.

**Substance of proposed rule:** The Commission, on April 19, 2012 adopted an order approving Orange and Rockland Utilities, Inc's amendments to PSC No. 2 — Electricity, effective May 2, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-E-0450SA2)

## NOTICE OF ADOPTION

**Amendments to PSC No. 4 — Gas, Effective 5/2/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00014-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4 — Gas, effective 5/2/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 4 — Gas, effective 5/2/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 4 — Gas, effective 5/2/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4 — Gas, effective May 2, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0451SA2)

## NOTICE OF ADOPTION

**Amendments to PSC No. 12 — Gas, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00015-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's amendments to PSC No. 12 — Gas, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 12 — Gas, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 12 — Gas, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Central Hudson Gas and Electric Corporation's amendments to PSC No. 12 — Gas, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0455SA2)

## NOTICE OF ADOPTION

**Amendments to PSC No. 9—Gas, Effective 5/2/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00016-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective 5/2/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 9—Gas, effective 5/2/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 9—Gas, effective 5/2/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective May 2, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0453SA2)

## NOTICE OF ADOPTION

**Amendments to PSC No. 16—Gas, Effective 5/1/12 for the Removal of Late Payment Charges****I.D. No.** PSC-08-12-00017-A**Filing Date:** 2012-04-19**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 16—Gas, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 16—Gas, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 16—Gas, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 16—Gas, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0459SA2)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 219—Gas, Effective 5/1/12 for the Removal of Late Payment Charges**

**I.D. No.** PSC-08-12-00018-A  
**Filing Date:** 2012-04-19  
**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid’s amendments to PSC No. 219—Gas, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 219—Gas, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 219—Gas, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid’s amendments to PSC No. 219—Gas, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0457SA2)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 90—Gas, Effective 5/1/12 for the Removal of Late Payment Charges**

**I.D. No.** PSC-08-12-00019-A  
**Filing Date:** 2012-04-19  
**Effective Date:** 2012-04-19

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

**Action taken:** On 4/19/12, the PSC adopted an order approving New York State Electric & Gas Corporation’s amendments to PSC No. 90—Gas, effective 5/1/12 for the removal of late payment charges on unpaid loan installment amounts.

**Statutory authority:** Public Service Law, sections 42(3), 65(6) and 66-m  
**Subject:** Amendments to PSC No. 90—Gas, effective 5/1/12 for the removal of late payment charges.

**Purpose:** To approve amendments to PSC No. 90—Gas, effective 5/1/12 for the removal of late payment charges.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order approving New York State Electric & Gas Corporation’s amendments to PSC No. 90—Gas, effective May 1, 2012 for the removal of late payment charges on unpaid loan installment amounts, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(11-G-0461SA2)

**NOTICE OF ADOPTION**

**To Reallocate \$90.4 Million of RPS Main Tier Program Funds into the Customer-Sited Tier for 2012 and 2013**

**I.D. No.** PSC-09-12-00010-A  
**Filing Date:** 2012-04-24  
**Effective Date:** 2012-04-24

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

**Action taken:** On 4/19/12, the PSC adopted an order authorizing NYSERDA to reallocate \$90.4 million of RPS Main Tier program funds into the Customer-Sited Tier to support the expansion of the Solar Photovoltaic category and Geographic Balance component for 2012 and 2013.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)  
**Subject:** To reallocate \$90.4 million of RPS Main Tier program funds into the Customer-Sited Tier for 2012 and 2013.

**Purpose:** To authorize the reallocation of \$90.4 million of RPS Main Tier program funds into the Customer-Sited Tier for 2012 and 2013.

**Substance of final rule:** The Commission, on April 19, 2012 adopted an order authorizing The New York State Energy Research and Development Authority (NYSERDA) to reallocate \$90.4 million of Renewable Portfolio Standard Main Tier program funds into the Customer-Sited Tier to support the expansion of the Solar Photovoltaic category and Geographic Balance component for 2012 and 2013, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(03-E-0188SA31)

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

**LIWC Proposes to Retain a Portion of Property Tax Refunds**

**I.D. No.** PSC-19-12-00032-P

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

**Proposed Action:** The PSC is considering the petition of Long Island Water Corporation d/b/a Long Island American Water (LIWC) to retain a certain portion from approximately \$1,642,839 in property tax refunds.

**Statutory authority:** Public Service Law, section 113(2)

**Subject:** LIWC proposes to retain a portion of property tax refunds.

**Purpose:** To allow LIWC to retain a portion of property tax refunds.

**Public hearing(s) will be held at:** 1:00 p.m., June 26, 2012\* at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

\*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 12-W-0051.

**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:** The Public Service Commission is considering whether to approve or reject, in whole or part, the petition of Long

Island Water Corporation d/b/a Long Island American Water (LIWC), pursuant to Public Service Law Section 113(2), for approval of a proposed allocation between shareholders and customers of \$1,642,838.95 in property tax refunds resulting from LIWC's complaint against the Town of Hempstead and various garbage and refuse districts within that Town. LIWC proposes to calculate net refunds by deducting \$215,835.63 in expenses incurred to achieve the refunds received to date, and retain for customers 18% of such net refunds.

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

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

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

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

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

(12-W-0051SP1)

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

**EEPS Program Approvals**

**I.D. No.** PSC-19-12-00008-P

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

*Proposed Action:* The Commission is considering whether to adopt, in whole or in part, Niagara Mohawk's April 2, 2012 proposal regarding substantial design and budget changes to its EEPS electric small business and commercial and industrial programs.

*Statutory authority:* Public Service Law, sections 4(1), 5(2) and 66(1)

*Subject:* EEPS program approvals.

*Purpose:* To change the design and budgets to Niagara Mohawk's EEPS Small Business and Commercial and Industrial Programs.

*Substance of proposed rule:* The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to the petition of Niagara Mohawk Power Corporation d/b/a National Grid for Approval of Substantive Modifications to Certain EEPS Electric programs.

Niagara Mohawk proposes to increase funding for its electric Small Business Services program in the amount of \$8,002,807 for each of the program years 2012-2015 in order to provide small business customers an incentive of 70% (the project cost which is the approved original program design) instead of 65% of the project costs which is currently the incentive paid. The total revised funding would amount to \$32,613,495 for each of the program years 2012-2015.

The company proposes to increase funding for its electric Mid-Size Commercial program in the amount of \$4,900,180 for each of the program years 2012-2015 in order to provide commercial customers an incentive of 50% (project costs which is the original approved program design) instead of the 35% or 40% of the project costs which is currently paid. The revised budget is \$21,564,865 for the Mid-Size Commercial program for each program year for 2012-2015.

Lastly, Niagara Mohawk requests to consolidate the Mid-Size and Large Industrial Electric programs to increase flexibility in delivering of programs to C/I customers and block bidding customers. As a result, customers who wish to participate in the block bidding program will be able to bid across sectors.

*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, Three Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: [leann.ayer@dps.ny.gov](mailto:leann.ayer@dps.ny.gov)*

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

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

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

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

(07-M-0548SP51)

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

**Restructuring of the Attribute Prices in Niagara Generation's RPS Contract**

**I.D. No.** PSC-19-12-00009-P

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

*Proposed Action:* The Commission is considering a petition by Niagara Generation, LLC for a Restructuring of Its Retail Renewable Portfolio Standard (RPS) Agreement to alter the attribute prices paid over its term.

*Statutory authority:* Public Service Law, sections 4(1), 5(2) and 66(1)

*Subject:* Restructuring of the attribute prices in Niagara Generation's RPS Contract.

*Purpose:* To raise the attribute price in earlier contract years, followed and offset by reduced prices thereafter.

*Substance of proposed rule:* The Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of Niagara Generation, LLC to modify its Retail Renewable Portfolio Standard (RPS) Attribute Contract to increase the price paid per attribute in the earlier years of its contract, to be followed by an offsetting decrease in price for the period thereafter. In particular, the Commission is considering the "Verified Petition of Niagara Generation, LLC for a Restructuring of its RPS Agreement" dated April 12, 2012.

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

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

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

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

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

(03-E-0188SP33)

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

**Approval to Allocate Uncommitted EEPS Gas and Electric Funds to the CHP Program Administered by NYSEERDA**

**I.D. No.** PSC-19-12-00010-P

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

*Proposed Action:* The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSEERDA for approval to allocate uncommitted EEPS funds to the CHP Performance program.

*Statutory authority:* Public Service Law, sections 4(1), 5(2) and 66(1)

*Subject:* Approval to allocate uncommitted EEPS gas and electric funds to the CHP program administered by NYSEERDA.

*Purpose:* Modify NYSEERDA's EEPS gas and electric programs budget to fund the CHP program.

*Substance of proposed rule:* The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to New York State Energy Research and Development Authority's (NYSEERDA) petition submitted on March 30, 2012 relating to its Combined Heat and Power Performance (CHP) program. In its petition,

NYSERDA proposes to use uncommitted Energy Efficiency Portfolio Standard (EEPS) gas and electric funds and reallocate those funds to the 2012-2015 CHP program. Specifically, the Commission is considering whether to permit NYSERDA to reallocate \$14,947,153 uncommitted EEPS electric funds and \$4,416,859 EEPS uncommitted gas funds to the CHP program.

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

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

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

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

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

(07-M-0548SP55)

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

**Approval to Modify EEPS Electric Program Budgets and Targets Administered by NYSERDA**

**I.D. No.** PSC-19-12-00011-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSERDA to modify EEPS electric program budgets and targets.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval to modify EEPS electric program budgets and targets administered by NYSERDA.

**Purpose:** Modify NYSERDA's EEPS electric program budgets and targets.

**Substance of proposed rule:** The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to a March 30, 2012 petition from the New York State Research and Development Authority (NYSERDA) proposing changes to its Energy Efficiency Portfolio Standard (EEPS) electric program budgets and energy savings targets. In its petition, NYSERDA proposes to decrease energy savings targets in 11 electric programs and to re-allocate budgets between various electric programs. NYSERDA is proposing to reallocate \$3.8 million (20% of the total budget) from the Home Performance with Energy Star (HPwES) program to the Point-of-Sale Lighting program (POS Lighting), with a corresponding reduction of 5,352 MWh (12% of total savings) to the HPwES program and an increase of 34,282 MWh to the POS Lighting program. Overall, NYSERDA is proposing a reduction in the energy savings target of the POS Lighting program from 1,522,560 to 224,352 MWh, a reduction of 85%, due to significant changes in the lighting market. NYSERDA is proposing to reduce the energy savings target of the low-income residential EmPower NY program from 83,600 MWh to 61,960 MWh, a reduction of 26%, with no change in the corresponding budget. NYSERDA proposes to decrease the energy savings targets for the Multifamily Performance Program (MPP) and the Low-Income Multifamily Performance Program (LI-MPP) from 113,712 to 108,124 MWh (4.9%) and from 136,628 to 130,169 MWh (4.7%), respectively, while keeping the corresponding budgets unchanged. NYSERDA proposes to reallocate \$14.8 million of the \$21.1 million budget (70%) of the Electric Reduction in Master-Metered (ERMM) multifamily program budget to the Technology and Market Development (T&MD) Combined Heat and Power (CHP) program. NYSERDA also proposes to reallocate the entire \$21.2 million budget of the Benchmarking and Operations Efficiency (BOE) commercial and industrial program to the CHP, with an elimination of the 106,640 MWh energy savings target. NYSERDA estimates the corresponding reduction in the ERMM program energy savings target from 41,928 to 12,579 MWh (70%). NYSERDA further proposes to subsume the function of the BOE program into the Flex Tech program. NYSERDA is proposing, due to various factors, the following

energy savings target reductions: the Flex Tech audit program reduced from 758,120 MWh to 445,000 MWh (41%); the Industrial and Process Efficiency program reduced from 1,010,624 MWh to 800,000 MWh (21%); and the High Performance New Construction program savings reduced from 552,050 to 350,000 MWh (37%). NYSERDA has proposed no changes to those program's budgets.

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

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

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

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

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

(07-M-0548SP57)

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

**Approval to Modify EEPS Gas Program Budgets and Targets Administered by NYSERDA**

**I.D. No.** PSC-19-12-00012-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a petition by NYSERDA to modify EEPS gas program budgets and targets.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval to modify EEPS gas program budgets and targets administered by NYSERDA.

**Purpose:** Modify NYSERDA's EEPS gas program budgets and targets.

**Substance of proposed rule:** The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to a March 30, 2012 petition from the New York State Research and Development Authority (NYSERDA) proposing changes to its Energy Efficiency Portfolio Standard (EEPS) gas program budgets and energy savings targets. NYSERDA is proposing to increase the gas energy savings target in the Existing Facilities Program from 311,854 to 482,557 Dth (55%) with a corresponding budget increase from \$8,079,934 to \$12,502,728 (55%). NYSERDA is proposing to decrease the energy savings target in the Flexible Technical Assistance Program from 711,553 to 400,000 Dth (44%), the Industrial and Process Efficiency from 3,650,960 to 2,940,000 Dth (20%), and the High Performance New Construction program from 311,086 to 230,967 Dth (30%), with no changes in the corresponding program budgets. NYSERDA proposes to decrease energy savings targets in its Single Family Home Performance Program from 1,898,472 to 1,485,943 Dth (22%) and EmPower NY from 850,408 to 746,988 Dth (12%) with no change in corresponding budgets. NYSERDA proposes an increase to the energy savings target for the Low-Income Single Family Home Performance program from 260,888 to 346,766 Dth (33%) with no change in the corresponding budget. NYSERDA proposes to decrease the energy savings target in the Multifamily Program from 603,652 to 488,902 Dth (19%) with a decrease in the corresponding budget from \$32,322,684 to \$27,408,468 (15%). For the Low-income Multifamily Program, NYSERDA proposes a decrease in the energy savings target from 695,176 to 612,418 Dth (12%) with no change in the corresponding budget.

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

*Data, views or arguments may be submitted to:* Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.us](mailto:secretary@dps.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.  
(07-M-0548SP56)

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

**Approval to Allocate Uncommitted SBC-III Gas and Electric Funds to EEPS Programs Administered by NYSERDA**

**I.D. No.** PSC-19-12-00013-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSERDA to allocate uncommitted SBC-III funds to a number of Technology and Market Development Programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval to allocate uncommitted SBC-III gas and electric funds to EEPS programs administered by NYSERDA.

**Purpose:** Modify NYSERDA's EEPS programs by reallocating uncommitted SBC-III funds.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, a March 30, 2012 petition by New York State Energy Research and Development Authority's (NYSERDA) proposing allocation of uncommitted System Benefit Charge III (SBCIII) funds for certain strategic initiatives in its Technology and Market Development (T&MD) plan. NYSERDA proposes: (1) to allocate uncommitted funds to support additional T&MD program activities in the Advanced Clean Power, Smart Grid and Advanced Buildings programs; (2) a method for reallocating SBC III funds that may become uncommitted in the future; (3) to allocate uncommitted funds to cover the share of the State Cost Recovery Fee allocable to SBC III funds expended on or before December 31, 2011 and; (4) use future SBC III and EEPS interest earnings to pay any future Cost Recovery fees allocable to the expenditure of SBC III funds after December 31, 2011. NYSERDA is proposing to to reallocate \$10 million uncommitted SBC-III funds to the Advanced Clean Power Program, \$10 million uncommitted SBC-III funds to the Smart Grid Program, \$5,760,672 uncommitted SBC-III funds to the Advanced Buildings program and \$1,748,336 uncommitted SBC-III funds to the State Cost Recovery Fee.

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

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

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

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

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

(07-M-0548SP58)

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

**EEPS Program Approvals**

**I.D. No.** PSC-19-12-00014-P

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

**Proposed Action:** The Commission is considering whether to adopt, in whole or in part, Energy Efficiency Portfolio Standard (EEPS) program administrator proposals regarding substantial design and budget changes to EEPS programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS program approvals.

**Purpose:** To change the design and budgets of EEPS programs.

**Substance of proposed rule:** The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to the petitions filed on March 30, 2012 by New York State Energy Research and Development Authority, New York State Gas and Electric Corporation, and Rochester Gas and Electric Corporation; and April 2, 2012 by Central Hudson Gas & Electric, Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc. for Energy Efficiency Portfolio Standard (EEPS) program administrators for modifications to certain EEPS Electric programs. The Commission may resolve the petitions and may resolve related matters as well.

**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, Three Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

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

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

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

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

(07-M-0548SP59)

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

**Approval to Allocate Uncommitted EEPS Gas and Electric Funds to Workforce Development Program Administered by NYSERDA**

**I.D. No.** PSC-19-12-00015-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSERDA for approval to allocate uncommitted EEPS funds to its Workforce Development program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval to allocate uncommitted EEPS gas and electric funds to Workforce Development program administered by NYSERDA.

**Purpose:** Modify NYSERDA's Workforce development program by reallocating uncommitted EEPS funds.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to a March 30, 2012 petition from New York State Energy Research and Development Authority (NYSERDA) which proposes to use Energy Efficiency Portfolio Standard (EEPS) uncommitted funds for Work Force Development Initiatives. NYSERDA is proposing to allocate \$24 million uncommitted EEPS program funds to support its Workforce Development program. The allocation would consist of \$12 million uncommitted EEPS electric funds and \$12 million of uncommitted EEPS gas funds.

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

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

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

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

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

(07-M-0548SP54)

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

**Budgets and Targets for EEPS Programs****I.D. No.** PSC-19-12-00016-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 April 2, 2012 Central Hudson Gas & Electric petition to approve modifications to the budgets and targets for the period 2012—2015 of its EEPS Residential Gas HVAC, Small Business Electric, and Mid-Size Business Programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Budgets and targets for EEPS Programs.

**Purpose:** To modify budgets and targets of the Residential Gas HVAC, Small Business Electric, and Mid-Size Business Electric Programs.

**Substance of proposed rule:** The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to an April 2, 2012 Central Hudson Gas & Electric (CHG&E) petition seeking to modify its Residential Gas HVAC, Small Commercial Electric and Mid-Size Electric Programs for the years 2012-2015.

For the Residential HVAC Program, CHG&E proposes to reduce its energy savings target from 15,097 to 11,323 Dth (25%) while keeping the program funding constant at \$380,724.

For the electric Small Commercial and Mid-Size Commercial Programs, CHG&E proposes to reallocate the aggregate energy savings targets and budgets between the programs. The Small Commercial MWh energy savings target and budget would be reduced to 80% of the combined total, while the Mid-Size Commercial MWh energy savings target and budget would be increased to 20% of the combined total. The total annual budget for the combined Small and Mid-Size Electric programs is planned to hold constant at \$5,716,124.

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

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

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

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

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

(07-M-0548SP50)

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

**EEPS Programs Administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation****I.D. No.** PSC-19-12-00017-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 March 30, 2012 petition from New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for modifications to the companies' EEPS energy efficiency portfolio of programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

**Purpose:** To modify the Residential Gas HVAC Program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on March 30, 2012 by New York State Electric &

Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to modify the Residential Gas HVAC Program.

NYSEG/RG&E seek to modify their Residential Gas HVAC Programs by adding measures and reducing the savings and spending targets. For the Residential Gas HVAC Program, NYSEG seeks to reduce the annual savings by 56,030 and the annual budget by \$1,110,159, whereas RG&E seeks to reduce the annual savings by 134,487 and the annual budget by \$2,490,303.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP60)

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

**EEPS Programs Administered by Orange and Rockland Utilities, Inc.****I.D. No.** PSC-19-12-00018-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 April 2, 2012 petition from Orange and Rockland Utilities, Inc. in Case 07-M-0548 for modifications to its EEPS Small Business Direct Install Program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by Orange and Rockland Utilities, Inc.

**Purpose:** To modify the EEPS Small Business Direct Install Program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on April 2, 2012 by Orange and Rockland Utilities, Inc. (O&R) to modify its Small Business Direct Install Program within their EEPS portfolio.

Orange and Rockland seeks to modify its existing Small Business Direct Install (SBDI) Program by increasing the customer eligibility from 100kw up to 110kW. O&R also seeks to increase the cost per MWh of the SBDI program to \$355 per MWh using an annual budget of \$3,880,505 million to achieve an annual savings of 10,931 MWh.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP64)

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

**EEPS Programs Administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation**

**I.D. No.** PSC-19-12-00019-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 March 30, 2012 petition from New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for modifications to the companies' EEPS energy efficiency portfolio of programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

**Purpose:** To modify the C&I sector by combining multiple approved C&I programs into a single C&I program for each PA.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on March 30, 2012 by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to: combine the gas Commercial/Industrial Prescriptive and Custom Programs into a single program and combine the electric Commercial/Industrial Prescriptive, Custom.

NYSEG/RG&E seek to combine the gas Commercial/Industrial Prescriptive and Custom Programs into a single program and combine the electric Commercial/Industrial Prescriptive, Custom, and Block Bidding Programs into a single program. NYSEG/RG&E state that by combining the program's savings and spending targets for each fuel, no changes to overall/combined spending targets should result at this time. Through 2015, NYSEG plans to expend a combined gas budget of \$622,573 to achieve 13,576 Dth savings and a combined electric budget of \$6,252,177 to achieve 15,998 MWh savings. RG&E plans to spend a combined gas budget of \$619,064 to achieve 13,621 Dth savings and a combined electric budget of \$4,520,287 to achieve 11,733 MWh savings.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP61)

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

**EEPS Programs Administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation**

**I.D. No.** PSC-19-12-00020-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 March 30, 2012 petition from New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for modifications to the companies' EEPS energy efficiency portfolio of programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

**Purpose:** To modify the Small Business Direct Installation Program incentive amount and increase spending per MWh.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on March 30, 2012 by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to: modify the Small Business Direct Installation Program funding requirement and modify the Small Business Direct Install Program spending target per MWh.

NYSEG/RG&E seek to modify the Small Business Direct Installation Program requirement that provides a fixed incentive amount of 70% of the project installation costs to an incentive that funds "up to 70%" of project costs. In addition for the Small Business Direct Install Program, NYSEG/RG&E seek to increase the proposed spending per MWh to \$355 per MWh for all program administrators. NYSEG seeks to achieve 31,530 MWh savings by spending \$11,193,150 and RG&E seeks to achieve 14,761 MWh savings by spending \$5,240,155.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP62)

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

**EEPS Programs Administered by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-19-12-00021-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 April 2, 2012 petition from Orange and Rockland Utilities, Inc. in Case 07-M-0548 for approval of new Commercial & Industrial Gas Rebate Program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by Orange and Rockland Utilities, Inc.

**Purpose:** To approve a new EEPS gas C&I rebate energy efficiency program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on April 2, 2012 by Orange and Rockland Utilities, Inc. (O&R) to approve a new gas Commercial and Industrial Rebate Program within their EEPS portfolio.

Orange and Rockland requests the approval of a new gas Commercial and Industrial (C&I) Rebate Program to be implemented in conjunction with its existing electric C&I Program. O&R proposes to serve 1,262 customers through 2015 with the gas C&I Rebate Program using a cumulative budget of \$6,111,112 to achieve 110,000 Dth savings. The gas C&I program will offer rebates for the purchase and installation of energy efficient commercial boilers, furnaces, water heaters, programmable thermostats, dishwashers, and custom designed projects.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP65)

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

#### Approval of a Combined Heat and Power Performance Program Funding Plan Administered by NYSERDA

**I.D. No.** PSC-19-12-00022-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a petition by NYSERDA for approval of a Combined Heat and Power (CHP) Performance Program Funding Plan.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval of a combined heat and power performance program funding plan administered by NYSERDA.

**Purpose:** Modify NYSERDA's EEPS programs budget and targets to fund the CHP program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to New York State Energy Research and Development Authority's (NYSERDA) Energy Efficiency Portfolio Standard (EEPS) petition submitted on March 30, 2012 relating to the Combined Heat and Power Performance program (CHP). In its petition, NYSERDA outlines a recommended and alternative option for funding its CHP program by reallocating previously approved electric program budgets. NYSERDA's recommended option proposes to allocate \$14,947,153 uncommitted EEPS electric program funds, \$4,416,859 uncommitted EEPS gas program funds, \$21,158,664 from the Benchmarking Operations and Efficiency program (BOE) and \$14,756,913 from the Electric Reduction in Master-Metered multifamily buildings program (ERMM) into the CHP program. The corresponding MWh savings for this option would be a net increase of 11,063 MWh. NYSERDA's alternative option is to reallocate \$21,158,664 from the BOE program, \$14,756,913 from the ERMM multifamily buildings program, and \$22,701,069 from the High Performance New Construction program to the CHP program. The corresponding MWh savings from this option would result in a net increase of 48,554 MWh.

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

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

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

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

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

(10-M-0457SP5)

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

#### Petition for Approval Pursuant to Section 70 for the Sale of Goods with an Original Cost of Less Than \$100,000

**I.D. No.** PSC-19-12-00023-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 by Orange and Rockland Utilities, Inc. for approval to sell 984 feet of 138 kV solid dielectric cable to Central Hudson Gas and Electric, Inc.

**Statutory authority:** Public Service Law, section 70

**Subject:** Petition for approval pursuant to Section 70 for the sale of goods with an original cost of less than \$100,000.

**Purpose:** To consider whether to grant, deny or modify, in whole or in part, the petition filed by Orange and Rockland Utilities, Inc.

**Substance of proposed rule:** On April 6, 2012, Orange and Rockland Utilities, Inc. (O&R) submitted a petition for the Public Service Commission's (Commission) approval under Public Service Law (PSL) § 70 to sell 984 feet of 138 kV solid dielectric cable to Central Hudson Gas and Electric, Inc. The original cost of the cable is approximately \$60,000. Pursuant to PSL § 70, since the original cost is less than \$100,000, O&R may proceed with the sale unless the Commission determines that its review is necessary within 90 days of the date of O&R's filing. The Commission may allow the proposed transfer to occur by operation of law. Alternatively, if the Commission determines that its review is necessary, it may approve, reject or modify the petition, in whole or in part. The Commission may also consider other related matters and may apply its decision here to other utilities.

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

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

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

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

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

(12-E-0169SP1)

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

#### Approval to Allocate Uncommitted EEPS Gas and Electric Funds to the CHP and Empower Programs Administered by NYSERDA

**I.D. No.** PSC-19-12-00024-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a request by NYSERDA for approval to allocate uncommitted EEPS funds to the CHP Performance and Empower Programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Approval to allocate uncommitted EEPS gas and electric funds to the CHP and Empower programs administered by NYSERDA.

**Purpose:** Modify NYSERDA's EEPS gas and electric programs budget to fund the CHP and Empower programs.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to New York State Energy Research and Development Authority's (NYSERDA) petition submitted on March 30, 2012 relating to its Combined Heat and Power Performance (CHP) program and the low-income Empower program. In its petition, NYSERDA proposes to use uncommitted Energy Efficiency Portfolio Standard (EEPS) gas and electric funds and reallocate those funds to the 2012-2015 CHP and Empower programs. Specifically, the Commission is considering whether to permit NYSERDA to reallocate \$14,947,153 uncommitted EEPS electric funds and \$4,416,859 EEPS uncommitted gas funds to the CHP performance program and to reallocate \$13,737,918 uncommitted EEPS gas funds to the Empower program.

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

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

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

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

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

(10-M-0457SP4)

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

#### EEPS Programs Administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation

**I.D. No.** PSC-19-12-00025-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 March 30, 2012 petition from New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for modifications to the companies' EEPS energy efficiency portfolio of programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS programs administered by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

**Purpose:** To modify electric multifamily gas programs and approve EEPS new multifamily gas programs.

**Substance of proposed rule:**

The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on March 30, 2012 by New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E) to: create a new Residential/Non-Residential Multifamily Gas Program and modify the participation limits of the Residential/Non-Residential Multifamily Electric Program.

NYSEG/RG&E seek to add a new Residential/Non-Residential Multifamily Gas Program that would offer low flow showerheads, low flow faucet aerators, water heater pipe wrap, and programmable thermostats to multi-family customers who have gas water heaters and/or gas space heating. With the additional new gas measures incorporated into the program through 2015, NYSEG will provide 313 Dth savings with a budget of \$635,942 and RG&E will provide 1,374 Dth savings with a budget of \$2,299,048.

NYSEG/RG&E seek to modify the building eligibility participation limits of the Residential/Non-Residential Multifamily Electric Program by

increasing the range of eligibility from 5-50 dwelling units to 2-75 dwelling units. This proposal would also apply to the Companies' proposed gas multifamily program.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

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

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

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

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

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

(07-M-0548SP63)

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

#### Control of Affiliates Transactions, Conflicts of Interest and the Provision of Information

**I.D. No.** PSC-19-12-00026-P

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

**Proposed Action:** The Commission is considering a proposed filing by Corning Natural Gas Corporation establishing the company's standards pertaining to affiliates transactions, conflicts of interest and the provision of information.

**Statutory authority:** Public Service Law, section 110

**Subject:** Control of affiliates transactions, conflicts of interest and the provision of information.

**Purpose:** To establish the rules for affiliate expenses and conflicts of interest.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a Standards Pertaining to Affiliates and the Provision of Information filing by Corning Natural Gas Corporation (Corning) which established the methodology for allocating expenses, a business code of conduct, conflicts of interest and affiliate transaction rules for Corning and its affiliated companies.

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

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

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

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

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

(11-G-0280SP2)

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

#### Request Authorization to Transfer the Somerset and Cayuga Coal-Fired Electric Generation Facilities

**I.D. No.** PSC-19-12-00027-P

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

**Proposed Action:** The PSC is considering a joint petition filed by AES Eastern Energy, et al and NewCo to transfer the Somerset and Cayuga coal-fired electric generation facilities, as well as issue securities and assume debt.

**Statutory authority:** Public Service Law, sections 69 and 70

**Subject:** Request authorization to transfer the Somerset and Cayuga coal-fired electric generation facilities.

**Purpose:** To allow for the transfer of the Somerset and Cayuga coal-fired electric generation facilities.

**Substance of proposed rule:** AES Eastern Energy, L.P., AES Somerset, LLC, AES Cayuga, LLC (“AES Entities”) and Somerset Cayuga Holding Company, Inc. (“NewCo”) and jointly referred to as “Petitioners”) has requested Commission approval on an emergency basis, on or before May 17, 2012, to transfer the Somerset and Cayuga coal-fired electric generation facilities pursuant to Public Service Law (PSL) § 70, as well as approval under PSL § 69 to issue \$125 million in securities. The Commission may adopt, reject or modify, in whole or in part, the Petitioners’ request, and may also consider any related matters.

Additionally, on a related matter (see Case 12-F-0173), AES Eastern Energy, L.P. and NewCo seek approval on or before May 17, 2012 of the New York Board on Electric Generation Siting and the Environment to transfer the Certificate of Environmental Compatibility and Public Need for the Somerset coal-fired electric generation facility.

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

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

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

**Additional matter required by statute:** Approval of the New York Board on Electric Generation Siting and the Environment to Transfer the Certificate of Environmental Compatibility and Public Need for the Somerset coal-fired electric generation facility (see Case 12-F-0173).

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

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

(12-E-0174SP1)

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

#### Redistribution Provisions

**I.D. No.** PSC-19-12-00028-P

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

**Proposed Action:** The Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make revisions to its electric tariff schedule, P.S.C. No. 10—Electricity.

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

**Subject:** Redistribution Provisions.

**Purpose:** To revise redistribution criteria for customers taking high-tension service.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to revise the redistribution criteria under Service Classification (SC) No. 8—Multiple Dwellings - Redistribution and SC No. 9—General - Large for customers taking high-tension service. Con Edison also proposes changes to General Rules 25.21 and 30.2 to accommodate the changes to the redistribution provisions. The proposed filing has an effective date of July 23, 2012. The Commission may resolve related matters.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(12-E-0177SP1)

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

#### Increase in Rates Applicable in Municipality Where Service Is Supplied

**I.D. No.** PSC-19-12-00029-P

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

**Proposed Action:** The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to revise its rules and regulations contained in P.S.C. No. 15—Electricity, to become effective August 1, 2012.

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

**Subject:** Increase in Rates Applicable in Municipality Where Service Is Supplied.

**Purpose:** To include the Metropolitan Commuter Transportation Mobility Tax in the revenue tax recovery mechanism currently in the tariff.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to revise its rules and regulations contained in P.S.C. No. 15—Electricity. The filing proposes to include the Metropolitan Commuter Transportation Mobility Tax in the revenue tax recovery mechanism currently included in the tariff. The proposed filing has an effective date of August 1, 2012. The Commission may resolve related matters and may take this action for other utilities.

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

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

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

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

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

(12-E-0178SP1)

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

#### Service Classification (S.C.) No. 2—General Service Customers Subject to Mandatory Hourly Pricing

**I.D. No.** PSC-19-12-00030-P

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

**Proposed Action:** The Commission is considering a filing by Central Hudson Gas & Electric Corporation to propose revisions to the Company’s rules and regulations contained in P.S.C. No. 15—Electricity to become effective August 1, 2012.

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

**Subject:** Service Classification (S.C.) No. 2—General Service customers subject to Mandatory Hourly Pricing.

**Purpose:** To modify the incremental monthly charge applicable to S.C. No. 2—customers and require installation of cellular meters.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, Central Hudson Gas & Electric Corporation's proposal to modify the incremental monthly charge applicable to Service Classification No. 2—General Service customers subject to Mandatory Hourly Pricing and require installation of cellular meters. The proposed filing has an effective date of August 1, 2012. The Commission may resolve related matters.

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

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

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

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

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

(12-E-0189SP1)

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

**Increase in Rates Applicable in Municipality Where Service Is Supplied**

**I.D. No.** PSC-19-12-00031-P

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

**Proposed Action:** The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to revise its rules and regulations contained in P.S.C. No. 12—Gas, to become effective August 1, 2012.

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

**Subject:** Increase in Rates Applicable in Municipality Where Service is Supplied.

**Purpose:** To include the Metropolitan Commuter Transportation Mobility Tax in the revenue tax recovery mechanism currently in the tariff.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to revise its rules and regulations contained in P.S.C. No. 12—Gas. The filing proposes to include the Metropolitan Commuter Transportation Mobility Tax in the revenue tax recovery mechanism currently included in the tariff. The proposed filing has an effective date of August 1, 2012. The Commission may resolve related matters, and may take this action for other utilities.

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

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

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

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

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

(12-G-0179SP1)

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

**Issuance of Promissory Notes and the Assumption of the Costs and Benefits of Certain Derivative Instruments**

**I.D. No.** PSC-19-12-00033-P

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

**Proposed Action:** The PSC is considering a petition by Central Hudson Gas and Electric Corporation to enter into multi-year committed credit agreements in amounts not to exceed \$175 million in the aggregate, and issue long-term debt in an amount not to exceed \$250 million.

**Statutory authority:** Public Service Law, section 69

**Subject:** Issuance of promissory notes and the assumption of the costs and benefits of certain derivative instruments.

**Purpose:** To authorize the issuance of the above notes and to authorize entering into agreements concerning derivative transactions.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by Central Hudson Gas and Electric Corporation to (a) enter into multi-year credit agreements to provide committed funding to meet expected liquidity needs, in amounts not to exceed \$175 million in the aggregate and maturities not to exceed five years, and (b) approval to issue and sell long-term debt, commencing immediately upon issuance of an order regarding this petition, and from time to time through December 31, 2015, in an amount not to exceed \$250 million in the aggregate. The Commission may also resolve issues related to the petition.

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

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

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

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

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

(12-M-0172SP1)

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## New York State Thruway Authority

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### NOTICE OF ADOPTION

**Delete Obsolete References to Interstate 84 ("I-84") from 21 NYCRR Section 105.3**

**I.D. No.** THR-07-12-00008-A

**Filing No.** 398

**Filing Date:** 2012-04-24

**Effective Date:** 2012-05-09

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

**Action taken:** Amendment of section 105.3 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 354(5), (15) and 361(1)(a); and Vehicle and Traffic Law, section 1630

**Subject:** Delete obsolete references to Interstate 84 ("I-84") from 21 NYCRR section 105.3.

**Purpose:** The Thruway Authority's jurisdiction no longer includes I-84 and this rule will delete the obsolete references.

**Text or summary was published** in the February 15, 2012 issue of the Register, I.D. No. THR-07-12-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathy Clark, NYS Thruway Authority, 200 Southern Blvd. Albany, NY 12209, (518) 436-2876, email: kathy.clark@thruway.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

## Urban Development Corporation

### EMERGENCY RULE MAKING

#### Bonding Guarantee Assistance Program

**I.D. No.** UDC-19-12-00002-E

**Filing No.** 395

**Filing Date:** 2012-04-19

**Effective Date:** 2012-04-19

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

**Action taken:** Addition of Part 4253 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L. 1968, ch. 174; L. 1994, ch. 169, section 16-f

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

**Specific reasons underlying the finding of necessity:** The current economic crisis, including high unemployment and the immediate lack of capital for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Bonding Guarantee Assistance Program. The Program will provide surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, certified minority-owned enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. This assistance will sustain and increase employment generated by these businesses.

**Subject:** Bonding Guarantee Assistance Program.

**Purpose:** Provide the basis for administration of the Bonding Guarantee Assistance Program.

**Substance of emergency rule:** The Bonding Guarantee Assistance Program (the "Program") was created pursuant to Chapter 169 of the Laws of 1994 (the "Enabling Legislation"). The general purpose of the Program is to improve the economy of New York by providing small businesses greater access to surety bonds required to participate in the construction industry.

The Enabling Legislation creates Section 16-f of the New York State Urban Development Corporation Act (the "UDC Act") which governs the Program. The Enabling Legislation requires the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") to promulgate rules and regulations for the Program (the "Rules") in accordance with the provisions of the State Administrative Procedure Act. The Rules set forth the framework for the eligibility, evaluation criteria, application and project process and administrative procedures of the Program.

#### 1. Program Assistance:

(a) Provide eligible surety companies the additional financial backing needed in order to induce such companies to issue bid, payment and performance bonds for eligible contractors that are small businesses, as defined in the Rule, and certified, pursuant to article fifteen-A of the Executive Law, eligible minority-owned business enterprises or eligible women-owned business enterprises, in order for such contractors to meet bid, payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects; and

(b) Provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. The Corporation may refer such businesses to various business service providers or the Department of Economic Development for technical assistance as such businesses may need.

(c) Program assistance is limited to the financial backing necessary to secure bid bonds, performance bonds, and payment bonds issued in con-

nection with contract bids or awards. Such Program assistance shall be in such form as the Corporation may determine, and may include irrevocable standby letters of credits issued to a surety company by a financial institution for the account of the Corporation in connection with the surety company providing such bonds on behalf of a Program eligible contractor with respect to a contract. The amount of such Program assistance provided to a surety company with respect to each contract shall generally not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract. Generally, a surety company may not receive Program assistance for more than two contracts for the same contractor at the same time.

#### 2. Program Administration:

(a) In order for a Surety Company to participate in the Program, the surety company shall enter into a Program participation agreement with the Corporation in such form as the Corporation may prescribe.

(b) The Corporation shall conduct the oversight and management of the Program, and the Corporation may engage an agent for administration and implementation of the Program.

(c) The Corporation may contract with one or more financial institutions in order that such financial institution will provide to surety companies, as additional financial backing Program assistance, letters of credit or other guarantees for the account of the Corporation.

(d) The Corporation or the agent shall evaluate applications for Program assistance and make determinations as to business creditworthiness and whether to provide the requested additional financial backing Program assistance.

(e) The Corporation or the agent shall prepare annual reports for the Program.

#### 3. Fees:

A participating Surety company may charge application fees, commitment fees, bonding premiums and other reasonable fees and expenses pursuant to a schedule of fees and expenses adopted by the surety company and approved in writing by the Corporation. The Corporation may require a contractor participating in the Program to pay the Corporation for its out-of-pocket costs in connection with the Program assistance for the contractor, including, without limiting the foregoing, the costs with respect to letter of credit and other guarantees to be provided to a surety company in connection with bonds for such contractor's contract.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 17, 2012.

**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@esd.ny.gov

#### 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 (Uncon. Laws section 6259-c), 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 16-f of the Act provides for the creation of the Bonding Guarantee Assistance Program (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to provide small businesses and minority and women-owned business enterprises the additional financial backing needed in order to induce surety companies to issue payment and performance bonds necessary for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects.

2. Legislative Objectives: Section 16-f of the Act (Uncon. Laws section 6266-f, added by Chapter 169 of the Laws of 1994) sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide the assistance described above. The adoption of 21 NYCRR Part 4253 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. Needs and Benefits: The State has allocated \$10,405,173.00 of Federal funds for this program. The Bond Guarantee Assistance Program will provide assistance to New York's eligible small businesses, minority-owned business enterprises and women-owned business enterprises, in order to provide the collateral support necessary to secure surety bonds.

These businesses have been determined to be a major source of employment throughout New York State. These businesses have historically had difficulties obtaining financing or refinancing in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Providing assistance to these businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The rule defines eligible and ineligible businesses and eligible uses of the assistance and other criteria to be applied to qualify small businesses for the collateral support.

4. Costs: The Program is funded by a State appropriation in the amount of \$10,405,173.00 dollars. Pursuant to the rule, the amount of such assistance provided to a surety company with respect to each contract shall not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract. The costs to a participating surety company would depend on the extent to which they participate in the Program and their effectiveness and efficiency providing assistance.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as an annual report on the organization's lending activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard applications and documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates - program, service, duty, or responsibility - upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: While surety companies already provide business credit through surety bonding, access to such credit remains difficult to obtain for contractors that are small businesses and/or certified minority-owned enterprises or women-owned business enterprises. The State has established the Program in order to enhance the access of such businesses to such credit, and the proposed rule provides the regulatory basis for inducing surety companies to provide credit for contractors that are small businesses and/or certified minority-owned enterprises or women-owned business enterprises.

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**

a) Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Women owned Business Enterprise" is defined as a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent owned by one or more United States citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in State and independently owned and operated; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (vi) an enterprise that is a Small Business, unless the term Women-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section; "Minority-Owned Business Enterprise" is defined as a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in this state and independently owned and operated; (v) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index

of the previous year; and (vi) an enterprise that is a Small Business, unless the term Minority-Owned Business Enterprise is otherwise defined in section 310 of the Executive Law, in which case the definition shall be as set forth for such term in such section; and "Surety Company" is defined as a surety company that has a certificate of solvency from, and its rates approved by, the New York State Department of Financial Services and/or appears in the most current edition of the U.S. Department of Treasury Circular 570 as eligible to issue bonds in connection with procurement contracts for the United States of America. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") provide assistance to surety companies in order to provide financial backing to eligible small businesses, certified minority-owned business enterprises or certified women-owned business enterprises to secure bid bonds, performance bonds and payment bonds issued in connection with contract bids or awards. The amount of such assistance provided to small businesses and minority and women-owned small businesses with respect to each contract shall not be greater than the amount necessary to induce such surety company to issue the bonds required for the contract, and in no event shall exceed fifty percent of the face value of bonds to be issued by the surety company for such contract.

1. Compliance Requirements: There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating surety companies regardless of size. This is a voluntary program. Companies not wishing to undertake the compliance obligations need not participate.

2. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

3. Compliance Costs: There are no compliance costs for local governments in these regulations. Small businesses bear no costs, other than the fees imposed by surety companies for the surety bond or by banks for issuing a letter of credit. This program is voluntary. If it is not financially advantageous for a company to participate, then it is not required to do so.

4. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasibility for compliance with the rule by small businesses and local governments.

5. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide letters of credit to enhance the ability of small businesses to secure surety bonding.

6. Small Business and Local Government Participation: Small business contractors have repeatedly identified securing surety bonds as a major obstacle to securing government and private contracts.

#### **Rural Area Flexibility Analysis**

1. Types and Estimated Numbers of Rural Areas: Surety companies serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Bonding Guarantee Assistance Program (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any surety company receiving similar assistance regarding such matters as financial condition, required matching funds, and utilization of Program funds, and the statutorily required annual report on the use of Program funds; no additional acts will be needed to comply other than the said reporting requirements and the making of surety bonds to small businesses in the normal course of the business for any surety company that receives Program assistance; and, it is not anticipated that applicants will have to secure any additional professional services in order to comply with this rule.

3. Costs: The costs to surety companies that participate in the Program would depend on the extent to which they choose to participate in the Program, including the amount of required matching funds for their surety bonds to small businesses and the administrative costs in connection with such small business surety bonds and the fees, if any, charged to small businesses in connection with surety bonds to such businesses that include Program funds.

4. Minimizing Adverse Impact: The purpose of the Program is to provide surety companies the additional financial backing needed in order to induce such companies to issue payment and performance bonds for contractors that are small businesses, certified minority-owned enterprises or women-owned business enterprises, in order for such contractors to meet payment and performance bonding requirements for construction projects, including but not limited to, government sponsored, transportation related construction projects and to provide technical assistance in completing bonding applications for such contractors seeking surety bonding in preparation for bidding on construction projects, including transportation related projects. This rule provides a basis for cooperation

between the State and surety companies, including surety companies that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such surety companies and the small businesses, including small businesses located in rural areas of the State that such surety companies serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas. A number of surety companies that engage in underwriting surety bonds to rural and urban small businesses responded to a survey circulated by the Corporation regarding implementation of the Program. Their comments were considered in the rulemaking process.

***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 New York by providing small businesses greater access to surety bonds required to participate in the construction industry. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.