RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Mandatory Disqualification of Foster and Adoptive Parents Based on Criminal History

I.D. No. CFS-06-10-00004-P

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

Proposed Action: Amendment of sections 421.27 and 443.8 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 378-a(2), as amended by L. 2008, ch. 623 and L. 1997, ch. 436

Subject: Mandatory disqualification of foster and adoptive parents based on criminal history.

Purpose: The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history checks of foster and adoptive parents.

Text of proposed rule: Paragraph (1) of subdivision (d) of section 421.27 is amended to read as follows:

(d)(1) Except [as authorized herein and] as set forth in subdivision (h) of this section, the authorized agency must deny an application to be an approved adoptive parent or revoke the approval of an approved adoptive parent when a criminal history record of the prospective or approved adoptive parent reveals a conviction for:

(i) a felony conviction at any time involving;

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography;

(d) a crime involving violence, including rape, sexual assault, or homicide, other that a crime involving physical assault or battery[, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) approval of the application or continuing approval will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within five years for physical assault, battery, or a drug-related offense [, unless the prospective adoptive parent or approved adoptive parent demonstrates that:

(a) such denial will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) approval of the applicant will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to an adoptive parent fully approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 421.27 is repealed.

Paragraph (1) of subdivision (e) of section 443.8 is amended to read as follows:

(e)(1) Except as [authorized herein and as] set forth in this section, the authorized agency must deny an application for certification or approval as a certified or approved foster parent or deny an application for renewal of the certification or approval of an existing foster parent *submitted on or after October 1, 2008* or revoke the certification or approval of an existing foster parent when a criminal history record of the prospective or existing foster parent reveals a conviction for:

(i) a felony conviction at any time involving:

(a) child abuse or neglect;

(b) spousal abuse;

(c) a crime against a child, including child pornography; or

(d) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery[; unless the applicant or approval or certification as a foster parent or the certified or approved foster parent demonstrates that;

(1) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(2) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child]; or

(ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense[; unless the applicant for certification or approval as a foster parent or the certified or approved foster parent demonstrates that:

(a) such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and

(b) continued certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child].

Notwithstanding any other provision to the contrary, with regard to a foster parent fully certified or approved prior to October 1, 2008, the provisions of this paragraph only apply to mandatory disqualifying convictions that occur on or after October 1, 2008.

Subdivision (k) of section 443.8 is repealed.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

Section 34(3)(f) of the SSL authorizes the commissioner of OCFS to establish regulations for the administration of public assistance and care within New York State, both by the State and by local government units.

Section 378-a(2) of the SSL requires criminal history record reviews of prospective foster and adoptive parents, as well as other persons over the age of 18 who reside in the home of such applicants.

Chapter 623 of the laws of 2008 amended the criminal history review standards set forth in section 378-a(2) of the SSL. Section 5 of Chapter 623 of the Laws of 2008 authorizes OCFS to promulgate rules and regulations on an emergency basis for the purpose of implementing the provision of the Chapter.

2. Legislative objectives:

The regulations implement Chapter 623 of the Laws of 2008 relating to criminal history record reviews of applicants for certification or approval as foster or adoptive parents. The regulations reflect amendments to federal and state statutory standards relating to situations where such applicant has been convicted of a mandatory disqualifying crime. The regulations eliminate the category of presumptive disqualifying crimes and replace that category with the category of mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents.

Chapter 623 of the Laws of 2008 and the regulations implement changes in federal statutes that had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents and that required the application of mandatory disqualification for certain categories of felony convictions. The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated effective October 1, 2008 the ability of states to opt out of federal criminal history review standards and required states to comply in order to receive federal Title IV-E payments for foster care or adoption assistance.

3. Needs and benefits:

The regulations are necessary for OCFS to conform to federal and state statutory changes to criminal history record review standards. The regulations reflect the federal requirement set forth in the federal Adam Walsh Child Protection and Safety Act of 2006 that states must adopt federal mandatory disqualification standards for prospective foster and adoptive parents who are convicted of certain categories of felonies. Compliance with the federal requirement is a condition for New York State to have a compliant Title IV-E State Plan which is a condition for New York State to receive federal funding for foster care and adoption assistance.

The regulations are also necessary to reflect amendments to section 378-a(2) of the SSL that eliminated the category of presumptive disqualifying crimes. The regulations reflect the mandatory disqualification of an applicant to be certified or approved as a foster or adoptive parent when such applicant has been convicted of a certain category of felony.

The regulations will not impact persons who were fully certified or approved as a foster or adoptive parent prior to October 1, 2008 for convictions that occurred prior to that date.

4. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately $600 million in federal Title IV-E funding earned on an annual basis.

5. Local government mandates:

The regulations adopt the standards that were in place in 1999 with the enactment of Chapter 7 of the Laws of 1999, but were amended by Chapter 145 of the Laws of 2000 that created the criteria of presumptive disqualifying crimes.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe have been required to perform criminal history record reviews since 1999 in regard to New York State checks through the New York State Division of Criminal Justice Services and since 2007 in regard to a national criminal history record check through the Federal Bureau of Investigation. The regulations do not expand who must have a criminal history record check in relation to foster care or adoption.

6. Paperwork:

Authorized agencies are currently required to document their criminal history record review activities. The regulations do not impose additional paperwork requirements on social services districts or voluntary authorized agencies.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

The proposed regulations are required to implement the state law, Chapter 623 of the Laws of 2008 and the federal Adam Walsh Child Protection and Safety Act of 2006.

9. Federal standards:

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) eliminated the ability of states to opt out of the federal criminal history record review requirements set forth in section 471(a)(20) of the Social Security Act for prospective foster and adoptive parents. New York State had opted out of the federal requirements in 2000 through Chapter 145 of the Laws of 2000 that created the category of presumptive disqualifying crimes. Effective October 1, 2008, for a state to have a compliant Title IV-E State Plan, the state must apply the federal criminal history record review standards for applicants for certification or approval as foster or adoptive parents. Those standards prohibit the final certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for abuse or neglect, spousal abuse, or a crime against a child or for a crime involving violence. In addition, the federal statutes prohibit final certification or approval of a prospective foster or adoptive parent who has been convicted within 5 years of such application for assault or a drug related offense.

10. Compliance schedule:

Chapter 623 of the Laws of 2008 provides for an October 1, 2008 effective date of the standards set forth in the regulations. OCFS is developing the necessary revised forms and instructions to authorized agencies to implement the revised standards.

Regulatory Flexibility Analysis

1. Effect on small business and local governments:

The regulations will affect social services districts, Indian tribes with an agreement with the State of New York to provide foster care and adoption services and voluntary authorized agencies that certify or approve prospective foster and adoptive parents. There are 58 social services districts and approximately 160 voluntary authorized agencies. The St. Regis Mohawk Tribe has an agreement with the State of New York to provide foster care and adoption services.

2. Reporting, recordkeeping and compliance requirements:

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The 2006 federal Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional recordkeeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Professional services:

No new or additional professional services would be required by small businesses or local governments in order to comply with the regulations.

4. Compliance costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately $600 million in federal Title IV-E funding earned on an annual basis.

5. Economic and technological feasibility:

The social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe affected by the regulations have the economic and technological ability to comply with the regulations. The regulations do not expand the categories of persons for whom a criminal history record review must be completed. OCFS is making modifications to the statewide automated child welfare information system, CONNECTIONS and to its criminal history information system, CHRS to support and implement the regulations.

6. Minimizing adverse impact:

The regulations reflect specific amendments to state statute enacted by Chapter 623 of the Laws of 2008 and amendments to federal standards as enacted by the Adam Walsh Child Protection and Safety Act of 2006. The process for fingerprinting foster or adoptive parents and other persons over the age of 18 who reside in the home of the applicants has been the same since 1999 for in-state checks through the New York State Division of Criminal Justice Services and since 2007 for national checks through the Federal Bureau of Investigation. While the regulations will change the standards following the receipt of the result of the criminal history check, the regulations will not change the process for taking and reviewing of fingerprints. The regulations build on existing procedures.

7. Small business and local government participation:

OCFS advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks in the federal Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster /Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCFS-INF-07 Preparation for the Elimination of the ''Out-Out'' Provision for conducting Criminal History Record Checks) issued May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of that conference is also is available to all agencies that were not able to attend.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect 44 social services districts that are defined as being rural counties and the seven social services districts that include significant rural areas within their borders. The regulations will also affect the St. Regis Mohawk Tribe that has an agreement with the State of New York to provide foster care and adoption services and which services a rural community. In addition, there are approximately 100 voluntary authorized agencies that service rural communities that will be affected by the regulations.

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

The regulations are necessary to comply with federal and state statutory requirements relating to criminal history record reviews of persons applying for certification or approval as foster or adoptive parents. The regulations reflect the enactment by Chapter 623 of the Laws of 2008 regarding mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents and the elimination of the category of presumptive disqualifying crimes for such applicants. The adoption of mandatory disqualifying crimes is required by the federal Adam Walsh Child Protection and Safety Act of 2006 in order to enable New York State to continue to receive federal funding for foster care and adoption assistance pursuant to Title IV-E of the Social Security Act. The federal 2006 Act requires implementation of this provision effective October 1, 2008.

Social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe will continue to process requests for criminal history record reviews as originally mandated by Chapter 7 of the Laws of 1999. The regulations reflect modifications to the standards for the certification or approval of prospective foster or adoptive parents when an applicant has been convicted of a mandatory disqualifying crime.

The regulations will not impose additional recordkeeping or reporting requirements on agencies. The regulations will eliminate a notification that is presently required in regard to presumptive disqualifying crimes.

3. Costs:

The regulations are necessary to comply with federal requirements that states perform background checks and review the criminal history of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the Social Security Act effective October 1, 2008. New York State must implement the provisions set forth in these regulations by October 1, 2008, or face significant losses of earned federal revenue. The enactment of Chapter 623 of the Laws of 2008 and these regulations will preserve approximately $600 million in federal Title IV-E funding on an annual basis.

4. Minimizing adverse impact:

It is anticipated that the regulations will not have an adverse impacts on rural areas.

5. Rural area participation:

The Office of Children and Family Services (OCFS) advised social services districts, voluntary authorized agencies and the St. Regis Mohawk Tribe of the federal amendment to criminal history record checks by the Adam Walsh Child Protection and Safety Act of 2006 and the anticipated impact on New York State standards in an administrative directive (07-OCFS-ADM-01 State and National Criminal History Record Checks (for Foster/Adoptive Parents) issued on February 7, 2007. A reminder of the federal statutory change and related impact on New York State standards was sent to the same parties in an informational letter (08-OCF-INF-07 Preparation for the

Elimination of the ''Opt-Out'' Provision for Conducting Criminal History Record Checks) issued on May 21, 2008. The federal statute was posted on the OCFS website and was discussed at a statewide video conference held in October of 2006 at which agencies were invited to view and to ask questions. A tape of the video conference is available for agencies not able to attend.

Job Impact Statement

A full job impact statement has not been prepared for the regulations which contain new requirements imposed by Chapter 623 of the Laws of 2008. The regulations will not have an impact on jobs and employment opportunities because they will not impact the number of staff authorized agencies must maintain to certify, approve or supervise foster or adoptive homes. The regulations impact persons who are not in an employment relationship with the agency.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-10-00006-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading ''Office of Homeland Security,'' by adding thereto the position of Community Relations Specialist and by increasing the number of positions of Special Assistant from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-10-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Environmental Conservation, by deleting therefrom the position of Program Associate (Assigned to Executive Chamber) and by increasing the number of positions of Special Assistant from 15 to 17.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-10-00008-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY Health Science Center at Syracuse," by adding thereto the positions of Senior Operating Room Technician (15).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy

Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-10-00009-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading ''Office of Alcoholism and Substance Abuse Services,'' by decreasing the number of positions of Associate Counsel from 3 to 2 and by adding thereto the position of Deputy Counsel.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-10-00010-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Economic Development, by deleting therefrom the position of Industrial Development Representative (1); and, in the Department of Labor under the subheading ''State Employment Relations Board,'' by deleting therefrom the positions of Senior Attorney (5).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-04-10-00003-P, Issue of January 27, 2010.

Department of Environmental Conservation

NOTICE OF ADOPTION

The Commercial and Recreational Harvest Limits for Winter Flounder

I.D. No. ENV-48-09-00003-A

Filing No. 44

Filing Date: 2010-01-26

Effective Date: 2010-02-10

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-c

Subject: The Commercial and Recreational Harvest Limits for Winter Flounder.

Purpose: To reduce the commercial and recreational harvest limits of winter flounder and remain in compliance with ASMFC management plans.

Text or summary was published in the December 2, 2009 issue of the Register, I.D. No. ENV-48-09-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0483, email: swheins@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

Assessment of Public Comment

Question #13. The department received two written comments on the proposed rule, both from the same individual who, in one case was representing the Coastal Conservation Association - New York (CCA NY) and, in the other, himself. The comments were identical and are summarized as follows: Coastal Conservation Association - New York strongly opposes the proposed winter flounder management measures and strongly supports the imposition of a total moratorium on harvest of winter flounder on the following grounds:

1. The State's clear policy (as given in Environmental Conservation Law) with respect to the management of marine resources, including winter flounder, requires that a complete moratorium on harvest be imposed;
2. The economic considerations cited in the DEC statement are inadequate grounds for rejection of the moratorium option;
3. New York's failure to adopt a harvest moratorium, based on the failure of any other state to take similar action, is supported neither by biology nor law; and
4. Imposing a harvest moratorium on the winter flounder fishery would be consistent with the policy recently adopted by the DEC with respect to Hudson River shad.

Department response: The department agrees that the current state of winter flounder stocks does indeed call for strong action on the part of the department. The department feels the difficult decision to comply with the requirements of the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for winter flounder and not impose a total moratorium at this time was the proper one.

The department disagrees that the action taken is contrary to the policy for natural resources management given in state law. This action will significantly reduce fishing mortality in state waters while allowing some by-catch of flounder that may be killed incidentally as a result of fishing activity targeted at other species. This action is entirely consistent with such policy, and gives primary consideration to the health of the resource and secondary consideration to associated socioeconomic affects of fishery management actions. What CCA NY may have defined as the primary principle guiding the management of New York's marine fisheries, it is not the sole principle guiding management decisions.

The department disagrees with CCA's contention that socioeconomic needs of a fishery are inadequate grounds for rejection of a total moratorium. A complete moratorium on harvest in New York was given detailed consideration and discussed openly with the fishing industry and the Marine Resources Advisory Council (MRAC). However, many New York State commercial fishermen rely on harvesting winter flounder for the income it provides. They strongly objected to a total moratorium on winter flounder harvest. Up to now, there has been little restriction on the commercial fishery. Fishermen told the department they felt a 200-to-300 pound trip limit would be restrictive without imposing significant economic hardship, but that anything close to a total moratorium would be economically devastating. Representatives of party and charter boat businesses and bait and tackle shops claimed they would lose many of their customers who target winter flounder during the recreational season if a total moratorium were imposed, and so were opposed to such action. Representatives of the party boat fishery suggested a reduction in the recreational possession limit to 4 fish per angler, which would allow them to continue to run targeted trips. Furthermore, the MRAC reviewed the current status of the winter flounder fishery in New York, the recommendations of ASMFC, and the options the department had to manage the imperiled winter flounder resources in state waters. The MRAC then recommended that the department follow the ASMFC requirements for reducing fishing mortality on winter flounder. The MRAC did not support a total moratorium on this fishery.

The department took socioeconomic concerns into account when adopting the current American shad regulations, which allow a very limited take of shad in the Hudson River and a by-catch in the ocean fisheries. The moratorium on harvest of American shad was proposed only after it became clear that the current measures had done nothing to halt or reverse the decline of American shad in the Hudson River.

The economic impacts of a moratorium on winter flounder fishing on New York State commercial fishermen cannot be neglected in the management decision process. Even if New York State prohibits the harvest of winter flounder, New Jersey, Connecticut and Rhode Island would remain open for this fishery. Winter flounder from these states would be found in New York State markets, denying local state fishermen economic opportunities that would remain available in neighboring states.

The course of action chosen by the department is recommended by ASMFC and has also been chosen by all member states of ASMFC. New York State will be in compliance with the fishery management plan for winter flounder and the recommendations of ASMFC. The Mid-Atlantic Fishery Management Council, National Marine Fisheries Service, ASMFC and the department will continue to monitor the winter flounder populations along the Atlantic coast. If no progress toward arresting the decline in population or toward the restoration of the winter flounder stocks is made, further restrictions to protect this resource will be put in effect.

Hudson River - Black River Regulating District

EMERGENCY RULE MAKING

Apportionment Grievance Hearing Procedure

I.D. No. HBR-06-10-00002-E

Filing No. 37

Filing Date: 2010-01-22

Effective Date: 2010-01-22

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

Action taken: Addition of sections 606.126 through 606.134 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 15, title 21, sections 15-2109(1) and 15-2121(5)

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

Specific reasons underlying the finding of necessity: Adoption of the proposed rule pursuant to the traditional SAPA rulemaking process could take months to complete. During the pendency of such rulemaking process, the Board may be in a position to issue a new apportionment and, upon approval of that apportionment by DEC, a new assessment. Such assessment is necessary to secure revenue or, absent immediate collection of such revenue, to support a tax anticipation note. Revenue is necessary to the Regulating District's continued operation and, absent some other agency's adoption of the Regulating District's mission, the maintenance of the high-hazard impoundments under its control. The efficient conduct of the apportionment grievance hearing is central to the successful collection of the assessed amounts following the reapportionment effort. Further, because the Regulating District's available reserves will be exhausted before the final adoption of the proposed rule pursuant to the traditional SAPA process, the Regulating District does not have time to adhere to that process.

Based on the foregoing, and upon the approval granted by the Governor's Office of Taxpayer Accountability; and the NYS Department of Environmental Conservation, the Regulating District Board finds that adoption of the apportionment grievance hearing rule proposal as an emergency rule at the same time that the Regulating District submits the rule to the Governor's Office of Regulatory Reform (GORR) for consideration pursuant to the traditional SAPA process, will afford the Regulating District the opportunity to put the apportionment grievance hearing rule into immediate effect for a period of 90 days. Further, upon such basis the Board finds that Emergency Adoption is necessary for the preservation of public safety or the general welfare and that compliance with the regular rulemaking process would be contrary to the public interest. The Board finds that such circumstances exist in that, without an immediate infusion of cash pursuant to a new assessment, the Regulating District will not be in a position to maintain staff nor perform routine maintenance necessary to protect the high hazard dams under its control.

Subject: Apportionment Grievance Hearing Procedure.

Purpose: To establish a simplified due process procedure for contesting the apportionment of Regulating District costs.

Text of emergency rule: PART 606

Review of Apportionment

(Statutory Authority: Environmental Conservation Law, §§ 15-2109(1) and 15-2121(5))

Section 606.126 Apportionment Purpose. Pursuant to statute, the board of the Hudson River-Black River Regulating District must prepare an estimate of the cost of the reservoirs operated by the regulating district and then apportion such cost, less the amount which may be chargeable to the state, among the public corporations and parcels of real estate benefitted, in proportion to the amount of benefit which will inure to each such public corporation or parcel of real estate by reason of such reservoir. The regulating district board shall certify such apportionment to the department of environmental conservation for approval. Upon department approval, the apportionment shall be served and filed as required by statute.

Section 606.127 Apportionment date. The regulating district shall by resolution determine the apportionment date. The value, condition and ownership of parcels of real estate benefitted by the operation of the reservoir shall be determined as of the apportionment date. Unless directed to modify the apportionment by the department, the regulating district may not unilaterally modify the apportionment until after the conclusion of the apportionment grievance hearing.

Section 606.128 Publication of the Apportionment. Upon approval of the department, the regulating district board shall place a notice in the regulating district's official newspapers detailing when and where the apportionment roll and the data upon which it is based will be available for review. The notice shall specify:

1) The apportionment date;

2) The address and telephone number for the regulating district office at which aggrieved persons may make an appointment with regulating district staff to review the apportionment;

3) The address and telephone number for the regulating district office at which formal complaints may be filed;

4) The last date for the filing of formal complaints;

5) The date upon which aggrieved parties must notify the board regarding the basis for the complaint and approximate time required to present written and/or oral testimony in support of the complaint, and;

6) The date, time and place for the apportionment grievance hearing at which the regulating district board shall hear formal complaints.

Section 606.129 Apportionment Grievance Hearing. Following department approval, service and filing, the regulating district board shall, upon not less than 45 days notice, conduct a public hearing at which all public corporations and owners of parcels of real property interested in or aggrieved by the apportionment shall be afforded an opportunity to present documentary and/or oral testimony contesting such apportionment.

Section 606.130 Notice to Board of Intent to Seek Modification. Following the board's publication of notice that it will conduct a public hearing, and at least seven days prior to the commencement of that public hearing, any public corporation or person deeming themselves to have been aggrieved shall notify the Board in writing regarding the basis for the requested modification to the apportionment. The aggrieved party's written complaint shall provide an estimate of the time necessary to present evidence at the apportionment grievance hearing and must be received by the board, at the address indicated on or before the date and time indicated in the board's published notice. The Board shall cause to be published on its website a copy of each such written complaint.

Section 606.131 Complaint Procedure. The complaint should include statements, records and other relevant information to support the requested apportionment modification. The aggrieved party may appear at the apportionment grievance hearing in person to present oral and written testimony, and may appear with or without an attorney or other representative. Authorization for appearances by counsel or other representation must be put in writing and bear a date within the same calendar year in which the complaint is filed. A quorum of the regulating district board will preside at the apportionment grievance hearing. The Board may require an aggrieved party to submit additional evidence and, should the party willfully refuse to submit such evidence, or should the aggrieved party refuse to answer any material question, the aggrieved party will not be entitled to an apportionment modification or subsequent judicial review.

Section 606.132 Conduct of Apportionment Grievance Hearing. There is a presumption that the apportionment determined by the regulating district and approved by the department is correct. The burden to prove otherwise, by substantial evidence, lies with the public corporation or owner of a parcel of real property interested in or aggrieved by the apportionment. Only the current apportionment may be aggrieved. A separate complaint must be filed for each parcel or public corporation.

Section 606.133 Modification of Apportionment following Apportionment Grievance Hearing. If, after examining documentary evidence and hearing testimony, the regulating district board shall modify such apportionment, the revised apportionment shall not become effective until approved by the department of environmental conservation and a copy thereof is served and filed in the same manner as upon the completion of the same in the first instance at which time the apportionment shall be final and conclusive. If the regulating district board adopts a resolution approving the apportionment without modification, the apportionment shall be final and conclusive.

Section 606.134 Judicial Review. Parties dissatisfied with the final apportionment determination may elect to challenge such apportionment pursuant to Article 78 of the New York Civil Practice Law and Rules.

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 April 21, 2010.

Text of rule and any required statements and analyses may be obtained from: Glenn A. LaFave, Executive Director, Hudson River-Black River Regulating District, 350 Northern Boulevard, Albany, New York 12204, (518) 465-3491, email: hrao@hrbrrd.com

Regulatory Impact Statement

1. Statutory Authority

The Hudson River - Black River Regulating District (''the District'') is a public corporation created pursuant to Environmental Conservation Law (ECL) Article 15, Title 21. ECL Section 15-2103 declares, ''…river regulating districts may be created…'' pursuant to ECL Title 21 of Article 15 ''…to construct, maintain and operate reservoirs within such districts…'' ECL section 15-2105 sets forth direction and criteria for the organization of the boards of river regulating districts and pursuant to ECL section 15-2109(1), ''The board shall have the power to make all necessary rules and regulations which shall be effective when approved by the department.''

2. Legislative Objective

The Regulating District was created to regulate the flow of the Hudson River and Black River, primarily for the purposes of flood control and augmentation of low flows. Pursuant to NY ECL 15-2121, the legislature directed the Regulating District Board to apportion the costs to construct and operate the necessary reservoirs, less the amount chargeable to the state, among the public corporations and parcels of real estate benefitted thereby. Embodied within that mandate is a requirement that the Board meet at a time and place specified to hear all persons and public corporations interested in or aggrieved by such apportionment and that upon approval or modification of the apportionment, such person or public corporation aggrieved may upon notice to the Board review the determination of the Board in the same manner as a review is had of the determination of a board of assessors in making an assessment. The proposed rule establishes a grievance hearing procedure including notice provisions, complaint parameters, hearing conduct standards and imposing the burden of proof.

The Regulating District's current Rules and Regulations, which govern the use, operation and maintenance of the Great Sacandaga Lake, 6 NYCRR Part 606, were approved on July 13, 1992 by the

New York State Department of Environmental Conservation (NYSDEC), adopted October 19, 1992 by Resolution of the Board of the Hudson River-Black River Regulating District, and became effective January 27, 1993. The current rules do not establish a procedure for interested and/or aggrieved parties to exhaust administrative remedies before challenging the statutorily mandated apportionment in a court of law.

The proposed rule additions are consistent with the current rules and regulations previously approved by the NYSDEC to administer the Access Permit System, but will themselves be subject to Department approval as required by NY ECL 15-2109(1).

3. Needs and Benefits

Needs:

The Proposed Rules are required to allow for the efficient administration of the apportionment grievance process. By statute, the Regulating District is required to prepare a statement showing each public corporation and a description of each parcel of real estate benefitted by the Regulating District's reservoirs and the percentage of the Regulating District's costs to be borne by each. This ''apportionment'' statement is to be filed with the clerk of each county, town, village, or city affected or containing any real estate which is benefited. NY ECL 15-2123(3) requires that the legislative body of every such county, town, village or city levy and assess such costs upon the relevant public corporation. The statute further requires that such assessments be collected in the same manner and by the same procedure as general taxes are collected. In short, the Regulating District's costs are to be assessed upon benefited public corporations and parcels based on an apportionment of those costs among those benefited public corporations and parcels. The proposed rules articulate the process through which the counties, towns, villages and cities, as well as the owners of individual parcels, can challenge the Regulating District's determination regarding who should bear the cost to maintain the reservoir facilities which prevent flooding and provide low flow augmentation to the communities benefited.

Benefits:

These Proposed Rules will improve the efficiency, predictability, understanding and fairness of the process by which those public corporations and owners of parcels of real estate chosen to share in the cost to operate the Regulating District's facilities can assure themselves that those costs are appropriately allocated among those who benefit from such facilities. Providing an efficient, transparent, forum through which affected parties can advocate for modifications to the apportionment of costs will serve to limit unnecessary effort and expense by the Regulating District and those affected parties.

4. Costs

Cost to Regulated Parties

As stated above, the Proposed Rules are being developed to provide predictability and finality to the statutorily mandated apportionment grievance process. The public corporations and parcels of real estate benefited by the maintenance and operation of the Regulating District's reservoirs and related facilities have, to a great extent, received those benefits for decades without shouldering the full burden of providing those benefits. In light of the shift in responsibility occasioned by a federal court decision, many of those municipalities will, for the first time, be faced with collecting and paying assessments for benefits their constituents have taken for granted.

The Regulating District's enabling statute requires that the Regulating District Board apportion the costs to operate the Regulating District's facilities, less the amount which may be chargeable to the state, among the public corporations and parcels of real estate benefited by such facilities in proportion to the amount of benefit which shall inure to each, NY ECL § 15-2121. The United States Court of Appeals' Albany Engineering v. FERC decision, (2008, 548 F.3rd 1071), has forced the Regulating District to reapportion most costs from the FERC licensed merchant power plants along the Hudson and Sacandaga Rivers to the public corporations in that area. NY ECL § 15-2121 also requires that the Regulating District Board allow persons and public corporations interested in or aggrieved by the Board's apportionment determination to review such determination in the same manner as a review is had of a determination of a board of assessors in making an assessment. The proposed rule establishes a grievance hearing procedure to facilitate the efficient administration of the determination review required by NY ECL § 15-2121(5).

The Proposed Rules implement the statutory requirement for a cost effective, non-judicial, forum through which interested and aggrieved parties can raise concerns and have those concerns addressed. Municipalities will realize cost savings by being able to direct individual constituents to participate in the Regulating District's apportionment grievance hearing process rather than face administrative and court challenges themselves. The Proposed rules will provide the municipalities with definite timeframes, clear direction regarding complaint process and content, and a transparent open meeting at which to rebut established presumptions by meeting the proscribed burden of proof. It is anticipated that public corporations will utilize existing resources to present their concerns, in writing and through oral testimony at hearing, without the need for consultants and/or specialized models or evidence. Non-public interested or aggrieved parties will face costs similar to those faced when mounting an assessment challenge.

Cost to Agency

The Regulating District has developed the Proposed Rules utilizing existing staff as an in-house project. The Proposed Rules are not expected to result in additional costs for implementation beyond what the District currently incurs for administration of its typical monthly meeting schedule. The Proposed Rules are expected to facilitate the efficient collection of the Regulating District's periodic assessment. A transparent, open grievance process is less costly than defending Article 78 challenges.

Cost to Local Governments

The Regulating District will be solely responsible for administering the apportionment grievance hearing process. The municipalities have no responsibility for administration. It is important to note that the District pays approximately $2.6 million in property taxes annually to the municipalities and other taxing jurisdictions around Great Sacandaga Lake and the payment of those taxes will not be affected by this rulemaking.

5. Local Government Mandates

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

6. Paperwork

This rule will not impose any reporting requirement, including forms or other paperwork.

7. Duplication

No rules or other legal requirements of either the State or federal government exist at the present time which duplicate, overlay or conflict with the Proposed Rules.

8. Alternatives

The first alternative is the ''null alternative'' or the ''do nothing'' alternative. For decades, the Regulating District utilized an apportionment completed in 1925 to allocate its costs among the parcels of real estate and public corporations benefited by the flood control and flow augmentation provided by the Regulating District's facilities. As such, the statutory provisions which derive from legislation enacted at the turn of the 20th century have remained untested for more than 80 years. In addition, the advent during the 1970's of modern procedures for municipal tax assessment challenges have obscured the procedures used as a guidepost by the Regulating District's enabling statute. Establishing streamlined, transparent procedures through which parties can ensure that they, and their constituents, are assessed only for their appropriate share of the Regulating District's costs weighed against the use of the null alternative.

The process for establishing new grievance hearing procedures resulted in multiple drafts. The first Draft was subject to analysis by the Regulating District's sister state agencies, such as the Department of Environmental Conservation and the Office of Real Property Services.

9. Federal Standards

The federal government has set no standards for the same or similar subject areas addressed by the Proposed Rules. Pursuant to Article 408 of the license issued to the Regulating District by the Federal Energy Regulatory Commission (FERC) the District is required to notify FERC during any rulemaking process affecting Title 6, Part 606 of the New York Code of Rules and Regulations.

10. Compliance Schedule

Upon publication of the Notice of Adoption in the State Register, all regulated parties shall be required to comply with the Proposed Rules.

Regulatory Flexibility Analysis

Pursuant to SAPA § 202-b(3)(a)(ii), the Hudson River Black River Regulating District (the ''District'') is not required to prepare a Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASB/LG)) because the Proposed Rules will not impose adverse economic impacts or recordkeeping compliance requirements on small businesses or local governments. Pursuant to the requirements of SAPA, the following represents the statement of findings and the reasons upon which the finding was made that the Rules would impose no adverse economic impacts.

Small Businesses

The affected parties will include both commercial and non-commercial parties with property or interests lying within designated floodplains in either the Hudson River Area or the Black River Area. The majority of the affected parties will include non-commercial parties. The commercial parties primarily include non-FERC licensed hydropower entities and retail outlets, marinas, restaurants, warehouse and industrial facilities located within the floodplain adjacent to the Sacandaga and Hudson Rivers and similar commercial parties within similar floodplains for the Black, Beaver and Moose Rivers. These non-commercial and commercial parties own property within one or both of the Regulating District's two River Areas. The Regulating District anticipates preparation of maps and/or property descriptions which clearly delineate those parcels in a given municipality falling within the designated floodplain. The Proposed Rules will provide property owners with 45 days to view such map or description and will guide interested or aggrieved parties in the preparation and submission of written complaints.

The Proposed Rules are not expected to result in an increased need for small businesses to hire professional consultants for compliance. The Proposed Rules will not require small businesses to purchase or lease new computer equipment, hardware or software. The Proposed Rules will not require small business to prepare any additional reports or keep additional records. As stated in the RIS, the Proposed Rules are being developed to provide predictability and finality to the apportionment grievance process.

Local Government Mandates

There will be no costs to local governments for the implementation of the Proposed Rules because the Regulating District will fully administer and fund the apportionment grievance process. Local governments will have the option to contest, but need not contest, an apportionment which affects the municipality and/or its constituents. The Regulating District pays approximately $2.6 million in property taxes to the municipalities and other taxing jurisdictions around Great Sacandaga Lake, and the payment of these taxes will not be affected by this rulemaking.

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

Rural Area Flexibility Analysis

Pursuant to SAPA § 202-bb(2), in developing a rule, agencies must consider utilizing approaches to accomplish the objectives of a statute while minimizing any adverse impact on public and private sector interests in rural areas. For the purposes of this SAPA evaluation, a rural area is defined as a county having a population less than 200,000. The eight counties with corporate boundaries within the Hudson River area include: Albany; Rensselaer; Hamilton; Fulton; Washington; Warren; Essex; and Saratoga counties. The five counties with corporate boundaries within the Black River area include: Jefferson; Lewis; Herkimer; Oneida; and Hamilton counties Of the twelve counties within the two river areas, Essex, Rensselaer, Hamilton, Washington, Warren, Fulton, Jefferson, Lewis, Herkimer and Oneida counties each have a population of less then 200,000 persons, and therefore, the potential impacts on these counties must be considered.

Pursuant to SAPA § 202-bb(4)(a) a Rural Area Flexibility Analysis (RAFA) is not required because the Proposed Rules will not impose adverse impacts or reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Pursuant to the requirements of SAPA, the following represents the statement of findings and the reasons upon which the finding was made that the rule would impose no adverse impacts or recordkeeping compliance requirements:

Small Businesses

The affected parties will include both commercial and non-commercial parties with property or interests lying within designated floodplains in either the Hudson River Area or the Black River Area. The majority of the affected parties will include non-commercial parties. The commercial parties primarily include non-FERC licensed hydropower entities and retail outlets, marinas, restaurants, warehouse and industrial facilities located within the floodplain adjacent to the Sacandaga and Hudson Rivers and similar commercial parties within similar floodplains for the Black, Beaver and Moose Rivers. These non-commercial and commercial parties own property within one or both of the Regulating District's two river areas.

The Regulating District anticipates preparation of maps and/ or property descriptions which clearly delineate those parcels in a given municipality falling within the designated floodplain. The Proposed Rules will provide property owners with 45 days to view such map or description and will guide interested or aggrieved parties in the preparation and submission of written complaints.

The Proposed Rules are not expected to result in an increased need for small businesses to hire professional consultants for compliance. The Proposed Rules will not require small businesses to purchase or lease new computer equipment, hardware or software. The Proposed Rules will not require small business to prepare any additional reports or keep additional records. As stated in the RIS, the Proposed Rules are being developed to provide predictability and finality to the apportionment grievance process.

Local Government Mandates

There will be no costs to local governments for the implementation of the Proposed Rules because the Regulating District will fully administer and fund the apportionment grievance process. Local governments will have the option to contest, but need not contest, an apportionment which affects the municipality and/or its constituents. The Regulating District pays approximately $2.6 million in property taxes to the municipalities and other taxing jurisdictions around Great Sacandaga Lake, and the payment of these taxes will not be affected by this rulemaking.

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts.

Job Impact Statement

Pursuant to SAPA § 201-a(2)(a), a Job Impact Statement for the Proposed Rule additions is not required because it is apparent from the nature and purposes of the Proposed Rules that they will not have a substantial adverse impact on jobs and employment opportunities. The Proposed Rules are required to allow for the efficient administration of the apportionment grievance process.

The affected parties will include both commercial and non-commercial parties with property or interests lying within designated floodplains in either the Hudson River Area or the Black River Area. The majority of the affected parties will include non-commercial parties. The commercial parties primarily include non-FERC licensed hydropower entities and retail outlets, marinas, restaurants, warehouse and industrial facilities located within the floodplain adjacent to the Sacandaga and Hudson Rivers and similar commercial parties within similar floodplains for the Black, Beaver and Moose Rivers. These non-commercial and commercial parties own property within one or

both of the Regulating District's two river areas. The proposed rules do not affect the Regulating District's authority to impose assessments upon affected parties, but rather provide clarity to the process necessary to successfully contest such charges. Therefore, there will be no impact on jobs.

Insurance Department

NOTICE OF ADOPTION

Conduct, Trustworthiness and Competence of Insurance Producers, Especially Relating to Compensation Arrangements with Insurers

I.D. No. INS-48-09-00002-A
Filing No. 45
Filing Date: 2010-01-27
Effective Date: 2011-01-01

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

Action taken: Addition of Part 30 to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301; and art. 21

Subject: Conduct, trustworthiness and competence of insurance producers, especially relating to compensation arrangements with insurers.

Purpose: To require insurance producers to make certain disclosures about their role in the insurance transaction to insurance customers.

Text of final rule: A new Part 30 is added to read as follows:

§ 30.1 Purposes.

The purposes of this Part are:

(a) to implement the New York Insurance Law by regulating the acts and practices of insurers and insurance producers with respect to transparency of compensation paid to insurance producers and their role in insurance transactions in this State; and

(b) to protect the interests of the public by establishing minimum disclosure requirements relating to the role of insurance producers and the compensation paid to insurance producers.

§ 30.2 Definitions.

For purposes of this Part:

(a) Compensation means anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, trips, prizes, or gifts, whether paid as commission or otherwise. Compensation does not mean tangible goods with the insurer name, logo or other advertisement and having an aggregate value of less than $100 per year per insurer.

(b) Purchaser means the person or entity to be charged under an insurance contract or a group policyholder and may include the named insured, policyholder, owner of a life insurance policy or annuity contract, principal under a bond, or other person to be charged, including an applicant for insurance, bond or annuity; but does not include a certificate holder or member under a group or blanket insurance contract unless the insurance producer has direct sales or solicitation contact with the certificate holder or member, and the certificate holder or member pays all of the premium.

(c) Insurer means any person or entity doing an insurance business in this State.

(d) Insurance contract means an insurance policy, surety bond, contract of guarantee, or annuity contract.

(e) Insurance producer or producer means any insurance producer as defined by Insurance Law section 2101(k).

§ 30.3 Disclosure of producer compensation, ownership interests and role in the insurance transaction.

(a) Except as provided in section 30.5 of this Part, an insurance producer selling an insurance contract shall disclose the following information to the purchaser orally or in a prominent writing at or prior to the time of application for the insurance contract:

(1) a description of the role of the insurance producer in the sale;

(2) whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract the producer sells;

(3) that the compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance contracts that the producer provides to the insurer; and

(4) that the purchaser may obtain information about the compensation expected to be received by the producer based in whole or in part on the sale, and the compensation expected to be received based in whole or in part on any alternative quotes presented by the producer, by requesting such information from the producer.

(b) If the purchaser requests more information about the producer's compensation prior to the issuance of the insurance contract, the producer shall disclose the following information to the purchaser in a prominent writing at or prior to the issuance of the insurance contract, except that if time is of the essence to issue the insurance contract, then within five business days:

(1) a description of the nature, amount and source of any compensation to be received by the producer or any parent, subsidiary or affiliate based in whole or in part on the sale;

(2) a description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage;

(3) a description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate;

(4) a description of any material ownership interest the insurer issuing the insurance contract or any parent, subsidiary or affiliates has in the insurance producer or any parent, subsidiary or affiliate; and

(5) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

(c) If the purchaser requests more information about the producer's compensation after issuance of the insurance contract but less than thirty days after issuance, then the insurance producer shall disclose to the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within five business days.

(d) If the nature, amount or value of any compensation to be disclosed by the insurance producer is not known at the time of the disclosure required by subdivision 30.3 (b) or (c) of this section, then the insurance producer shall include in the disclosure:

(1) a description of the circumstances that may determine the receipt and amount or value of such compensation, and

(2) a reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

(e) If the disclosure required by subdivision (a) of this section is provided orally, then the insurance producer shall also disclose the information required by subdivision (a) of this section to the purchaser in a prominent writing no later than the issuance of the insurance contract.

(f) An insurance producer shall not make statements to a purchaser contradicting the disclosures required by this section or any other misleading or knowingly inaccurate statements about the role of the insurance producer in the sale or compensation.

§ 30.4 Retention of disclosure.

The insurance producer shall retain a copy of any written disclosure provided to the purchaser pursuant to section 30.3 of this Part for not less than three years after the disclosure is given, unless the insurance producer has a written agreement with the insurer that the insurer shall retain such a copy.

§ 30.5 Exceptions.

This Part shall not apply:

(a) to the placement of reinsurance;

(b) to the placement of insurance with a captive insurance company pursuant to Article 70 of the Insurance Law;

(c) to an insurance producer that has no direct sales or solicitation contact with the purchaser, which may include wholesale brokers or managing general agents;

(d) to a sale of insurance by a person who is not required to be licensed as an insurance producer under Insurance Law section 2102(a)(1) for the purposes of that sale; or

(e) to renewals, except that if the purchaser requests more information about the producer's compensation less than 30 days prior to a renewal or less than 30 days after a renewal, the insurance producer shall disclose to the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within five business days.

§ 30.6 Obligations of an authorized insurer.

The amount of any compensation that an authorized insurer or its agent pays to an insurance producer shall be maintained by the insurer in accordance with Part 243 of this Title (Regulation 152).

§ 30.7 Conformity with other laws.

Nothing in this Part shall be construed in a manner inconsistent with, or in violation of, Insurance Law sections 2119, 2324, 4224, or other provisions of the Insurance Law and regulations promulgated thereunder.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 30.2, 30.3, 30.4 and 30.5.

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

Summary of Revised Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of this Part derives from Insurance Law Sections 201 and 301, and Article 21 of the Insurance Law.

Insurance Law Sections 201 and 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, and to prescribe regulations interpreting the Insurance Law. Section 201 says that the ''superintendent shall possess the rights, powers, and duties, in connection with the business of insurance in this state, expressed or reasonably implied by this chapter or any other applicable law of this state.''

Article 21 establishes the requirements, including standards of competency and trustworthiness, for obtaining and renewing certain licenses, including agents (Section 2103), brokers (Section 2104), adjusters (Section 2108), consultants (Section 2107), and intermediaries (Section 2106). It also provides for the investigation and disciplining of the licensees (Sections 2110 and 2127). Provided that the regulation is not inconsistent with some specific statutory provision, the Superintendent may broadly interpret, clarify and implement legislative policy and effectuate any powers that the Insurance Law reasonably implies.

In order to protect all insurance customers, the proposed regulation exercises the Superintendent's broad authority under Section 201, by requiring Article 21 licensees to disclose the potential conflict that arises due to the differences in the amount of compensation an insurer pays to its producers.

2. Legislative objectives: The Legislature vested in the Superintendent the authority to regulate the conduct, trustworthiness, and competence of insurance producers (insurance agents, insurance brokers and excess line brokers, reinsurance intermediaries, and limited lines licensees) to protect all insurance customers, whether for personal or commercial insurance.

3. Needs and benefits: Insurers compensate insurance producers for their role in placing and selling insurance by paying compensation, including commissions and other items or benefits of monetary value. Compensation arrangements typically differ from insurer to insurer, with some insurers paying not only commissions by the policy, but also by the total volume generated by a producer or the profitability of the insurance contracts the producer provides to the insurer. Individual consumers and commercial interests typically rely on insurance producers to assist them with obtaining information about available insurance policies and evaluating those policies to determine which are best suited to the customer's needs.

There is nothing inherently improper about an incentive-based compensation arrangement between an insurer and the producer, but due to the differences in each insurer's compensation arrangement, a potential conflict of interest may arise when an insurance policy that would earn the producer the greatest compensation for its sale is not the most appropriate insurance for the customer in terms of coverage, service or price. This may create an incentive for the producer to recommend that policy to the customer. This could arise not only with respect to policies offered by competing insurers, but even with respect to different policies offered by one insurer, where the nature and extent of the compensation may vary depending upon the particular policy form or type of policy.

Indeed, the New York State Attorney General and the New York State Insurance Department commenced a joint investigation in 2004 that uncovered instances of criminal bid rigging by a large insurance broker and several large insurers, as well as steering schemes involving a number of major insurers and other insurance producers. The investigation culminated in settlements between 2005 and 2006 under which producers and insurers paid more than $1 billion to recompense customers for harm resulting from bid rigging and steering.

The issue also goes beyond the large brokers and insurance companies investigated by the Attorney General and the Department. Consumer representatives have told the Department repeatedly that insurance purchasers (particularly individual consumers of personal lines products like auto, homeowners and life) do not understand the role of the insurance producer in the insurance transaction. Consumer representatives also pointed out that consumers often do not understand that producers receive incentive-based compensation that may affect the recommendations the producers make, and therefore rarely ask for such information. The Department believes that the marketplace will function better for purchasers, producers and insurers if purchasers have access to information about producer compensation arrangements.

The proposed regulation is intended to provide a means to address the potential conflict that arises due to the differences in the amount of compensation an insurer pays to its producers in the least invasive manner possible - by requiring that insurance producers make certain disclosures about their role in the insurance transaction and compensation arrangements with insurers to insurance customers. Specifically, the regulation would require an insurance producer to disclose the role of the producer in the transaction, that the producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer, upon request, information about the compensation the producer expects to receive from the sale of the policy. The regulation also requires that upon the customer's request, the producer disclose the amount of compensation for the policy selected and any alternative quotes presented. The required disclosures would minimize the potential conflicts that arise from producer compensation because it allows insurance customers to request information about the compensation for the insurance policy and alternative policies quoted.

Empowering customers with this information makes it more difficult for an insurance producer to succumb to an incentive to place the policy with the insurer paying the greatest compensation, or one type of policy with an insurer over another with the same insurer, rather than offering the best policy in terms of price, coverage or service. Overall, all insurance consumers in the state, whether personal or commercial, are likely to benefit from the regulation because transparency and a better understanding of the role of the insurance producer is likely to lead to better-informed selection among available insurance options.

4. Costs: The amendments will not impose any compliance costs on local governments. The Insurance Department does not anticipate any added cost to the Department associated with the regulation. Enforcement of the regulation will be integrated into the Department's ongoing efforts to address consumer complaints, license insurance producers and insurers and licensee compliance with the trustworthiness standards set forth in the Insurance Law.

Insurance producers, many of whom are small businesses, may incur additional costs of compliance, but they should be minimal. The cost to producers will be associated primarily with developing and providing a brief initial disclosure to purchasers either orally or in writing. Once developed, this initial disclosure likely will be a short boilerplate statement a few sentences long. There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. The only additional recordkeeping required by the regulation is maintaining the disclosures for each purchaser, and the producer can even arrange for the insurer to maintain that information. Producers are not required to keep any additional information that they do not already maintain in the ordinary course of business. The regulation does not regulate the amount, nature or amount of compensation; it simply requires disclosure of compensation practices.

Producers will also have to spend a small amount of time gathering the compensation information they have on hand and presenting it to the purchaser when requested. The regulation, however, does not require the producer to collect or maintain any more information than the producer already has on hand in the ordinary course of business. The regulation will require insurers to maintain records relating to the payment of compensation to producers, but will not dictate the manner in which those records are kept, thereby reducing any potential compliance cost.

5. Local government mandates: This regulation does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: The Department has designed the proposed regulation to minimize the paperwork required to the extent possible. The producer must make the disclosure required prior to the sale of an insurance policy either in writing or orally. If the producer makes the disclosure orally, the producer must either prepare a certification stating that the producer made the oral disclosure or make a recording of the disclosure. If the producer elects to provide oral disclosure, the producer must follow up with a written disclosure statement (which could be boilerplate) prior to issuance of the insurance policy. An insurance producer who chooses to satisfy the initial disclosure requirement with a written disclosure may prepare a boilerplate form to use with each disclosure. Also, to the extent that the insurance producer is required to disclose additional information about its compensation, the producer is only required to provide information that it has at that time, or to make a reasonable estimate. There would also be some time and cost associated with preparing a more detailed, substantive disclosure statement when a purchaser requests it. That time and cost would depend on the number of consumers who make such requests.

There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. The regulation, however, does not require the producer to collect or maintain any more information than the producer already has on hand in the

ordinary course of business. The regulation will require insurers to maintain records relating to the payment of compensation to producers but will not dictate the manner in which those records are kept thereby reducing any potential compliance cost.

7. Duplication: The proposed regulation will not duplicate any existing state or federal law or regulation.

8. Alternatives: Insurance producers generally receive compensation from insurers or other producers by one of two types of methods. The first is a flat percentage commission based on premium volume, paid at the time of sale. There may be different flat rates paid for new and renewal business. The second is a contingent commission, which may be paid in addition to flat percentage commissions, and which typically is based on profit, volume, retention, and/or business growth. Contingent commissions are not payable on a per policy basis, but are allocated based on the performance of the entire portfolio of business placed with a particular insurer. The contingent commission schedule is known to producers at the beginning of a given period of time (usually one year), but contingent commissions actually earned are calculated some period after business is placed and loss experience is observed. The amount of compensation paid may also vary from producer to producer, depending upon the relationship between the producer and the insurer or other producer, though the compensation paid usually will not change the actual premium to the consumer.

Defenders of incentive-based producer compensation argue that competition in the marketplace can address any conflicts because consumers can comparison shop among producers. Producers that do not offer insurance providing the best combination of coverage, service and price will lose business to those that do. However, consumer representatives emphasized in discussions with the Department that consumers who purchase insurance through an insurance producer may not comparison shop for the most favorable coverage, service and price because they are often encouraged to rely on the producer to comparison shop the market for them.

From 2005 to 2007, the Attorney General and the Superintendent entered into enforcement settlement agreements and regulatory stipulations concerning allegations of improper steering in response to incentive-based compensation with a number of major brokers and insurers. The allegations underlying the settlements and stipulations included undisclosed conflicts of interest and improper steering by small, medium and large producers. The investigation also made it clear that insurers pay contingent commissions and other types of incentive-based compensation in order to influence producers' recommendations to their clients. The agreements and stipulations prohibited the receipt of contingent commissions by certain insurance brokers; prohibited the payment of contingent compensation by certain insurers for certain lines of insurance; provided a mechanism for expansion of the prohibition of contingent compensation to additional lines of insurance; and required substantial improvements in the disclosure of all producer compensation by certain large producers.

In response to the New York investigation, the National Association of Insurance Commissioners in 2004 amended its Producer Licensing Model Act to include requirements that brokers (but not agents) disclose compensation to purchasers. The Department also circulated a draft disclosure regulation in 2007. The work done on that draft and the comments received have been incorporated into the current draft.

In July 2008, the Department in cooperation with the Attorney General's Office held public hearings in Buffalo, Albany and New York City and conducted extensive outreach to consumer groups, industry and other stakeholders for more than a year. The Department has publicly exposed two informal draft regulations (in January 2009 and July 2009) and sought comment on each. The Department has also held six ''working group'' meetings with stakeholders in various lines of insurance and dozens of other formal and informal meetings and phone calls with consumer and industry representatives. Through this process, the Department has considered a number of different courses of action including (1) banning or limiting certain types of producer compensation; (2) full disclosure of all producer compensation for every insurance transaction; (3) requiring disclosure only for producers who are paid directly by the purchaser and by the insurer; (4) requiring disclosure of producer compensation only upon the request of the purchaser; (5) requiring that producers disclose only their role in the transaction and the source of their compensation with no disclosure of the compensation amount; and (6) taking no regulatory action and/or promoting voluntary disclosure of compensation by producers.

After this exhaustive process, the Department has determined that the regulation is the best way to ensure that consumers better understand the role that insurance producers play in the insurance transaction, the compensation they receive and any potential conflicts of interest that may arise, while imposing as little cost as necessary on the producers and insurers.

A summary of the input provided to the Department in response to: (1) the July 2008 public hearings; (2) the January 2009 informal draft regulation; and (3) the July 2009 informal draft regulation were included in the regulatory impact statement for the proposed regulation, available online at www.ins.state.ny.us.

A summary Assessment of Public Comments is included as part of the adoption package. A full review of the input provided to the Department in response to publication of the proposed rule in the State Register on December 2, 2009, focusing primarily on comments that had not been previously submitted by the same party, and which had not already been considered by the Department, is available online at www.ins.state.ny.us.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: The regulation will be effective January 1, 2011, thereby enabling affected parties with an adequate period to prepare.

Revised Regulatory Flexibility Analysis

1. Effect of the regulation: The regulation will not affect any local governments. This regulation will affect regulated insurers, most of which do not come within the definition of ''small business'' found in Section 102(8) of the State Administrative Procedure Act, because none is independently owned and operated, and employs less than one hundred individuals. The regulation would also affect insurance producers, the vast majority of which are small businesses because they are independently owned and operated, and employ one hundred or less individuals. There are over 200,000 licensed insurance producers in New York, resident and non-resident, that will be affected by the regulation. The Department has no record of the exact number of small businesses included in that group. The Department has designed the regulation to place the least burden possible on insurance producers, as discussed below.

2. Compliance requirements: The regulation requires an insurance producer to provide an oral or written disclosure describing the role of the producer in the transaction, that the producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer upon request information about the compensation the producer expects to receive from the sale of the policy and for any alternative quotes that the insurer producer obtained for the customer. The regulation also requires a written disclosure where the customer specifically asks for more information about the producer's expected compensation for the policy recommended and alternative quotes. The regulation requires the producer to retain a copy of all written disclosures for a period of three years after the disclosure is given, unless the insurance producer agrees in writing with the insurer that the insurer shall retain such information.

3. Professional services: The regulation would not require an insurance producer to use professional services.

4. Compliance costs: The regulation will not impose any compliance costs on local governments. Insurance producers, many of whom are small businesses, may incur additional costs of compliance, but they should be minimal. The cost to producers will be associated primarily with developing and providing a brief initial disclosure to purchasers either orally or in writing. Once developed, this initial disclosure likely will be a short boilerplate statement a few sentences long. There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. In the alternative, the insurance producer may agree with the insurer in writing that the insurer shall retain necessary records. The regulation does not regulate the amount, nature or amount of compensation; it simply requires disclosure of compensation practices.

5. Economic and technological feasibility: Local governments will not incur an economic or technological impact as a result of this regulation. Small businesses will not have to purchase any new technology to comply with the regulation. An insurance producer may choose whether to comply with the regulation by providing disclosure in writing or orally.

6. Minimizing adverse impact: The regulation applies to the insurance market throughout New York State. The same requirements will apply to all insurance producers and so do not impose any adverse or disparate impact on small businesses. Further, the Department has designed the regulation to place the least burden possible on insurance producers by allowing insurance producers to decide whether to provide mandatory disclosures prior to sale either orally or in writing. An insurance producer who chooses to satisfy the initial disclosure requirement with a written disclosure may prepare a ''boilerplate'' form to use with each disclosure. Finally, to the extent that the insurance producer is required to disclose additional information about its compensation, the producer is only required to provide information that the producer has at that time, or to make a reasonable estimate.

7. Small business and local government participation: In July 2008, the New York State Insurance Department, in tandem with the Attorney General's Office, held public hearings in Buffalo, Albany, and New York City and conducted extensive outreach to consumer groups, industry and other stakeholders for more than a year. The Department publicly exposed two informal draft regulations (in January 2009 and July 2009) and sought

public comment on each. The Department has also held six ''working group'' meetings with stakeholders in various lines of insurance and dozens of other formal and informal meetings and phone calls with consumer and industry representatives. By its extensive outreach, the Department facilitated comments from all interested parties, including small businesses and local governments and their representatives such as the Independent Insurance Agents and Brokers of New York and Professional Insurance Agents, which represent many small businesses, and the Public Risk and Insurance Management Society, which represents risk managers employed by local governments.

Revised Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This regulation applies to producers and regulated insurers doing business or resident in every county in the state, including those that are, or contain, rural areas, as defined under Section 102(13) of the State Administrative Procedure Act. There are over 200,000 licensed insurance producers in New York, resident and non-resident, that will be affected by the regulation. The Department has no record of the exact number of insurance producers that do business in rural areas.

2. Reporting, recordkeeping and other compliance requirements and professional services: The proposed regulation requires an insurance producer to provide an oral or written disclosure describing the role of the producer in the transaction, that the producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer upon request information about the compensation the producer expects to receive from the sale of the policy and for any alternative quotes that the insurer producer obtained for the customer. The regulation also requires a written disclosure where the customer specifically asks for more information about the producer's expected compensation for the policy recommended and alternative quotes. The regulation requires the producer to retain a copy of all written disclosures for a period of three years after the disclosure is given, unless the insurance producer agrees in writing with the insurer that the insurer shall retain such information.

3. Costs: Regulated insurers and insurance producers, including those located in rural areas, may incur additional costs of compliance, but they should be minimal. The cost to producers will be associated primarily with developing and providing a brief initial disclosure to purchasers either orally or in writing. Once developed, this initial disclosure likely will be a short boilerplate statement a few sentences long. There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. The regulation does not regulate the amount, nature or amount of compensation; it simply requires disclosure of compensation practices.

Producers will also have to spend a small amount of time gathering and presenting additional information about their compensation when a consumer requests such information. The regulation, however, does not require the producer to collect or maintain any more information than the producer already has on hand in the ordinary course of business. The regulation will require insurers to maintain records relating to the payment of compensation to producers but will not dictate the manner in which those records are kept thereby reducing any potential compliance cost.

4. Minimizing adverse impact: The Department has designed the regulation to place the least burden possible on insurance producers by allowing insurance producers to decide whether to provide mandatory disclosures prior to sale either orally or in writing. An insurance producer who chooses to satisfy the initial disclosure requirement with a written disclosure may prepare a ''boilerplate'' form to use with each disclosure. To the extent that the insurance producer is required to disclose additional information about its compensation, the producer is only required to provide information that the producer has at that time, or to make a reasonable estimate. There may be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. In the alternative, the insurance producer may agree with the insurer in writing that the insurer shall retain necessary records.

5. Rural area participation: In July 2008, the New York State Insurance Department, in tandem with the Attorney General's Office, held public hearings in Buffalo, Albany and New York City and conducted extensive outreach to consumer groups, industry and other stakeholders for more than a year. The Department publicly exposed two informal draft regulations (in January 2009 and July 2009) and sought public comment on each. The Department has also held six ''working group'' meetings with stakeholders in various lines of insurance and dozens of other formal and informal meetings and phone calls with consumer and industry representatives. By its extensive outreach, the Department endeavored to facilitate comments from all interested parties, including parties in rural areas.

Revised Job Impact Statement

The proposed regulation is not likely to have a substantial adverse impact on job or employment opportunities in New York. The proposed regulation requires an insurance producer to provide an oral or written disclosure describing the role of the producer in the transaction, that the producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer upon request information about the compensation the producer expects to receive from the sale of the policy and for any alternative quotes that the insurer producer obtained for the customer. The regulation requires a written disclosure where the customer specifically asks for more information about the producer's expected compensation for the policy recommended and alternative quotes. The regulation requires the producer to retain a copy of all written disclosures for a period of three years after the disclosure is given, unless the insurance producer agrees in writing with the insurer that the insurer shall retain such information.

The Department has designed the regulation to place the least burden possible on insurance producers. An insurance producer who chooses to satisfy the initial disclosure requirement with a written disclosure may prepare a ''boilerplate'' form to use with each disclosure. To the extent that the insurance producer is required to disclose additional information about its compensation, the producer is only required to provide information that the producer has at that time, or to make a reasonable estimate.

Further, the regulation may have a positive effect on jobs of businesses that purchase insurance. It would provide a business with the information its needs to assess the recommendations that insurance producers make and avoid situations where producers could potentially steer them to less advantageous (in terms of price or coverage or service) insurance policies. Overall, all insurance consumers in the state, whether personal or commercial, are likely to benefit from the regulation because transparency and a better understanding of the role of the insurance producer is likely to lead to better-informed selection among available insurance options.

A number of life insurance industry groups representing producers and insurers have argued that the regulation's disclosure requirements will make it more difficult to attract, train and retain new life insurance agents, because more inexperienced agents will encounter difficulty overcoming consumer questions about producer compensation to make sales. The Department has sought to address these concerns by moving to a two-step disclosure process that simply requires the agent to describe his or her role in the transaction, followed by more specific compensation-related information only upon request from the consumer. Anything less than this initial ''role disclosure'' undermines the important consumer protection goals of transparency for all insurance purchasers. Accordingly, the Department is of the view that the regulation will not result in any significant negative impact on jobs or economic opportunities in New York State.

Assessment of Public Comment

Insurance producers generally receive compensation from insurers or other producers by one of two types of methods. The first is a flat percentage commission based on premium volume, paid at the time of sale. There may be different flat rates paid for new and renewal business. The second is a contingent commission, which may be paid in addition to flat percentage commissions, and which typically is based on profit, volume, retention, and/or business growth. Contingent commissions are not payable on a per policy basis, but are allocated based on the performance of the entire portfolio of business placed with a particular insurer. The contingent commission schedule is known to producers at the beginning of a given period of time (usually one year), but contingent commissions actually earned are calculated some period after business is placed and loss experience is observed. The amount of compensation paid may also vary from producer to producer, depending upon the relationship between the producer and the insurer or other producer, though the compensation paid usually will not change the actual premium to the consumer.

Defenders of incentive-based producer compensation argue that competition in the marketplace can address any conflicts because consumers can comparison shop among producers. Producers that do not offer insurance providing the best combination of coverage, service and price will lose business to those that do. However, consumer representatives emphasized in discussions with the New York State Insurance Department that consumers who purchase insurance through an insurance producer may not comparison shop for the most favorable coverage, service and price because they are often encouraged to rely on the producer to comparison shop the market for them.

From 2005 to 2007, the Attorney General and the Superintendent entered into enforcement settlement agreements and regulatory stipulations concerning allegations of improper steering in response to incentive-based compensation with a number of major brokers and insurers. In response to the New York investigation, the National Association of Insurance Commissioners in 2004 amended its Producer Licensing Model Act to include requirements that brokers (but not agents) disclose compensation to purchasers. The New York Insurance Department also circulated a draft disclosure regulation in 2007. The work done on that draft and the comments received have been incorporated into the current draft.

In July 2008, the New York State Insurance Department, in tandem with the Attorney General's Office, held public hearings in Buffalo, Albany and New York City and conducted extensive outreach to consumer groups, industry and other stakeholders for more than a year. The Department has publicly exposed two informal draft regulations (in January 2009 and July 2009) and sought comment on each. The Department has also held six ''working group'' meetings with stakeholders in various lines of insurance and dozens of other formal and informal meetings and phone calls with consumer and industry representatives. Through this process, the Department has considered a number of different courses of action including (1) banning or limiting certain types of producer compensation; (2) full disclosure of all producer compensation for every insurance transaction; (3) requiring disclosure only for producers who are paid directly by the purchaser and by the insurer; (4) requiring disclosure of producer compensation only upon the request of the purchaser; (5) requiring that producers disclose only their role in the transaction and the source of their compensation with no disclosure of the compensation amount; and (6) taking no regulatory action and/or promoting voluntary disclosure of compensation by producers.

After this exhaustive process, the Department has determined that this final draft regulation hereby adopted is the best way to ensure that consumers better understand the role that insurance producers play in the insurance transaction, the compensation those producers receive, and any potential conflicts of interest that may arise as a result, while imposing as little cost as necessary on the producers and insurers. On November 12, 2009, the Department received approval from the Governor's Office of Regulatory Reform to proceed with a proposed regulation. The proposed rule was published in the State Register on December 2, 2009, and the 45-day public comment period expired on January 16, 2010.

A summary of the input provided to the Department in response to: (1) the July 2008 public hearings; (2) the January 2009 informal draft regulation; and (3) the July 2009 informal draft regulation were included in the regulatory impact statement for the proposed regulation, available online at www.ins.state.ny.us.

In response to publication of the proposed regulation in the December 2, 2009 State Register, the Department received more than 2,200 comments. Many of the comments were from parties that had commented previously and were similar or identical in nature to their previous comments. A summary of the input provided to the Department in response to publication of the proposed rule in the State Register on December 2, 2009, focusing primarily on comments that had not been previously submitted by the same party, and which had not already been considered by the Department, is available online at www.ins.state.ny.us.

Department of Labor

EMERGENCY RULE MAKING

The Number of Crane Board Members Needed to Conduct Operators Examinations and Hold Administrative Hearings

I.D. No. LAB-06-10-00001-E
Filing No. 36
Filing Date: 2010-01-21
Effective Date: 2010-01-21

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

Action taken: Addition of section 23-8.5 to Title 12 NYCRR.

Statutory authority: General Business Law, section 483

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

Specific reasons underlying the finding of necessity: This is a very busy season for practical examinations for crane operators. This amendment will allow for more testing days to be scheduled thereby eliminating delays in getting examinations.

Subject: The number of Crane Board Members needed to conduct operators examinations and hold administrative hearings.

Purpose: To modify the requirements regarding crane operator examinations and administrative hearings for crane operators.

Text of emergency rule: 12 NYCRR Section 23-8.5 is amended to read as follows:

§ 23-8.5 Special provisions for crane operators

(a) Finding of fact. The board finds that the trade or occupation of operating cranes of the type described in subdivision (b) of this section, in construction, demolition and excavation work involves such elements of danger to the lives, health and safety of persons employed in such trade or occupation as to require special regulations for their protection and for the protection of other employees and the public in that such cranes may fall over, collapse, contact electric power lines, dislodge material and cause such material to fall or fail to support intended loads and convey them safely, unless such cranes are operated by persons of proper ability, judgment and diligence.

(b) Limited application of this section. This section applies only to mobile cranes having a manufacturers' maximum rated capacity exceeding five tons or a boom exceeding forty feet in length and to all tower cranes operating in construction, demolition and excavation work. The word crane as used in this section refers to tower cranes and to such mobile cranes of the following type: a mobile, carrier-mounted, power-operated hoisting machine utilizing hoisting rope and a power-operated boom which moves laterally by rotation of the machine on the carrier.

(c) Certificate of competence - Crane Classifications. The Commissioner has the authority to issue certificates of competence for the following classes of cranes:

(1) Class A - Unrestricted - Conventional, cable, lattice boom, and friction are names that have been used in reference to this class. This class includes all cranes having a fixed lattice boom, with or without free fall capability; conventional tower cranes, derricks and all cranes with free fall capability. A certificate of competence for Class A allows the holder to operate any crane.

(2) Class B - Hydraulic - This class includes all hydraulic cranes which have a telescopic boom and swinging cab; there is no restriction on maximum manufacturer's rating. This class also includes small trailer or truck mounted self-erecting tower cranes, as well as boom trucks having a manufacturer's rated capacity of over 28 tons. A certificate of competence for Class B allows the holder to operate Class B, C and D cranes.

(3) Class C - Boom Truck - This includes cranes having telescopic booms which are generally truck mounted and up to 28 ton maximum manufacturers' rated capacity. A certificate of competence for Class C allows the holder to operate Class C and D cranes.

(4) Class D - Restricted Boom Truck - These cranes are also referred to as sign hangers, but their use not restricted to that industry. This class includes cranes having telescopic booms which are generally truck mounted and up to 3 ton maximum manufacturer's rated capacity, and up to 125 feet of boom. A certificate of competence for Class D allows the holder to operate Class D cranes only.

(5) Class E - Reserved

(6) Class F - Line Truck - These cranes are also referred to as digger derricks. These cranes have up to 15 ton maximum manufacturers' rated capacity, 65 foot maximum boom length, utilize a non-conductive tip with nylon rope, for use in electrical applications only. A certificate of competence for Class F allows the holder to operate Class F cranes only.

(d) Certificate of competence required. No person, whether the owner or otherwise, shall operate a crane in the State of New York unless such person is a certified crane operator by reason of the fact that:

(1) He holds a valid certificate of competence issued by the commissioner to operate [a] *that class of* crane; or

(2) He is at least 21 years of age and holds a valid license issued by the Federal government, a State government or by any political subdivision of this or any other State and such license has been accepted in writing by the commissioner as equivalent to a certificate of competence issued *pursuant to this Part* [by him]; or

(3) He is a person who:

(i) is at least 21 years of age and is employed by the Federal government, the State or a political subdivision, agency or authority of the State and is operating a crane owned or leased by the Federal government, the State or such political subdivision, agency or authority and his assigned duties include operation of a crane;

(ii) is at least 21 years of age and is employed only to test or repair a crane and is operating it for such purpose while under the direct supervision of a certified crane operator; or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and his assigned duties include the operation of a crane;

(iii) an apprentice or learner who is at least 18 years of age and who has the permission of the owner or lessee of a crane to take instruction in its operation and is operating such crane under the direct supervision of a certified crane operator or under the direct supervision of a person employed by the Federal government, the State or a political subdivision, agency or authority of the State and whose assigned duties include the operation of a crane.

(d) Application forms and photographs. An application for a certificate of competence or for a renewal thereof shall be made on forms provided by the commissioner. Upon notice from the commissioner to an applicant that a certificate of competence or a renewal thereof will be issued to him, the applicant must forward photographs of himself in such numbers and sizes as the commissioner shall prescribe, and such photographs must have been taken within 30 days of the request for such photographs.

(e) Physical condition. No person suffering from a physical handicap or illness, such as epilepsy, heart disease, or an uncorrected defect in vision or hearing, that might diminish his competence, shall be certified by the commissioner.

(f) Experience required. An applicant for a certificate of competence must be at least 21 years of age and must have had practical experience in the operation of cranes for at least three years and, in addition, have a practical knowledge of crane maintenance.

(g) Examining board. The commissioner may appoint an examining board which shall consist of at least three members, at least one of whom shall be a crane operator who holds a valid certificate of competence issued by the commissioner, and at least one of whom shall be a representative of crane owners. The members of the examining board shall serve at the pleasure of the commissioner and their duties will include:

(1) The examination of applicants and their qualifications, and the making of recommendations to the commissioner with respect to the experience and competence of the applicants;

(2) The holding of hearings regarding appeals following denials of certificates;

(3) The holding of hearings prior to determinations of the commissioner to suspend or revoke certificates, or to refuse to issue renewals of certificates;

(4) The reporting of findings and recommendations to the commissioner with respect to such hearings;

(5) The acts and proceedings of the examining board shall be in accordance with regulations issued by the commissioner.

(h) General examination. Each applicant for a certificate of competence will, and each applicant for a renewal thereof may, be required by the commissioner to take an appropriate general examination.

(i) Operating examination. An applicant who passes the general examination will also be required to take a practical examination in crane operation, except that the commissioner may waive this requirement with respect to an applicant for a renewal of a certificate of competence. *The commissioner shall designate one member of the examining board to conduct the practical examination for Class F line trucks. For all other practical examinations (for Classes A, B, C, D, and E), the commissioner shall designate a minimum of three members of the examining board to administer the practical examination, of which two members must be present at the practical examination and score the applicant and the other member(s) may review the video of the practical examination and score the applicant. When a practical examination is conducted by a single member of the examining board, the applicant must achieve a passing score from the member to receive a certificate of competence. When the practical examination is administered by three or more members of the examining board, the applicant must achieve a passing score, which shall be calculated as an average of all scores received from the three or more members that administered the practical examination. The procedures used regarding the conduct of the practical examination, the establishment of the passing score and the assignment of the board members to conduct individual examinations shall be set forth in a guidance document approved by the examining board.*

(j) Contents of certificate. Each certificate of competence issued shall include the name and address of the certified crane operator, a brief description of him for the purpose of identification and his photograph.

(k) Term of certificate. Each certificate of competence or renewal thereof shall be valid for three years from the date issued, unless its term is extended by the commissioner or unless it is sooner suspended or revoked. The commissioner may extend the term of any certificate of competence as he may find necessary to relieve a certified operator of unnecessary hardship.

(l) Carrying certificate. Each certified crane operator shall carry his certificate on his person when operating any crane and failure to produce the certificate upon request by the commissioner shall be presumptive evidence that the operator is not certified.

(m) Renewals. An application for renewal of a crane operator's certificate of competence shall be made within one year from the expiration date of the certificate sought to be renewed, except that the commissioner may extend the time to make such application to prevent any undue hardship to a certified crane operator.

(n) Suspension, revocation, refusal to renew, denials of certificates, hearings.

(1) The commissioner may, upon notice to the interested parties and after a hearing before the examining board, suspend or revoke a certificate of competence upon finding that the certified operator has failed to comply with an order of the commissioner or that the certified operator is not a person of proper competence, judgment or ability in relation to the operation of cranes, or for other good cause shown.

(2) Prior to a determination by the commissioner not to renew a certificate of competence, the commissioner shall require a hearing before the examining board upon notice to the interested parties.

(3)[(i)] An applicant whose application for a certificate has been denied by the commissioner may[, upon his written] request [made to the commissioner within 30 days after the mailing or personal delivery to him of a notice of such denial, have a hearing before the examining board] *an administrative review of the reasons for the denial and a written response will be provided to such applicant but no hearing shall be required in connection with a denial of an application other than a renewal.*

[(ii) Such hearing shall be held by the examining board which] *(4) The commissioner shall designate a panel of two or more members of the examining board to conduct all hearings required pursuant to this section. The commissioner may also designate a hearing officer to assist the panel in conducting the hearings. The panel* shall make its recommendations to the commissioner within three days after such hearing has been concluded. A written notice of the commissioner's decision, containing the reasons therefor, shall be promptly given to the certified operator or applicant, as the case may be, and to any interested parties who appeared at the hearing. Every such hearing shall be held in accordance with such regulations as the commissioner may establish.

Statutory authority: General Business Law Section 483

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 April 20, 2010.

Text of rule and any required statements and analyses may be obtained from: Teresa Stoklosa, New York State Department of Labor, Counsel's Office, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: thomas.mcgovern@labor.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

Section 483 of the General Business Law gives the Commissioner of Labor the authority to prescribe such rules and regulations as may be necessary and proper for the administration and enforcement of

Article 28-D relating to Crane Operators. Such regulations may provide for examinations, categories of certificates, licenses or registrations (Section 483(2)).

2. Legislative Objectives:

The rulemaking accords with the public policy objectives the Legislature sought to advance when it adopted Section 483 of the General Business Law. These regulatory revisions clarify administrative procedures regarding the administration of the practical examinations for crane operator's certificates and the conduct of hearings by the examining board regarding the revocation, suspension, refusal to renew or denial of a crane operator's certificate. The Department is seeking to make it easier to schedule the practical examinations by authorizing the Commissioner to designate one member of the Examining Board to conduct examinations for Class F Line Trucks and to designate three or more members of the Examining Board to administer all other classes (Class A, B, C, D and E) of examination, with two of the members present at the physical examination and the other members to review a video of the examination and score the examination. Currently, at least a quorum of the entire Crane Examining Board must be present to conduct the exams. Crane Board members already dedicate more than forty (40) days annually to crane testing and hearings without compensation. This is a substantial commitment of time given that Board members are responsible for operating their own businesses or are employed full-time. Finding adequate number of Board members to participate in each testing series can be difficult given limitations on availability, particularly in the construction season when demand for testing can be at its highest. The regulation will facilitate the conduct of examinations by allowing the examinations to take place without a quorum of the board present at the exam. Additionally, the Department wants to make it easier to get administrative hearings scheduled regarding the revocation, suspension, and refusal to renew a crane operator's certificate. The Board is responsible for conducting these hearings and making a report and recommendation to the Commissioner. Individuals seeking review of adverse determinations regarding their operator's certificate expect timely access to the hearing process. It is important that crane operators not have any delays in getting their exams scheduled. It is even more important that administrative hearings not be delayed due to scheduling difficulties. The emergency regulation would also revise the procedures to be followed where an applicant fails the practical examination. Currently, the applicant is entitled to request a hearing regarding the failure of the practical examination. This is a rather unusual procedure to follow for failing a practical examination. Accordingly, the emergency regulation provides that an applicant who failed the practical examination and is denied a certificate of competence may ask for a review of the reasons for the denial and will receive a written response to that request.

3. Needs and Benefits:

As previously mentioned, the members of the Board serve without salary or other compensation (General Business Law, Section 483(3)). The time estimated to conduct the exams and hearings is approximately 40 days per year. While Board members have been extremely generous in making themselves available for their duties, it is increasingly difficult to find testing and hearing dates when sufficient numbers of the board members are available for tests or hearings given other professional and personal demands on their time. This creates many scheduling difficulties and can create delays which affect crane operator applicants and individuals who are seeking hearings to review adverse determinations regarding their operator certificates. Moreover, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem. The amendments to 12 NYCRR Section 23-8.5 establishing a smaller number of Board members who need to be present at either examinations or hearings will make it easier to schedule the exams, thereby making certain that there will be no delays in the process. Additionally, the amendments will also make it easier to schedule administrative hearings. It is very important that there not be any delays in the hearing process.

4. Costs:

This amendment imposes no compliance costs upon state or local governments. There will be no additional costs to crane operators. There will also be no additional costs to the Labor Department.

5. Local Government Mandates:

The proposed amendment imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork:

The proposed amendment imposes no new paperwork requirements.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other State or federal requirements.

8. Alternatives:

The primary alternative is to leave the regulation unchanged.

Another alternative would be to add new Board members, thereby increasing the pool of available members for testing and/or hearing panelists. The current regulations provide for the Commissioner of Labor to appoint the Board members and that the Board be comprised of at least three members. Accordingly, the Commissioner could increase the number of Board members to provide for a larger pool of members to conduct tests or hearings. However, as described above, since General Construction Law § 41 establishes a default quorum of a majority of Board members for the conduct of official business, increasing the size of the Board to make more members available to serve as examiners or hearing panelists will only exacerbate this problem.

9. Federal Standards:

There are no federal standards regulating the testing and licensing of crane operators, or administrative hearings relating thereto.

10. Compliance Schedule:

The provisions of this amendment will take effect immediately.

Regulatory Flexibility Analysis

These emergency regulations relate to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings need not be conducted by the entire examining board, but rather may be conducted by a panel of two or more members of the board. The regulations also have been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is rather an unusual process for someone failing a practical examination.

The emergency regulations do not impose any additional obligations on any local government or business entity. Nor do they impose any adverse economic impact, reporting or recordkeeping, or other compliance requirements on small businesses and/or local governments. Rather, they are intended to facilitate the testing of individuals seeking crane operator certificates, some of whom are employees of local governments or businesses. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The rule will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. On

the contrary, the rule is intended to facilitate the timely conduct of crane operator examinations and hearings. Therefore, the regulations will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping 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 regulation relates to the administration of a crane operator's practical examination and the conduct of hearings regarding a suspension, revocation, and refusal to renew a crane operator's certificate. Currently, regulations already require that a crane operator pass a practical examination before being given a certificate to operate a crane. The Crane Examining Board has established different classifications for a crane operator's certificate of competence. The regulation merely adds these existing classifications to the crane regulations. The regulation also provides that the practical examination for a Class F Line Truck may be administered by one member of the Board and that the practical examination for all other classes (A, B, C, D, and E) is to be conducted by a minimum of three members of the Board, with two members present at the practical examination and the other members scoring the examination based upon a review of the video of the examination. Additionally, where a certificate is suspended, revoked, and refused a renewal, the individual is given an opportunity for a hearing before the Crane Examining Board. The regulation clarifies that the hearings may be conducted by a panel of two or more members of the Board. The regulation has been amended to provide that an individual who is denied a certificate of competence for failing the practical examination, may request a review of the reasons for the denial and will be given a written response. The regulations currently require a hearing under these circumstances which is a rather unusual process for someone failing a practical exam. Accordingly, the regulation will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rule will encourage and support employment opportunities for qualified crane operators because it will facilitate the testing of individuals seeking crane operator licenses. Because it is evident from the nature of the regulation that it will have a beneficial impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Therefore, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Licensing of Blaster, Crane Operators, Laser Operators and Pyrotechnicians

I.D. No. LAB-06-10-00003-E

Filing No. 39

Filing Date: 2010-01-22

Effective Date: 2010-01-22

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

Action taken: Addition of Part 61 to Title 12 NYCRR.

Statutory authority: General Business Law, section 483

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

Specific reasons underlying the finding of necessity: These regulations are needed to clarify and standardize the procedures for regulating various occupations which the legislature has found pose special risks to the safety and health of the citizens of New York as well as to their property. There have been several incidents where individuals have been or could have been seriously injured a pyrotechnic displays.

The licensing of pyrotechnicians is a new requirement enacted this year under Section 482 of the General Business Law, by Part CC of Chapter 57 of the Laws of 2009. Every pyrotechnic display conducted in New York on or after October 4, 2009 must have at least one lead pyrotechnician who possesses a certificate of competence issued by the Department of Labor. These regulations set forth the procedure and requirements for obtaining the certificate.

Subject: Licensing of blaster, crane operators, laser operators and pyrotechnicians.

Purpose: To clarify and standardize the licensing of blasters, crane operators, laser operators and pyrotechnicians.

Substance of emergency rule: The proposed amendment will create a new part to Title 12 – Labor Law of the State Administrative Code. Under this amendment, Part 61 will be added to Subchapter A – Industrial Code. Part 61 provides for general licensing guidelines for crane operators, blasters, and laser operators as well as an entirely new subpart for the licensing of pyrotechnicians. It is the purpose and intent of Part 61, to provide consistent and uniform regulations for these dangerous occupations and to insure that only individuals with proper experience and ability engage in these activities in order to protect the lives, health, and safety of the citizens of the state.

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 April 21, 2010.

Text of rule and any required statements and analyses may be obtained from: Nancy Pepe, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-0288, email: nancy.pepe@labor.state.ny.us

Additional matter required by statute: National Fire Protection Association, 1123 and 1126 Standards on Fireworks Displays and Use of Pyrotechnics Before a Proximate Audience

Regulatory Impact Statement

1. Statutory Authority:

General Business Law Sections 482(1) and 483(1)(a) provide that the Commissioner of Labor is hereby authorized and directed to prescribe such rules and regulations with respect to lasers, crane operators, blasters and pyrotechnicians and that no individual shall operate lasers, cranes or act as a blaster or a pyrotechnician without holding a valid certificate of competence issued by the Commissioner or Labor.

2. Legislative Objectives:

General Business Law Section 480 states that the use of lasers, the operation of cranes, the detonation of explosives, and the preparation and firing of pyrotechnics involves such elements of potential danger to the lives, health and safety of the citizens of this state and to their property that special regulations are necessary to insure that only persons of proper ability and experience shall engage in such operations.

The general provision of this regulation does not supersede and incorporates by reference the current licensing criteria for each of the following occupations: crane operators, General Business Law Section 481.3, 12 NYCRR § 23-8.5; blasters, General Business Law Section 481.4, 12 NYCRR § 39.5; and laser operators, General Business Law Section 481.1., 12 NYCRR § 50.9.

The legislature specified that pyrotechnicians must be certified and directed the Commissioner of Labor to promulgate rules and regulations to administer and enforce the certification requirement.

3. Needs and Benefits:

The Commissioner of Labor recognizes the need for procedures to regulate various occupations which have been designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property. These regulations are needed to clarify and standardize the procedures for regulating the various occupations designated by the legislature as creating special risks to the safety and health of the citizens of New York as well as to their property. There have been several incidents where individuals have been or could have been seriously injured a pyrotechnic displays. The most recent incident occurred during the summer of 2008 when a member of the public was struck by a pyrotechnic shell in the Village of Ticonderoga during an aerial display. By requiring certification only individuals who have demonstrated that they have had training and experience in the field will be allowed to be in charge of these displays.

These emergency regulations clarify that firework displays subject to the permitting requirements of Penal Law Section 405.00 may be conducted by a single certified operator, who shall ensure that a sufficient number of authorized assistants are available for the safe conduct of the fireworks display. Penal Law Section 405.00(3) discusses two operators but makes no provision regarding certification of these individuals. These regulations clarify that at least one certified operator (as defined in the regulation) must conduct the fireworks display with the assistance of a sufficient number of authorized assistants (as defined in the regulation) to ensure the safe conduct

of the fireworks display. Penal Law Section 405.00(2) provides that the permit application for a fireworks display must contain a verified statement from the applicant identifying the individuals who are authorized to fire the display, however firing the display is undefined in the statute. These regulations clarify that the firing of the display refers to the actions of the certified operator in issuing a signal to start, or halt, the ignition of fireworks, but does not include the actions of authorized assistants, including shooters, who ignite fireworks in response to such a signal.

4. Costs:

The cost to the certified party will be a one hundred and fifty dollar ($150) non refundable application fee which will entitle them to be certified for three years. They will also be required to submit to a criminal background check as part of the application process which will cost ninety four dollars and twenty five cents ($94.25). The total cost will be two hundred and forty four dollars and twenty five cents ($244.25) every three years.

Additionally, they will be required to demonstrate that they had training in safe handling and firing of pyrotechnic displays. Most employers currently provide this training to their staff on an annual basis.

The other requirement for certification is experience. Applicants will have to be able to demonstrate that they have practical experience by having worked on displays.

The final requirement will be that the applicant passes a written examination demonstrating that they do have the knowledge necessary to properly carry out their duties as a pyrotechnician.

5. Local Government Mandates:

This rule imposes no additional requirements on local governments; certification is the sole responsibility of the Department. Pyrotechnicians must still comply with local laws and obtain applicable permits and variances. For example, the City of New York requires Certificates of Fitness for firework displays (see 3 RCNY Section 113-01(e)(2)(B)).

6. Paperwork:

The paperwork requirements contained in the proposed rule are minimal. The Department will have to develop and complete new documents including application forms and letters to address certification determinations. The Department will also need to develop a data base to process the certificates of compliance.

7. Duplication:

No duplication of rules was identified. Rather, the general provision of this regulation does not supersede and incorporates by reference the current licensing criteria for crane operators, blasters and laser operators. As noted previously, applicants must still comply with local laws and obtain permits and variances in addition to obtaining a state issued license.

8. Alternatives:

The legislation requiring promulgation of the rule provided little room for any alternative to be considered. The amendment specifically requires pyrotechnicians to be certified. The alternatives provided by the Department involve different classifications depending on the applicants training and certification. The regulation requires basic requirements for certification recommended by various stakeholders.

9. Federal Standards:

There are no Federal Standards for pyrotechnic displays.

10. Compliance Schedule:

The statute becomes effective on October 4, 2009. The regulation contains provisions to allow individuals, who can otherwise demonstrate compliance with the requirements for certification, to be certified without having to sit for the exam. These individuals would have until April 1, 2010 to apply. Anyone applying after that date would be required to take a written exam.

These regulations become effective on August 1, 2009 and provide a procedure and requirements for obtaining a Pyrotechicians Certificate of Competence. The sections of the regulations requiring such certificate to conduct firework displays are not effective until October 4, 2009, the effective date for the statutory provisions requiring pyrotechnicians to be certified. However, these regulations provide the procedures and requirements for obtaining the Certificate of Competence prior to October 4, 2009.

Regulatory Flexibility Analysis

1. Effect of rule:

These regulations accomplish two purposes. One is to standardize the certification process for the various occupations that the Department is charged with regulating. The second is to adopt specific requirements that relate to the issuance of a Pyrotechnician's Certificate of Competence. The requirement for a Pyrotechnician's Certificate of Competence was enacted by Chapter 57 of the Laws of 2009. These regulations do not impose any new burdens on local governments. All of the requirements for review and issuance of certificates rests with the Department of Labor.

It is expected that the requirement to certify pyrotechnicians may have some economic impact on small businesses. The person in charge of each display will have to be certified by the Department. Currently there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Most of these would qualify as small businesses.

Chapter 57 amended the General Business Law, the Penal Law and the Labor Law. The amendments to the Penal Law now make it possible for pyrotechnic companies to put on ''private'' displays for things such as weddings etc. Prior to this change only public displays of fireworks were allowed. It is expected that this change will increase the number of shows being done on an annual basis thereby having a positive economic impact on these small businesses.

2. Compliance requirements:

There are no requirements for local governments associated with this rule. Small businesses will be required to hire at least one certified pyrotechnician to be in overall charge of each display.

3. Professional services:

The only required professional services associated with this regulation are those of the pyrotechnician created by the regulation.

4. Compliance costs:

The certifications issued under this regulation are individual occupational certifications. The cost of compliance is borne by the employee not the business or government. It is possible that there may be some positive impact on wages for these licensed individuals but that will remain to be determined by the marketplace.

5. Economic and technological feasibility:

There are no undue economic or technological requirements being imposed by this standard.

6. Minimizing adverse impact:

This rule will have no adverse impact on small businesses or local governments because it is an individual licensing requirement. These regulations provide a procedure for obtaining certification and the requirements for certification. The cost of the license is borne by the employee not the business or the government. The review and issuance of certificates for these individuals is the sole responsibility of the Department. Pyrotechnicians must still comply with local laws and obtain applicable permits and variances.

7. Small businesses and local government participation:

The Department has done extensive outreach with the industry while developing this regulation. It began two years ago with a public forum in Syracuse where members of the industry were invited to discuss reforms to the Departments existing regulations. At the conclusion of the meeting the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes and regulations. This is one of the changes developed by that workgroup.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers:

It is expected that the requirement to certify pyrotechnicians may have some economic impact on rural areas. The person in charge of each display will have to be certified by the Department. Currently

there are approximately 79 businesses outside of New York City that are involved in pyrotechnic displays. Most of these would qualify as small businesses.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

There are no requirements for local governments associated with this rule. Small businesses will be required to hire at least one certified pyrotechnician to be in charge of each display.

3. Costs:

The certifications issued under this regulation are individual occupational certifications. The cost of compliance is borne by the employee not the business or government. It is possible that there may be some positive impact on wages for these licensed individuals.

4. Minimizing Adverse Impact:

This rule should have no adverse economic impact on rural areas.

5. Rural Area Participation:

In developing the proposed regulation, the Department sought assistance from the industry, which included rural areas. It began two years ago with a public forum in Syracuse where members of the industry were invited to discuss reforms to the Departments existing regulations. At the conclusion of the meeting the Department requested that individuals be selected to act as industry representatives. These individuals worked with the Department in developing and revising the existing statutes and regulations. This is one of the changes developed by that workgroup.

Job Impact Statement

1. Nature of impact:

The certifications issued under this regulation are individual occupational certificates. It is possible that there may be some positive impact on wages for these licensed individuals. The regulation requires that the person in charge of a pyrotechnic display be certified to ensure that they have the necessary training and experience to properly set up and carry out pyrotechnic displays. This certification requirement was enacted into law by Chapter 57 of the Laws of 2009 and is effective on October 4, 2009.

2. Categories and numbers of jobs or self-employment opportunities affected:

Currently, approximately 79 businesses in New York State are involved in pyrotechnic displays. Some are manufactures, some are display companies and some are a combination of both. These facilities are located across the state in rural areas as well as in proximity to urban area.

3. Regions of the state where there would be a disproportionate adverse impact:

There should be no adverse impact from these regulations; therefore, there will be no disproportionate impact.

Division of the Lottery

EMERGENCY RULE MAKING

Multi-Jurisdictional Lottery Games and Payment of Prizes

I.D. No. LTR-06-10-00005-E
Filing No. 42
Filing Date: 2010-01-26
Effective Date: 2010-01-26

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

Action taken: Amendment of sections 2803.12, 2806.2, 2806.7 and 2806.11 and addition of section 2806.13 to Title 21 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612 and 1617

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

Specific reasons underlying the finding of necessity: Emergency adoption of regulations that will allow the introduction of the Powerball game is necessary to counteract the budgetary crisis currently facing the State of New York. Governor Paterson discussed the severity of this crisis in his January 7, 2009 State of the State address:

> New York faces an historic economic challenge, the gravest in nearly a century. For several months, events have shaken us to the core. Bank closures, job losses and stock market meltdowns have destabilized the foundations of our economy. Since January 2008, two million Americans have lost their jobs. During this recession, an estimated 225,000 New Yorkers will be laid off. Many others have lost their homes. The pillars of Wall Street have crumbled. The global economy is reeling. Trillions of dollars of wealth have vanished.
>
> We still do not know the extent of the economic chaos that awaits us. We do know that this may be the worst economic contraction since the Great Depression. New York entered recession in August. Wall Street was hit the hardest. At least 60,000 jobs will be lost in the financial services sector, which is devastating to our state budget. Financial services provide 20% of state government revenues, so this year's budget will be exceptionally difficult.
>
> Let me be clear - our state faces historic challenges. Our economy is damaged, our confidence is shaken, and the economic obstacles we face seem overwhelming. . . These problems may last for many more months or even years.

The Governor again underscored the importance of reversing New York State's ominous fiscal situation in his January 6, 2010 State of the State Address:

> We come here to build. To build New York's economy to a national model of ingenuity and strength. To build our people's trust in the fiscal stability of our State. . . The last two budget battles have left its toll on all of us in this Chamber, and there are more deficits up ahead that will require an even greater sacrifice.

The New York Lottery (the ''Lottery'') has the unique ability to generate revenue for the State quickly and at a critical time when additional revenue is essential. The new regulations allow the Lottery to participate in Powerball, and the Lottery hopes to increase revenue earned for education in New York State through Powerball sales.

The new regulations allowing for the introduction of Powerball are expected to result in increased earnings for aid to education because Powerball will likely supplement existing sales of the Mega Millions multi-jurisdictional lottery game. Mega Millions currently averages annual sales of approximately $465 million, generating $163 million for education per year. With the addition of Powerball, the Lottery expects more frequent high jackpots resulting in a thirty percent (30%) overall increase in sales over current Mega Millions sales. Sales for each game will vary depending on jackpot rolls, but we anticipate combined annual sales from Mega Millions and Powerball to be approximately $605 million, generating $212 million for education. Therefore, the introduction of Powerball is estimated to result in an additional $50 million per year in earnings for aid to education.

Due to the unprecedented need for revenue at this time, the Lottery and the State cannot afford to delay participation in Powerball until completion of the Notice of Proposed Rulemaking process under the State Administrative Procedure Act. Therefore, the new multi-jurisdictional lottery game regulations must first be implemented through Emergency Adoption.

Subject: Multi-jurisdictional lottery games and payment of prizes.

Purpose: To allow the sale of Powerball tickets and to codify an existing requirement regarding verification of prize winner identities.

Substance of emergency rule: This amendment of Sections 2803.12, 2806.2, 2806.7 and 2806.11 and this addition of Section 2806.13 revises the New York Lottery's (the ''Lottery's'') regulations governing identification of persons entitled to a prize award and multi-jurisdictional lottery games to permit the introduction of the Powerball game in New York State.

The amendment of Section 2803.12 of the prize payment provisions of the Lottery's regulations codifies a long-standing condition of a Lottery prize award that each prize claimant must cooperate with the Lottery in the release of a public announcement regarding the prize and by participating in a news conference if required by the Lottery. The Lottery requires certain information from prize winners to operate and administer the Lottery, which includes the marketing and advertising of the Lottery and the identification of the person entitled to a prize award. Public identification of Lottery winners is a standard part of the Lottery's process to verify the identity of prize claimants and to verify the proper ownership of prizes.

The amendment of provisions in Part 2806 and the addition of Section 2806.13 to the multi-jurisdictional game regulations will allow the Lottery to offer the Powerball game. The amendments to Sections 2806.2, 2806.7 and 2806.11 implement technical modifications and other revisions neces-

sary to finalize the agreement between the New York Lottery, other Mega Millions state lotteries, and the Multi-State Lottery Association (''MUSL'') that will permit the sale of Powerball tickets in New York State and the sale of Mega Millions tickets in MUSL states. The definition of ''Quick Pick'' in Section 2806.2 is revised to more accurately describe how a Quick Pick is determined and to coincide with the definition of a Powerball Quick Pick included in the new Section 2806.13. Section 2806.7 is amended to revise the manner in which Mega Millions jackpot prizes are determined and advertised in accordance with the cross-selling arrangement between state lotteries. Also consistent with the cross-selling arrangement, Section 2806.7 is amended to address the payment of lower level prizes as pari-mutuel prizes when deemed necessary following consultation with other state lotteries selling Mega Millions tickets. Section 2806.11 is amended to coincide with the unclaimed prize money provision of the new Section 2806.13 to accommodate the cross-selling arrangement.

The new Section 2806.13 of the Lottery's regulations describes Powerball as a multi-jurisdictional lottery game similar to the Mega Millions game that has been offered in New York and in other states since 2002. For every Powerball drawing, five numbers, from one (1) through fifty-nine (59), and one additional number, from one (1) through thirty-nine (39), are selected as the winning numbers. A player who matches all numbers is eligible for a jackpot prize. If no ticket is sold that matches all winning numbers, the jackpot prize is rolled over to the next drawing.

Additionally, the new Powerball section addresses ticket sales and ticket prices. For example, a Powerball ticket may be purchased for $1.00 per play. The new section also describes Powerball play characteristics, time and place of drawings, prize structure, probability of winning, prize payment, and ticket validation requirements.

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 April 25, 2010.

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Associate Attorney, New York State Division of Lottery, One Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3408, email: nylrules@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: This rulemaking, which includes the amendment of four sections and the addition of a new section to the New York Lottery's (the ''Lottery's'') regulations, is proposed pursuant to Tax Law Sections 1601, 1604, 1612 and 1617.

Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively for aid to education. Tax Law Section 1604 authorizes the Lottery to operate and administer the Lottery and ''to promulgate rules and regulations governing the establishment and operation thereof.'' Tax Law Section 1612(a)(3)(D) describes the distribution of revenues for any joint, multi-jurisdiction, and out-of-state lottery.

Tax Law Section 1617 authorizes the Lottery Director to ''enter into an agreement with a government-authorized group of one or more other jurisdictions providing for the operation and administration of a joint, multi-jurisdiction, and out-of-state lottery.'' Chapter 57 of the Laws of 2009 removed the restriction in Tax Law Section 1617 that ''the director may not agree to participate in the games of more than one such group at any single time.'' This amendment to Section 1617 was made so that the Lottery could offer Powerball in an effort to generate revenue for education in New York.

2. Legislative objectives: The purpose of operating Lottery games is to generate earnings for the support of education in the State. This rulemaking is expected to advance the Lottery's ability to generate earnings for education through the introduction of Powerball. This rulemaking will also formally adopt existing requirements that allow for effective public announcement of Lottery prize awards.

3. Needs and benefits: The amendment of § 2803.12 of the prize payment provisions of the Lottery's regulations codifies a long-standing condition of a Lottery prize award that each prize claimant must cooperate with the Lottery in the release of a public announcement regarding the prize and by participating in a news conference if required by the Lottery. To effectively operate and administer the Lottery, the Lottery must accurately identify the person entitled to a prize award, as well as market and advertise the Lottery, which results in more ticket sales that ultimately generate aid to education. An effective way to verify the identity of a claimant, as well as ownership of a winning ticket, is to publicly announce and identify the claimant through participation in a news event. The Lottery has long required each prize claimant to cooperate with the Lottery in the release of a public announcement and by participating in a news event. Public identification of Lottery winners is a standard part of the Lottery's process to verify the identity of prize claimants and to verify the proper ownership of prizes.

Amendment to the multi-jurisdictional game regulations will allow the Lottery to offer the Powerball game and continue its effort to keep and enlarge its market share of players (from within New York State and other states) who play lottery games. Powerball is a multi-jurisdictional lottery game similar to the Mega Millions game that has been offered in New York and in other states since 2002. For every Powerball drawing, five numbers, from one (1) through fifty-nine (59), and one additional number, from one (1) through thirty-nine (39), are selected as the winning numbers. A player who matches all numbers is eligible for a jackpot prize. If no ticket is sold that matches all winning numbers, the jackpot prize is rolled over to the next drawing.

Powerball tickets have not yet been sold in New York, and many New Yorkers often travel to adjacent states like Connecticut and Vermont to purchase tickets when the Powerball jackpot is high. Recently, the New York Lottery and other Mega Millions state lotteries began negotiating an agreement with the Multi-State Lottery Association (''MUSL''), the organization composed of state lotteries that have administered Powerball since the inception of the game. This agreement will permit the sale of Powerball tickets in New York State.

The new regulations allowing for the introduction of Powerball are expected to result in increased earnings for aid to education because Powerball will likely supplement existing sales of the Mega Millions multi-jurisdictional lottery game. Mega Millions currently averages annual sales of approximately $465 million, generating $163 million for education per year. With the addition of Powerball, the Lottery expects more frequent high jackpots resulting in a thirty percent (30%) overall increase in sales over current Mega Millions sales. Sales for each game will vary depending on jackpot rolls, but we anticipate combined annual sales from Mega Millions and Powerball to be approximately $605 million, generating $212 million for education. Therefore, the introduction of Powerball is estimated to result in an additional $50 million per year in earnings for aid to education.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since current funds reserved for administrative expenses of operating lottery games are expected to be sufficient to support the costs of introducing Powerball, including advertising expenses, point of sale material production costs, and the cost of additional play slips for the new game. Powerball will generate more earnings for aid to education, which will far exceed the expenses necessary to operate the game. More aid to education from the Lottery will have a positive effect on the State because fewer funds will then be required from other General Fund resources to aid education. Furthermore, if fewer funds are required from other General Fund resources to aid education, local governments will benefit because increased funding for local schools from Lottery earnings may ease local tax burdens. Local retailers will earn higher commissions as ticket sales increase, which may result in more employment opportunities.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery's experience in operating State Lottery games for more than 40 years.

5. Local government mandates: None. No local government is authorized or required to do any act, apply any effort, expend any funds, or use any other resources in connection with the operation of the Powerball game. All necessary actions will be carried out by the Lottery or licensed Lottery retailers who will be completely responsible for all aspects of game operations at the local retail level. The Lottery has no authority and no need to impose any mandate on any local government. Consequently, no provision of the rule imposes any burden on any local government in the State.

6. Paperwork: There are no changes in paperwork requirements. Game information will be issued by the New York Lottery for public convenience on the Lottery's website and through point of sale advertising materials at retailer locations.

7. Duplication: None.

8. Alternatives: The alternative to amending the multi-jurisdictional game regulations is to not offer the Powerball game in New York. The failure to proceed will result in lost aid to education that is anticipated to be earned following introduction of Powerball. During the current fiscal crisis, New York State cannot afford to pass on this lucrative opportunity.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

The proposed rulemaking does not require a Regulatory Flexibility Analysis or a Rural Area Flexibility Analysis. There will be no adverse impact on rural areas, small business or local governments.

The proposed amendments to the New York Lottery's multi-jurisdictional game regulations will not impose any adverse economic or reporting, recordkeeping or other compliance requirements on small businesses or local governments. Small businesses will not have any additional recordkeeping requirements as a result of the proposed amendments. Additionally, the proposed amendments are anticipated to have a positive affect on the revenue of small businesses that sell lottery tickets as more players will purchase Powerball tickets, which will increase sales commissions paid to retailers. Local governments are not regulated by the New York Lottery or its regulations nor are any economic or recordkeeping requirements imposed on local governments as a result of the proposed amendments to such regulations.

Job Impact Statement

The amendment of 21 NYCRR Sections 2803.12, 2806.2, 2806.7 and 2806.11, as well as the addition of Section 2806.13, does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State. This rulemaking is sought to allow for the sale of Powerball game tickets to generate more revenue for the State in aid to education.

The proposed revision to the prize payment and multi-jurisdictional game regulations will not have any adverse effect on jobs or employment opportunities.

The proposed revision may have a positive effect on jobs or employment opportunities as a result of an increase in ticket sales, which would increase sales commissions paid to Lottery retailers.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Summer Empire State Games—An Annual Multi-Sport Recreational Event Conducted by OPRHP Primarily for Young Athletes

I.D. No. PKR-39-09-00004-A

Filing No. 41

Filing Date: 2010-01-26

Effective Date: 2010-02-10

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

Action taken: Addition of Part 465 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(3), (5), (6), (8), (9), (10) and (16)

Subject: The Summer Empire State Games—an annual multi-sport recreational event conducted by OPRHP primarily for young athletes.

Purpose: To clarify the procedures and requirements for participating in the Summer Empire State Games.

Substance of final rule: The Office of Parks, Recreation and Historic Preservation (OPRHP) is proposing to add a new Subchapter C entitled ''Empire State Games'' and a new Part 465 ''Summer Empire State Games'' to Chapter VI of Subtitle I of Title 9 NYCRR. The largest competition of its kind in the nation, the Summer Games is a multi-sport event for amateur athletes, primarily New York State youths. It is patterned after the Olympic program. Following regional trials in each of six State regions, thousands of athletes participate in finals competitions.

Section 465.1 describes the purpose of the Summer Empire State Games (ESG) which is to promote the:

> public health and welfare of New York residents by encouraging wholesome amateur athletic competition particularly for youths; providing opportunities and incentives to improve amateur athletics; publicly recognizing dedicated amateur athletes; showcasing the different regions of the State; providing economic benefits to the host community; and, fostering and encouraging volunteerism.

The purpose of the proposed regulation is to clarify and standardize procedures and participation requirements.

Section 465.2 defines agency, applicant, finals, region, regional trial, resident or residency, roster, and summer ESG.

Section 465.3 outlines the general eligibility requirements.

Section 465.4 outlines the age-eligibility requirements and the sports-specific eligibility requirements for the scholastic and open divisions.

Section 465.5 outlines the age-eligibility requirements and the sports-specific eligibility requirements for the masters division.

Section 465.6 describes the code of conduct.

Section 465.7 describes the sanctions of non-participation or return of goods or awards.

Section 465.8 contains the severability language.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 465.7(b).

Text of rule and any required statements and analyses may be obtained from: Kathleen L Martens, NYS Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, 19th Floor, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

Revised Job Impact Statement

The existing rule does not affect jobs or employment opportunities and its repeal would not affect jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Deferral of an Expense Item

I.D. No. PSC-48-08-00020-A

Filing Date: 2010-01-20

Effective Date: 2010-01-20

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

Action taken: On 1/19/10, the PSC adopted an order denying Orange and Rockland Utilities, Inc.'s request to defer incremental debt service costs incurred between January 1, 2008 and October 31, 2009.

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

Subject: Deferral of an expense item.

Purpose: To deny the request to defer incremental debt service costs incurred between January 1, 2008 and October 31, 2009.

Substance of final rule: The Commission, on January 19, 2010, adopted an order denying Orange and Rockland Utilities, Inc.'s request to defer incremental debt service costs incurred between January 1, 2008 and October 31, 2009, 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.state.ny.us 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-M-1299SA1)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-29-09-00009-A

Filing Date: 2010-01-21

Effective Date: 2010-01-21

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

Action taken: On 1/19/10, the PSC adopted an order approving Emerald Green Lake Louise Marie Water Company, Inc.'s tariff revisions to P.S.C. No. 1 – Water, effective 10/1/09 and suspended through 1/28/10, to provide additional annual revenues of $106,418, or 27.7%.

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

Subject: Water rates and charges.

Purpose: To approve additional annual revenues of $106,418, or 27.7%, effective 1/28/10.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving Emerald Green Lake Louise Marie Water Company, Inc.'s tariff revisions to P.S.C. No. 1 – Water, effective October 1, 2009 and suspended through January 28, 2010, to provide additional annual revenues of $106,418, or 27.7%, 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.state.ny.us 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-W-0537SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-29-09-00012-A

Filing Date: 2010-01-22

Effective Date: 2010-01-22

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

Action taken: On 1/19/10, the PSC adopted an order approving the Petition of Highland Senior Residence, LLC to submeter electricity at 34 Highland Avenue, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of Highland Senior Residence, LLC to submeter electricity at 34 Highland Avenue, Yonkers, New York.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving the Petition of Highland Senior Residence, LLC to submeter electricity at 34 Highland Avenue, Yonkers, New York, located in the territory of Consolidated Edison Company of New York, 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.state.ny.us 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-E-0231SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-31-09-00012-A

Filing Date: 2010-01-25

Effective Date: 2010-01-25

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

Action taken: On 11/12/09, the PSC adopted an order approving the petition of the Town of Junius, Seneca County, for a waiver of certain provisions of 16 NYCRR Part 894 of the Commission's Rules to expedite cable television service with Time Warner Cable.

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

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve the Town of Junius Seneca County, and Time Warner Cable to expedite the cable television franchising process.

Substance of final rule: The Commission, on November 12, 2009, adopted an order approving the petition of the Town of Junius, Seneca County, for a waiver of certain provisions of 16 NYCRR sections 894.1 through 894.4 of the Commission's Rules as they apply to the Town's negotiation of an initial cable television franchise with Time Warner Entertainment-Advance/Newhouse Partnership, 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.state.ny.us 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-V-0542SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-32-09-00015-A

Filing Date: 2010-01-22

Effective Date: 2010-01-22

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

Action taken: On 1/19/10, the PSC adopted an order approving the Petition of FC 80 Dekalb Associates, to submeter electricity at 80 Dekalb Avenue, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition for the submetering of electricity.

Purpose: To grant the petition of FC 80 Dekalb Associates, to submeter electricity at 80 Dekalb Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving the Petition of FC 80 Dekalb Associates, to submeter electricity at 80 Dekalb Avenue, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, 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.state.ny.us 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-E-0519SA1)

NOTICE OF ADOPTION

Rejecting the Proposal for Residential High Efficiency Central Air Conditioning Program for 2010 and 2011

I.D. No. PSC-33-09-00008-A

Filing Date: 2010-01-20

Effective Date: 2010-01-20

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

Action taken: On 1/19/10, the PSC rejected Niagara Mohawk Power Corporation's proposal for a Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

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

Subject: Rejecting the proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

Purpose: To reject the proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

Substance of final rule: The Commission, on January 19, 2010, rejected Niagara Mohawk Power Corporation's April 1, 2009 proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011 and shall discontinue its Residential "Fast Track" electric energy efficiency programs by March 31, 2010, 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.state.ny.us 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-E-1014SA2)

NOTICE OF ADOPTION

Rejecting the Proposal for Residential High Efficiency Central Air Conditioning Program for 2010 and 2011

I.D. No. PSC-33-09-00011-A

Filing Date: 2010-01-20

Effective Date: 2010-01-20

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

Action taken: On 1/19/10, the PSC rejected Orange and Rockland Utilities Inc.'s proposal for a Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

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

Subject: Rejecting the proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

Purpose: To reject the proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011.

Substance of final rule: The Commission, on January 19, 2010, rejected Orange and Rockland Utilities Inc.'s April 2, 2009 proposal for Residential High Efficiency Central Air Conditioning program for 2010 and 2011 and shall discontinue its Residential "Fast Track" electric energy efficiency programs by March 31, 2010, 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.state.ny.us 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-E-1003SA2)

NOTICE OF ADOPTION

Amendments to 16 NYCRR Parts 10 and 257

I.D. No. PSC-41-09-00015-A

Filing No. 67

Filing Date: 2010-01-26

Effective Date: 2010-02-10

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

Action taken: Amendment of Parts 10 and 257 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 65(1) and 66(2)

Subject: Amendments to 16 NYCRR Parts 10 and 257.

Purpose: To adopt the amendments to 16 NYCRR Parts 10 and 257.

Substance of final rule: The Commission, on January 19, 2010, adopted an order amending 16 NYCRR Parts 10 and 257, to bring the Commission's regulations pertaining to safe operation and maintenance of liquefied petroleum gas (LPG) plants into alignment with the requirements found in Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas, 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.state.ny.us 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-1006SA1)

NOTICE OF ADOPTION

Pole Attachment Rates

I.D. No. PSC-43-09-00015-A

Filing Date: 2010-01-21

Effective Date: 2010-01-21

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

Action taken: On 1/19/10, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC 9—Electricity, effective January 1, 2010, and postponed to February 1, 2010, for an increase in annual pole attachment charges.

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

Subject: Pole Attachment Rates.

Purpose: To approve amendments to its pole attachment rates.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC 9—Electricity, effective January 1, 2010, and postponed to February 1, 2010, for an increase in annual pole attachment charges to reflect 2008 costs, 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.state.ny.us 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-E-0747SA1)

NOTICE OF ADOPTION

Pole Attachment Rates

I.D. No. PSC-43-09-00017-A

Filing Date: 2010-01-21

Effective Date: 2010-01-21

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

Action taken: On 1/19/10, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC 2—Electricity, effective January 1, 2010, and postponed to February 1, 2010, for an increase in annual pole attachment charges.

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

Subject: Pole Attachment Rates.

Purpose: To approve amendments to its pole attachment rates.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC 2—Electricity, effective January 1, 2010, and postponed to February 1, 2010, for an increase in annual pole attachment charges to reflect 2008 costs, 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.state.ny.us 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-E-0748SA1)

NOTICE OF ADOPTION

Transfer a Parcel of Land

I.D. No. PSC-45-09-00007-A

Filing Date: 2010-01-26

Effective Date: 2010-01-26

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

Action taken: On 1/19/10, the PSC adopted an order approving the Petition of Four Seasons Water Corp. to transfer approximately 1.51 acres of land located in East Fishkill, New York to Jack Frost, LLC.

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

Subject: Transfer a parcel of land.

Purpose: To approve the transfer of a parcel of land.

Substance of final rule: The Commission, on January 19, 2010, adopted an order approving the Petition of Four Seasons Water Corp. to transfer approximately 1.51 acres of land located in East Fishkill, New York to Jack Frost, LLC., 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.state.ny.us 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-W-0734SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement to Interconnect Telephone Networks for Provisioning of Local Exchange Service

I.D. No. PSC-06-10-00011-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 whether to approve or reject a modification filed by Verizon New York Inc. and McGraw Communications, Inc. to revise the interconnection agreement effective on December 15, 2009.

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

Subject: Interconnection agreement to interconnect telephone networks for provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and McGraw Communications, Inc. interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and McGraw Communications, Inc. in March 2007. The companies subsequently have jointly filed amendments to clarify the line acquisition incentive. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

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

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

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

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

(06-01498SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement to Interconnect Telephone Networks for Provisioning of Local Exchange Service

I.D. No. PSC-06-10-00012-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 whether to approve or reject a modification filed by Verizon New York Inc. and Granite Telecommunications, LLC to revise the interconnection agreement effective on December 29, 2009.

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

Subject: Interconnection agreement to interconnect telephone networks for provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Granite Telecommunications, LLC interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Granite Telecommunications, LLC in November 2002. The companies subsequently have jointly filed amendments to clarify the line acquisition incentive. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

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

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

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

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

(02-01022SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement to Interconnect Telephone Networks for Provisioning of Local Exchange Service

I.D. No. PSC-06-10-00013-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 whether to approve or reject a modification filed by Verizon New York Inc. and Time Warner ResCom of New York, LLC to revise the interconnection agreement effective on December 2, 2009.

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

Subject: Interconnection agreement to interconnect telephone networks for provisioning of local exchange service.

Purpose: To amend the Verizon New York Inc. and Time Warner ResCom of New York, LLC interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and Time Warner ResCom of New York, LLC in November 2005. The companies subsequently have jointly filed amendments to clarify the provisions regarding reciprocal compensation rates. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(05-01094SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Increased Funding for Individual Electric Energy Efficiency Programs to Balance the Overall Portfolio

I.D. No. PSC-06-10-00014-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 increased funding budgets, savings targets and collections for electric energy efficiency programs as a component of the Energy Efficiency Portfolio Standard.

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

Subject: Increased funding for individual electric energy efficiency programs to balance the overall portfolio.

Purpose: To encourage electric energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Energy Efficiency Portfolio Standard (EEPS) program relating to the overall balance of electric energy efficiency programs in the entire portfolio of approved EEPS programs. In particular, the Commission is considering whether to provide additional annual funding budgets and savings targets for the individual programs it has already approved in a selective manner to achieve an overall balance in the administration and delivery of electric energy efficiency programs. Some of the electric energy efficiency programs also have gas energy efficiency components or companion gas energy efficiency programs for which the Commission is considering enhanced annual funding budgets and savings. The Commission is also considering whether the schedule of collections should be modified to account for such changes to the EEPS program.

To date, the Commission has approved 45 electric energy efficiency programs as part of the EEPS program. Of the programs, 34 are administered by utilities within their service territories, and 11 are administered statewide by the New York State Energy Research and Development Authority. The various programs are provided for the benefit of residential, multifamily residential, low-income residential, commercial and industrial customers.

The EEPS program is intended to achieve a goal of reducing electricity usage by 15% (below that forecasted) statewide by 2015. The Commission has adopted an interim target of 3,569,010 MWh by 2011 as a step toward achieving the 15x15 goal. The programs approved to date are projected to be able to achieve 3,898,952 MWh in electric energy efficiency savings by 2011.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(07-M-0548SP17)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Increased Funding for Individual Gas Energy Efficiency Programs to Balance the Overall Portfolio

I.D. No. PSC-06-10-00015-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 increased funding budgets, savings targets and collections for gas energy efficiency programs as a component of the Energy Efficiency Portfolio Standard.

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

Subject: Increased funding for individual gas energy efficiency programs to balance the overall portfolio.

Purpose: To encourage gas energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to the Energy Efficiency Portfolio Standard (EEPS) program relating to the overall balance of gas energy efficiency programs in the entire portfolio of approved EEPS programs. In particular, the Commission is considering whether to provide additional annual funding budgets and savings targets for the individual programs it has already approved in a selective manner to achieve an overall balance in the administration and delivery of gas energy efficiency programs. Some of the gas energy efficiency programs also have electric energy efficiency components or companion electric energy efficiency programs for which the Commission is considering enhanced annual funding budgets and savings. The Commission is also considering whether the schedule of collections should be modified to account for such changes to the EEPS program.

To date, the Commission has approved 55 gas energy efficiency programs as part of the EEPS program. Of the programs, 45 are administered by utilities within their service territories, and 10 are administered statewide by the New York State Energy Research and Development Authority. The various programs are provided for the benefit of residential, multifamily residential, low-income residential, commercial and industrial customers.

The EEPS program is intended to achieve a goal of reducing gas usage by 44.04 billion cubic feet (Bcf) statewide by 2020. The Commission has adopted an interim target of 4.34 Bcf by 2011 as a step toward achieving the 2020 goal. The programs approved to date are projected to be able to achieve 5.2 Bcf in gas energy efficiency savings by 2011.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(07-M-0548SP18)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

A Specific Residential Electric and Gas Energy Efficiency Program

I.D. No. PSC-06-10-00016-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 a residential electric and gas energy efficiency program proposal as a component of the Energy Efficiency Portfolio Standard.

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

Subject: A specific residential electric and gas energy efficiency program.

Purpose: To encourage electric and gas energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a residential electric and gas energy efficiency program proposal made in response to an order in Case 07-M-0548 entitled "Order Establishing Energy Efficiency Portfolio Standard and Approving Programs" issued by the Public Service Commission on June 23, 2008 [see Ordering Clauses 8, 10 & 17]. The program proposal under consideration for this rule is: Cases 08-E-1135 and 09-G-0363 - Central Hudson Gas & Electric Corporation, Energy Efficiency Portfolio Standard letter from Thompson Hine LLP by Robert J. Glasser, Esq., dated November 3, 2008; The Positive Energy (currently OPower) Home Energy Reporting System (HERS) 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.state.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.state.ny.us

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

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

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

(08-E-1135SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Grant or Deny, in Whole or in Part, the Petition of Hertel Park Associates, LP for Waiver of Rule 47

I.D. No. PSC-06-10-00017-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 whether to grant or deny, in whole or in part, the petition of Hertel Park Associates, LP for waiver of electric tariff Rule 47 of Niagara Mohawk Power Corporation d/b/a National Grid.

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

Subject: Whether to grant or deny, in whole or in part, the petition of Hertel Park Associates, LP for waiver of Rule 47.

Purpose: Whether to grant or deny, in whole or in part, the petition of Hertel Park Associates, LP for waiver of Rule 47.

Substance of proposed rule: The Commission is considering whether to grant or deny, in whole or in part, the petition of Hertel Park Associates, LP for waiver of tariff Rule 47 contained in Niagara Mohawk Power Corporation d/b/a National Grid's tariff for electric service. The waiver is requested so that Hertel Park Associates, LP may aggregate delivery points at its Hertel Park Senior Living Facility so that the current directly metered living units may be master-metered without incurring the applicable charges under Rule 47 for such aggregation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(08-E-1355SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Grant or Deny, in Whole or in Part, the Petition of Walden Park Associates, LP for Waiver of Rule 47

I.D. No. PSC-06-10-00018-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 whether to grant or deny, in whole or in part, the petition of Walden Park Associates, LP for waiver of electric tariff Rule 47 of Niagara Mohawk Power Corporation d/b/a National Grid.

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

Subject: Whether to grant or deny, in whole or in part, the petition of Walden Park Associates, LP for waiver of Rule 47.

Purpose: Whether to grant or deny, in whole or in part, the petition of Walden Park Associates, LP for waiver of Rule 47.

Substance of proposed rule: The Commission is considering whether to grant or deny, in whole or in part, the petition of Walden Park Associates, LP for waiver of tariff Rule 47 contained in Niagara Mohawk Power Corporation d/b/a National Grid's tariff for electric service. The waiver is requested so that Walden Park Associates, LP may aggregate delivery points at its Walden Park Senior Living Facility so that the current directly metered living units may be master-metered without incurring the applicable charges under Rule 47 for such aggregation.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(08-E-1356SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Verizon and NexGen Networks Corp. for Local Exchange Service and Exchange Access

I.D. No. PSC-06-10-00019-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 whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with NexGen Networks Corp., executed on December 1, 2009.

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

Subject: Interconnection of the networks between Verizon and NexGen Networks Corp. for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and NexGen Networks Corp.

Substance of proposed rule: Verizon New York Inc. and NexGen Networks Corp. have reached a negotiated agreement whereby Verizon New York Inc. and NexGen Networks Corp. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 30, 2011, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-02396SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Windstream and Manhattan d/b/a MetTel for Local Exchange Service and Exchange Access

I.D. No. PSC-06-10-00020-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 whether to approve or reject a proposal filed by Windstream New York, Inc. for approval of an Interconnection Agreement with Manhattan Telecommunications Corp. d/b/a MetTel, executed on December 7, 2009.

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

Subject: Interconnection of the networks between Windstream and Manhattan d/b/a MetTel for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Windstream and Manhattan d/b/a MetTel.

Substance of proposed rule: Windstream New York, Inc. and Manhattan Telecommunications Corporation d/b/a MetTel have reached a negotiated agreement whereby Windstream New York, Inc. and Manhattan Telecommunications Corporation d/b/a MetTel will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until December 7, 2011, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-02490SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider Waiver of the Individual Metering Requirement for Electric Service at DePaul Batavia Community Residence

I.D. No. PSC-06-10-00021-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Living Opportunities of DePaul for waiver of the individual metering requirement at DePaul Batavia Community Residence.

Statutory authority: Public Service Law, section 2, 4, 65 and 66

Subject: To consider waiver of the individual metering requirement for electric service at DePaul Batavia Community Residence.

Purpose: To consider waiver of the individual metering requirement for electric service at DePaul Batavia Community Residence.

Substance of proposed rule: The Commission is considering whether to grant or deny, in whole or in part, the petition of Living Opportunities of DePaul for waiver of the individual metering requirement at DePaul Batavia Community Residence, located on East Main Street in Batavia, NY. DePaul Batavia Community Residence is a new, 42 unit residential facility being constructed by Living Opportunities of DePaul to serve as a community residence for seriously mentally ill persons. DePaul Batavia Community Residence is licensed by the New York State Office of Mental Health, and is equipped with 24 hour on-site staff trained in the care of mentally ill persons.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-E-0306SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

The Commission's Order of December 17, 2009 Related to Redevelopment of Consolidated Edison's Hudson Avenue Generating Facility

I.D. No. PSC-06-10-00022-P

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

Proposed Action: Rehearing of the Commission's Order of December 17, 2009 related to development planning for Consolidated Edison Company of New York Inc.'s (Consolidated Edison) Hudson Avenue generating facility.

Statutory authority: Public Service Law, sections 79, 80 and 81

Subject: The Commission's Order of December 17, 2009 related to redevelopment of Consolidated Edison's Hudson Avenue generating facility.

Purpose: To reconsider the Commission's Order of December 17, 2009 related to redevelopment of the Hudson Avenue generating facility.

Substance of proposed rule: On December 17, 2009 the Commission issued an order related to redevelopment of Consolidated Edison Company of New York, Inc.'s (Consolidated Edison) Hudson Avenue generating facility. The Commission refrained from ordering Consolidated Edison to construct a cogeneration facility, citing cost and timing issues. The Commission's order states that if the City of New York makes a timely proposal for the development of a cogeneration facility, including financial support (from the New York City Industrial Development Agency or other sources) which would make a cogeneration facility no more costly to customers than steam boilers (taking into account environmental benefits), then the proposal should be considered. The Commission is considering the City of New York's Petition for rehearing of the Order, stating that the Commission should require Consolidated Edison to seek expressions of interest from potential vendors, and that the New York City Industrial Development Agency cannot make proposals but can only entertain proposals.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(09-S-0029SP6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regional Greenhouse Gas Initiative (RGGI)

I.D. No. PSC-06-10-00023-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 whether to adopt, reject, or modify, in whole or in part, a proposal by Consolidated Edison Company of New York, Inc. to recover, through the MAC, the RGGI costs related to certain non-company-owned generating facilities.

Statutory authority: Public Service Law, sections 65(1), 66(1), (4), (5), (9), (10), (11), (19) and 113

Subject: Regional Greenhouse Gas Initiative (RGGI).

Purpose: To recover, through the MAC, RGGI costs incurred for the generators pursuant to the Consent Decree.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to recover through the Monthly Adjustment Clause (MAC), the Regional Greenhouse Initiative Gas (RGGI) costs incurred for the non-Company-owned generators pursuant to the Consent Decree approved in Indeck v. Paterson, Index No. 5280-09, Supreme Court, Albany County; in the same manner Con Edison recovers RGGI costs for Company-owned generation in excess of market prices.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(10-E-0025SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Classification No. 21 - Transport of Third Party Gas to Interstate Pipeline System

I.D. No. PSC-06-10-00024-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 a tariff filing by Corning Natural Gas Corporation to establish a new Service Class for transport of third party gas into the interstate pipeline system.

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

Subject: Service Classification No. 21 - Transport of Third Party Gas to Interstate Pipeline System.

Purpose: To establish a new service class for transport of third party gas into the interstate pipeline system.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Corning Natural Gas Corporation (Corning) to establish a new service class – S.C. No. 21 – for the transport of third party gas into the interstate pipeline system. The Commission may adopt, reject, or modify, in whole or in part, Corning's proposal.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(10-G-0035SP1)

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: November 1, 2009, through December 31, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(e) and 18 CFR § 806.22(f) for the time period specified above:

Approvals Issued

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Tyco Electronics Corporation, Lickdale Facility, ABR-20091222,

Union Township, Lebanon County, Pa.; Consumptive Use of up to 0.080 mgd; Approval Date: December 18, 2009.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. East Resources, Inc., Pad ID: Stehmer 420, ABR-20091101, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 15, 2009.

2. East Resources, Inc., Pad ID: Johnson 435, ABR-20091102, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

3. J-W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C-09H, ABR-20091103, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: November 16, 2009.

4. Citrus Energy, Pad ID: Procter & Gamble Mehoopany Plant 2 1H, ABR-20091104, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: November 16, 2009.

5. Fortuna Energy, Inc., Pad ID: Eick 013, ABR-20091105; Columbia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: November 16, 2009.

6. East Resources, Inc., Pad ID: Brown 425, ABR-20091106, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

7. East Resources, Inc., Pad ID: Barrett 410, ABR-20091107, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

8. East Resources, Inc., Pad ID: Starks 461, ABR-20091108, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

9. Chesapeake Appalachia, LLC, Pad ID: Doss, ABR-20091109, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 16, 2009.

10. East Resources, Inc., Pad ID: Yungwirth 307, ABR-20091110, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

11. East Resources, Inc., Pad ID: West 299, ABR-20091111, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

12. Chesapeake Appalachia, LLC, Pad ID: CSI, ABR-20091112, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 16, 2009.

13. East Resources, Inc., Pad ID: Button 402, ABR-20091113, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.

14. EXCO-North Coast Energy, Inc., Pad ID: Fidatti-Bianconi, ABR-20091114, Scott Township, Lackawanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: November 16, 2009.

15. Chief Oil & Gas, LLC, Pad ID: Teel Unit #1H, ABR-20091115, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: November 16, 2009.

16. EOG Resources, Inc., Pad ID: Guinan IV, ABR-20091116, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: November 18, 2009.

17. EOG Resources, Inc., Pad ID: Guinan 2H, ABR-20091117, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 18, 2009.

18. Pennsylvania General Energy Company, L.L.C., Pad ID: COP Tract 724 - Pad A, ABR-20091118, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: November 19, 2009, including a partial waiver of 18 CFR Section 806.15.

19. EOG Resources, Inc., Pad ID: Hoppaugh 1V, ABR-20091119, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: November 20, 2009.

20. EOG Resources, Inc., Pad ID: Hoppaugh 2H, ABR-20091120, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.

21. EOG Resources, Inc., Pad ID: Hoppaugh 3H, ABR-20091121, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.

22. EOG Resources, Inc., Pad ID: Lee 1H, ABR-20091122, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.

23. EOG Resources, Inc., Pad ID: Lee 2H, ABR-20091123, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.

24. EOG Resources, Inc., Pad ID: Lee 2H, ABR-20091124, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.

25. Rice Drilling B LLC, Pad ID: Ultimate Warrior #1, ABR-20091125, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: November 30, 2009.

26. Chief Oil & Gas, LLC, Pad ID: Hodge Unit Drilling Pad #1, ABR-20091201, Juniata Township, Blair County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 1, 2009.

27. Citrus Energy Corporation, Pad ID: Martin #1V, ABR-20091202, Sugarloaf Township, Columbia County, Consumptive Use of up to 5.000 mgd; Approval Date: December 1, 2009.

28. XTO Energy Incorporated, Pad ID: Jenzano, ABR-20090713.1, Franklin Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 1, 2009.

29. EOG Resources, Inc., Pad ID: Houseknecht 1H, ABR-20090423.1, Springfield Township, Bradford County, Pa.; Consumptive Use total of up to 1.999 mgd; Approval Date: December 2, 2009.

30. EOG Resources, Inc., Pad ID: Ward M 1H, ABR-20090421.1, Springfield Township, Bradford County, Pa.; Consumptive Use total of up to 1.990 mgd; Approval Date: December 2, 2009.

31. EOG Resources, Inc., Pad ID: Jones IV, ABR-20091203, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 2, 2009.

32. Chief Oil & Gas, LLC, Pad ID: Teel Unit Drilling Pad #2H, ABR-20091204, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: December 3, 2009.

33. Chief Oil & Gas, LLC, Pad ID: Teel Unit Drilling Pad #3H, ABR-20091205, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: December 3, 2009.

34. East Resources, Inc., Pad ID: Chapman 237, ABR-20091206, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 8, 2009.

35. East Resources, Inc., Pad ID: Houck 433, ABR-20091207, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 9, 2009.

36. Chesapeake Appalachia, LLC, Pad ID: Stoorza, ABR-20091208, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

37. Chesapeake Appalachia, LLC, Pad ID: Roger, ABR-20091209, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

38. Chesapeake Appalachia, LLC, Pad ID: Readinger, ABR-20091210, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

39. Chesapeake Appalachia, LLC, Pad ID: Miller, ABR-20091211, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

40. Chesapeake Appalachia, LLC, Pad ID: Grippo, ABR-20091212, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

41. Chesapeake Appalachia, LLC, Pad ID: Duffield, ABR-20091213, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.

42. Chief Oil & Gas, LLC, Pad ID: Clear Springs Dairy Drilling Pad #1, ABR-20091214, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 14, 2009.

43. East Resources, Inc., Pad ID: Jenkins 523, ABR-20091215, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.

44. East Resources, Inc., Pad ID: Pannebaker 515, ABR-20091216, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.

45. East Resources, Inc., Pad ID: Starks 460, ABR-20091217, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.

46. East Resources, Inc., Pad ID: Oldroyd 509, ABR-20091218, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.

47. XTO Energy Incorporated, Pad ID: Hazlak, ABR-20090715.1, Franklin Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 14, 2009.

48. XTO Energy Incorporated, Pad ID: Temple, ABR-20090714.1, Moreland Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 14, 2009.

49. EOG Resources, Inc., Pad ID: Harkness 1V, ABR-20091219,

Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 14, 2009.

50. EOG Resources, Inc., Pad ID: Harkness 2H, ABR-20091220, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: December 14, 2009.

51. EOG Resources, Inc., Pad ID: Harkness 3H, ABR-20091221, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: December 14, 2009.

52. Seneca Resources Corporation, Pad ID: T. Wivell Horizontal Pad, ABR-20090814.1, Covington Township, Tioga County, Pa.; Consumptive Use total of up to 4.000 mgd; Approval Date: December 18, 2009.

53. Cabot Oil & Gas Corporation, Pad ID: HibbardAM P1, ABR-20091223, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: December 21, 2009.

54. Cabot Oil & Gas Corporation, Pad ID: HibbardAM P2, ABR-20091224, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: December 21, 2009.

55. XTO Energy Incorporated, Pad ID: King Unit, ABR-20091225, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: December 22, 2009.

56. XTO Energy Incorporated, Pad ID: Booth, ABR-20091226, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 28, 2009.

57. Seneca Resources Corporation, Pad ID: Rich Valley 1V Pad, ABR-20091227, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: December 28, 2009.

58. Citrus Energy Corporation, Pad ID: Farver #1V, ABR-20091228, Benton Township, Columbia County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 28, 2009.

59. Seneca Resources Corporation, Pad ID: Wolfinger, ABR-20091229, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: December 28, 2009, including a partial waiver of 18 CFR Section 806.15.

60. Ultra Resources, Inc., Pad ID: Marshlands H. Bergey Unit #1, ABR-20091230, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.

61. Ultra Resources, Inc., Pad ID: Marshlands K. Thomas Unit #1, ABR-20091231, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.

62. Ultra Resources, Inc., Pad ID: Lick Run Pad, ABR-20091232, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.

63. Ultra Resources, Inc., Pad ID: Hillside Pad, ABR-20091233, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.

64. Ultra Resources, Inc., Pad ID: Button B 901 Pad, ABR-20091234, West Branch Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.

65. EOG Resources, Inc., Pad ID: Kenyon 1V, ABR-20091235, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 29, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: January 19, 2010.

Stephanie L. Richardson

Secretary to the Commission.