

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Applicability of Requirements Relating to the Production, Processing, and Manufacture of Milk and Milk Products

I.D. No. AAM-41-10-00001-A
Filing No. 1320
Filing Date: 2010-12-23
Effective Date: 2011-01-12

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

Action taken: Repeal of section 2.1 and addition of new section 2.1 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214-b

Subject: Applicability of requirements relating to the production, processing, and manufacture of milk and milk products.

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the current PMO.

Text or summary was published in the October 13, 2010 issue of the Register, I.D. No. AAM-41-10-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Casey McCue, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-5731, email: casey.mccue@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-10-00012-A
Filing No. 1342
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 18, 2010 issue of the Register, I.D. No. CVS-33-10-00012-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-10-00013-A
Filing No. 1339
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 18, 2010 issue of the Register, I.D. No. CVS-33-10-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-33-10-00014-A**Filing No.** 1341**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: 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 or summary was published** in the August 18, 2010 issue of the Register, I.D. No. CVS-33-10-00014-P.**Final rule as compared with last published rule:** No changes.**Text of 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**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-35-10-00007-A**Filing No.** 1347**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: 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 or summary was published** in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00007-P.**Final rule as compared with last published rule:** No changes.**Text of 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**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-35-10-00008-A**Filing No.** 1344**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text or summary was published** in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00008-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-35-10-00009-A**Filing No.** 1343**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the exempt class.**Text or summary was published** in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00009-P.**Final rule as compared with last published rule:** No changes.**Text of 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**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-35-10-00010-A**Filing No.** 1345**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: 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 or summary was published** in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00010-P.**Final rule as compared with last published rule:** No changes.**Text of 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**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-35-10-00011-A**Filing No.** 1348**Filing Date:** 2010-12-28**Effective Date:** 2011-01-12

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text or summary was published** in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00011-P.**Final rule as compared with last published rule:** No changes.**Text of 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**Assessment of Public Comment**

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-10-00012-A
Filing No. 1340
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00012-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-10-00013-A
Filing No. 1346
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00013-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-10-00014-A
Filing No. 1349
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

Action taken: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the exempt class and to delete a position from the non-competitive class.

Text or summary was published in the September 1, 2010 issue of the Register, I.D. No. CVS-35-10-00014-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

State Commission of Correction

NOTICE OF ADOPTION

Prisoner Population Counts

I.D. No. CMC-41-10-00004-A
Filing No. 1319
Filing Date: 2010-12-23
Effective Date: 2011-01-12

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

Action taken: Amendment of sections 7003.5 and 7003.6 of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Prisoner population counts.

Purpose: To eliminate the requirement for overlapping officer shifts in conducting prisoner population counts.

Text or summary was published in the October 13, 2010 issue of the Register, I.D. No. CMC-41-10-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, 80 Wolf Road, Albany, New York 12205, (518) 485-2346, email: Brian.Callahan@scoc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Black Bear Feeding

I.D. No. ENV-16-10-00014-A
Filing No. 1335
Filing Date: 2010-12-28
Effective Date: 2011-01-12

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

Action taken: Amendment of Part 187 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0521, 11-0903 and 11-0928

Subject: Black bear feeding.

Purpose: To reduce conflicts between bears and people.

Text of final rule: Section 187.1 of 6 NYCRR is repealed and a new section 187.1 adopted as follows:

187.1 Black bear feeding.

(a) "Purpose." The purpose of this section is to protect public safety while conserving New York's black bear populations. The deliberate, intentional feeding of black bears is prohibited. The incidental, indirect feeding of black bears becomes unlawful once a written warning has been issued by the department.

(b) "Definitions."

(1) "Feeding" means using, placing, giving, exposing, depositing, distributing or scattering any material to attract one or more black bears to feed on such material.

(2) "Incidental or indirect feeding" means using, placing, giving, exposing, depositing, distributing or scattering any material for a

different purpose but which attracts one or more black bears. This includes storage of garbage or refuse and use and storage of birdseed in a manner that is accessible to black bears.

(c) *Prohibited activities.* It is a violation for any person to:

(1) Feed black bears, except as authorized by section 187.2 of this Part;

(2) Incidentally or indirectly feed black bears after the department has issued a written notice to the person or persons directly responsible for the incidental or indirect feeding of a black bear.

Section 187.2 of 6 NYCRR is repealed and a new section 187.2 adopted as follows:

187.2 Training of dogs on black bears.

(a) *“Purpose.”* The purpose of this section is to allow the use of certified black bear tracking dogs by persons possessing a black bear tracking dog license issued by the department.

(b) *“Definitions.”*

(1) *“Certified black bear tracking dog”* means a dog that is used to track, trail, pursue and tree black bears pursuant to a black bear tracking dog license, issued as provided by this section; that is licensed, collared, identified and vaccinated against rabies in accordance with the Agriculture and Markets Law; and that is one of the following breeds or a cross among these breeds: Airedale, American Black and Tan Coonhound, Bluetick Coonhound, Majestic Tree Hound, Mountain Cur, Leopard Cur, English Coonhound, Plott Hound, Redbone Coonhound, Treeing Walker, Black Mouth Yellow Cur, and Karelian Bear Dog.

(2) *“License”* means a black bear tracking dog license issued pursuant to this section, authorizing the use of certified black bear tracking dogs as specified in this section and subdivision 6 of section 11-0923 of the Environmental Conservation Law.

(3) *“Licensee”* means a person who is the holder of a black bear tracking dog license.

(4) *“Agent”* means any person authorized by the licensee to place baits to attract a black bear, who is listed on the licensee’s agent list, and who possesses a copy of the license.

(5) *“Relaying”* means the act of replacing dogs or a pack of dogs during a chase or pursuit of a black bear.

(6) *“Reversible attractants”* means conditions that attract black bears where the conditions can be removed, made unattractive, or inaccessible to black bears.

(c) *Black bear tracking dog license.*

(1) *Qualifications.* An applicant for a license must:

(i) Possess a current license authorizing the applicant to hunt black bear in New York; and

(ii) Not have been convicted of, pled guilty to, or settled by civil settlement or otherwise for, the illegal taking of a black bear or the illegal sale of black bear parts within the last five years.

(2) *Issuance.* Applicants who meet the qualifications for a license must submit a completed, signed application and:

(i) a \$25 fee for a license valid for one year; or

(ii) a \$100 fee for a license valid for five years.

(3) *Entitlements.*

(i) A black bear tracking dog license issued by the department entitles the licensee to train and use certified black bear tracking dogs to track, trail, pursue and tree black bears, including the placement of bait to attract bears, from July 1 until nine days before the opening of any bear hunting season in the Zone (Northern or Southern Zone) where certified black bear tracking dogs are being used. The licensee must also possess a current license authorizing him or her to hunt black bear in New York. A licensee may also assist with controlling damage caused by black bears as provided in subdivision (e) of this section.

(ii) Residents of any age and non-residents under the age of 18, who have not been issued a black bear tracking dog license and have not been convicted of, pled guilty to, or settled by civil settlement or otherwise for, the illegal taking of a black bear or the illegal sale of black bear parts within the last five years may accompany a licensee

during the training and use of certified black bear tracking dogs to track, trail, pursue and tree black bears. They may also act as an agent of the licensee to place baits pursuant to subdivision (d) of this section.

(iii) Non-residents 18 years old and older who have not been issued a black bear tracking dog license, but do possess a current New York license authorizing black bear hunting, and have not been convicted of, pled guilty to, or settled by civil settlement or otherwise for, the illegal taking of a black bear or the illegal sale of black bear parts within the last five years, may accompany a licensee during the training and use of certified black bear tracking dogs to track, trail, pursue and tree black bears. They may also act as an agent of the licensee to place baits pursuant to subdivision (d) of this section.

(4) *Conditions.*

(i) No person may capture, take, kill or attempt to kill a black bear with the aid of a dog except by permit issued pursuant to subdivision 1 of Section 11-0521 of the Environmental Conservation Law.

(ii) No person may possess a longbow, crossbow, pistol, rifle, shotgun or firearm of any kind while using dogs to track, trail, pursue or tree a black bear except under a permit issued pursuant to subdivision 1 of section 11-0521 of the Environmental Conservation Law.

(iii) Black bear tracking dog training hours will be from one half hour before sunrise to sunset.

(iv) Only certified black bear tracking dogs may be used to track, trail, pursue or tree black bears.

(v) At least two but no more than eight certified black bear tracking dogs must be used to track, trail, pursue or tree black bears, except an additional four certified black bear tracking dogs may be brought to the tree for purposes of training after the chase has ended and the black bear is treed.

(vi) No relaying of packs or dogs is allowed when tracking black bear.

(vii) Each black bear tracking dog must have a tag which includes the owner’s name, address, and telephone number.

(viii) No more than 12 people may accompany a pack of dogs during the tracking, trailing, pursuit or treeing of black bears.

(ix) At least one person accompanying the pack must be a licensee.

(x) No licensee may release dogs after a black bear when the reported ambient air temperature is above 85 degrees Fahrenheit.

(xi) Licensees will make every effort to end any black bear chase or to remove their dogs and leave a treed black bear whenever the reported ambient air temperature is above 90 degrees Fahrenheit or when the black bear is panting.

(xii) Licensees must complete and return any survey, questionnaire, agent list or daily diary requested by the department.

(xiii) Licensees will maintain a list with names and addresses of agents who are authorized to place baits and provide all agents with a copy of their license.

(xiv) Licensees will maintain a map or list of GPS coordinates of all bait locations and show this map or coordinate list to any department official upon request;

(xv) Licensees will identify each bait site with their 12-digit Department of Environmental Conservation Automated Licensing System (DECALS) identification number or their name and address clearly legible on a metal tag, plastic tag, stake, or container for bait;

(xvi) The department may at any time amend license conditions establishing reporting requirements. Licensees will be notified in writing of any license condition amendments and the period of time during which they are in effect.

(xvii) Licensees and their agents will cease placing baits when notified by the department that such baits are creating a nuisance.

(d) *“Deployment of bait used for black bear tracking dog training.”* It is a violation for any licensee or agent to:

(1) place any bait within 500 feet of any occupied building (unless the building is owned or leased and occupied by that person), school, playground, paved public road, trailhead, designated or

established campsite, landfill, dump or municipal waste transfer site or dumpster;

(2) place any bait within 100 feet of any other building, any unimproved public road or trail, or body of water;

(3) place any bait or use any substance containing metal, glass, plastic, paper, cardboard or porcelain;

(4) place any bait during any time period other than the black bear tracking dog training season as defined in subdivision (c) of this section;

(5) act as an agent of the licensee unless the person:

(i) is listed on the licensee's agent list;

(ii) has agreed to the conditions and signed a copy of the license;

(iii) carries that copy of the license on their person when placing bait;

(iv) follows all other conditions of the license.

(6) fail to remove all baits by the close of the black bear tracking dog training season as defined in subdivision (c) of this section.

(e) "Deployment of black bear tracking dogs pursuant to a chase permit."

(1) In addition to training seasons established by this section, the department may also issue permits to chase nuisance black bears with trained, certified black bear tracking dogs when all of the following conditions are met:

(i) The department receives a complaint of damage to property or threat to public health or safety caused by one or more black bears;

(ii) The department examines the evidence of damage or threat and identifies any reversible attractants and all practical non-lethal control methods for the complainant;

(iii) The complainant has removed any reversible attractant and tried all practical non-lethal control methods, but the damage or threat continues;

(iv) The department determines that tracking dogs are essential to manage the nuisance black bear or bears.

(2) The department may issue a permit to destroy the nuisance black bear if there is a strong likelihood that the nuisance black bear can be identified. This destroy permit may, at the department's discretion, include the use of trained, certified black bear tracking dogs to tree the black bear for identification prior to destruction.

(3) After the above conditions are met, chase and destroy permits may be issued by the department at any time and any place.

(4) Nothing in this section may be construed to prohibit the use of dogs by the department or by persons authorized by the department pursuant to Environmental Conservation Law section 11-0515 or 11-0521 to aid in the capture or taking of black bears for management or research purposes or damage abatement.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 187.1(b)(1), (c)(1), 187.2(c)(3), (4), (d)(4) and (e)(2).

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8885, email: wildliferegs@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

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

The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rule Making remains valid, and does not need to be amended to reflect the changes made to the text of the regulation.

Assessment of Public Comment

The Department of Environmental Conservation (DEC or department) received approximately 35 copies of a form letter and 45 individual letters or emails with both supportive and critical comments on the proposal, several of which offered general support or opposition without explanation. A summary of the substantive comments, and the department's response follows:

Comment:

The proposed regulation is an appropriate and responsible action, which will improve public safety and result in a healthier and less habituated bear population. The proposed amendment is a reasonable solution to help control home owners from intentionally and inadvertently feeding bears.

Response:

The department agrees.

Comment:

The proposed inclusion of additional breeds of dogs and expansion of the areas open for training of dogs on bears is a good idea. This proposal should help reduce some of the property damage by bears that occurs outside the current training area.

Response:

The department agrees.

Comment:

The current regulation allows the feeding of bears up to nine days prior to the opening of the bear hunting season. This should be continued to enable successful hunting. The proposed regulations would remove a means of population control and be counterproductive to decreasing human-bear conflicts. Further, the proposed regulation will harm small businesses that rely on guided bear hunts for a significant part of their annual income.

Response:

Some hunters and guides apparently misconstrued the previous bear feeding regulation as if it allowed pre-baiting of black bears for the purpose of improving bear harvest success. In the examples provided to the department, hunters or their guides would establish a bear feeding site and remove the food nine days prior to the start of bear hunting season, in accordance with the regulation. These hunters or guides would then maintain the site attractiveness to bears by lawfully dispensing liquid scent or lure through the nine days prior to and during the bear hunting season. While the placement of food and dispersal of scent may have been conducted lawfully, the department asserts that the activity was clearly intended to condition bears to a "pre-established bait pile" for the purpose of hunting. This intention is further evidenced by the concern expressed by several hunters and licensed guides about the potential impact of this rule making on their bear hunting success.

The department acknowledges that the use of bait to hunt bears is an effective technique and, though presently unnecessary, may be of value to the department for black bear management at some point in the future. However, currently in New York, hunting black bear with the aid of a pre-established bait pile is expressly prohibited by New York State Environmental Conservation Law (ECL) 11-0901.

Therefore, the department contends that this rule making will not impact lawful hunting of black bears and any impact on hunter success or small business owners is a natural consequence of realigning hunting and business practices with existing statutes.

Use of scents or lures (by hunters or others) that are not intended to attract bears to consume such materials will still be allowed under the amended regulation.

Comment:

The primary problem is with campers who do not follow appropriate practices for storing food, or who directly feed bears. The proposal will not solve conflicts between campers and bears, but it will reduce hunting success in the Adirondacks, and this could increase those conflicts.

Response:

This rule making continues to provide a mechanism to restrict bear access to human supplied food sources at frontcountry and backcountry camping sites. Furthermore, by prohibiting direct feeding of bears and clarifying regulations regarding incidental or indirect feeding of bears, this rule making will secure greater enforcement authority for situations where direct feeding of bears leads to or increases conflicts between campers and bears.

Comment:

It is unfair to continue to allow houndsmen to feed bears for training dogs, while prohibiting it for hunters.

Response:

The department considers the training of dogs on black bears to be a legitimate activity with direct public benefit by helping to resolve nuisance bear problems, and the use of bait facilitates effective and efficient training. However, as indicated previously, use of bait for hunting is prohibited by New York State statute.

Comment:

Several comments were submitted with concern that the proposed regulations will restrict use of back yard bird feeders or potentially cause a person to be in violation if a bear feeds in a home garden.

Response:

This rule making specifies that incidental or indirect feeding of black bears is prohibited only after the department has issued a written notice to the responsible person or persons. Such flexibility allows the public to enjoy feeding birds, but also affords the department authority to require removal of incidental bear attractants when necessary. Additionally, the department generally encourages the public to discontinue bird feeding activity in spring when bears emerge from their dens and natural foods for bears are not abundant.

Comment:

The proposed regulation will harm trappers who use baits to capture furbearers, and because the department may be unable to distinguish between a bait station set for bears and a legitimate trap set, tickets may be written inappropriately. In particular, "pre-baiting" is an important technique for capturing fisher and raccoons; bait piles are often used to attract coyotes and fox.

Response:

There is no conflict between the lawful activities associated with furbearer trapping and this rule making. Similar to feeding birds, the use of baits or lures for furbearer trapping is of a different purpose than attracting bears. If bears are attracted to the baits or lures used in furbearer trapping, this could constitute incidental or indirect feeding of bears, which is prohibited only after the department has issued a written notice to the responsible person or persons.

Comment:

Enforcement of the current regulations should be emphasized before adding new restrictions. The proposed regulations will be difficult to enforce and will take away from the real job of our conservation officers.

Response:

Department wildlife and law enforcement staff currently work diligently to enforce black bear feeding regulations. However, this rule making will aid enforcement by prohibiting the feeding of bears in general statewide to protect public health and safety, with exceptions allowed only in those limited instances where needed for research and management purposes.

Comment:

DEC's current bear feeding regulation eliminates potentially problematic associations by simply prohibiting feeding or placement of bait near homes, buildings, roads, playgrounds, campsites, etc. via setbacks. The existing regulation works well when people follow the regulation. DEC's proposal to expand the feeding prohibition is unnecessary and misguided.

Response:

Department wildlife and law enforcement staff have identified situations where intentional feeding of bears was conducted in accord with existing regulations but in relative close proximity to high human-bear conflict areas. In these circumstances, the feeding activity maintained a high frequency rate of bears using the area and exacerbated food conditioned behavior of bears, confounding efforts to reduce human-bear conflicts in the area. This rule making is a necessary and sensible approach to reduce bear conditioning to human-supplied food sources and problematic associations that may result.

Comment:

The proposed regulations will place a handicap on legitimate photographers and others who are respectful of the existing regulation.

Response:

The department recognizes that some photographers may prefer to use small food stations to enhance their success in photographing black bears but considers the general prohibition on feeding bears to be of greater importance. Photographers may continue to seek wild bears by identifying marking trees, den locations, day bed areas, routine bear crossings over beaver dams or other key topographic features, or high use areas with abundant natural food. Additionally, use of scents or lures (by photographers or others) that are not intended to attract bears to consume such materials will still be allowed under the amended regulation.

Comment:

This blanket prohibition on feeding bears is the sort of intrusive hyper-regulation that makes so many people angry with the government.

Response:

The department is mandated to manage wildlife with consideration of public safety. Furthermore, the department has specific statutory authority to regulate the intentional and incidental feeding of black bears. Heretofore, the department allowed feeding under limited circumstances. Yet, as bear populations have increased in number and distribution in New York, the department now considers a general prohibition on the feeding of black bears to be a prudent and reasonable measure to reduce bear habituation to human supplied foods and thereby reduce human-bear conflicts.

Comment:

This proposal is contrary to the legislative intent that gave DEC authority to regulate feeding of bears.

Response:

In 1993, the new legislation authorized the department to regulate the intentional and incidental feeding of black bears. Bear populations have increased in number and distribution in New York since the early 1990s, and the department considers a general prohibition on the feeding of black bears to be a prudent and reasonable measure to reduce bear habituation to human supplied foods and thereby reduce human-bear conflicts.

Comment:

The proposed regulation should be amended to expand training hours from one half hour before sunrise to one half hour after sunset.

Response:

The department believes the current time frame (one half hour before sunrise to sunset) is sufficient for effective training of dogs to track black bear.

Comment:

The current and proposed regulations require two or more chases pursuant to a chase permit before the department may issue a permit to destroy the nuisance black bear. This "three strikes" policy is overly protective and causes unnecessary financial suffering of farmers.

Response:

The department concurs and has modified the text by removing reference to, "If, after two or more chases, pursuant to a chase permit, the damage or threat still continues," in Section 187.2(e)(2). The amended language continues to allow the department to exercise discretion for issuance of a chase permit or a chase permit in conjunction with a destroy permit to reduce a threat to public health or agricultural or property damage caused by bears.

Comment:

To protect dogs from coyote attacks, houndsmen should be permitted to carry handguns while training on bear. Houndsmen need the ability to either protect their dogs from coyotes or humanely dispatch a dog that has sustained damage from a bear or coyote.

Response:

The department believes that houndsmen must assume some risk to their dogs when releasing them to track bears and that the existing restriction on carrying firearms is appropriate.

Comment:

The proposed regulation seems to rule out putting baits near game cameras.

Response:

Correct. The use of baits to attract bears will be prohibited for this purpose. However, use of scents or lures (by photographers or others) that are not intended to attract bears to consume such materials will also be allowed under the amended regulation.

Comment:

The regulation describing which breeds of dogs may be used to train on bears should allow for a cross among breeds or include other breeds such as the German Jagdterrier.

Response:

Existing regulations allow for crossbreeds among the list of dog breeds designated as certified black bear tracking dogs. This rule making has expanded the list of breeds to include Black Mouth Yellow Cur and Karelian Bear Dogs which are commonly used to trail and tree bears in other areas. While the German Jagdterrier is used occasionally in other areas for hunting bears, the listed breeds are more adept at trailing and treeing bears.

Comment:

Human-bear conflicts take place in close proximity to structures and roadways. Increasing the buffer distances to 2,000 feet from a dwelling and 1,000 feet from a highway would accomplish the objective of reducing human-bear conflict without negatively impacting sporting opportunities of bear hunters.

Response:

The department considered adjustments to the setback distances for bear feeding, but this would perpetuate opportunities for black bears to become conditioned to human supplied food sources. Additionally, as has been previously stated, in light of existing statute, the feeding of bears prior to hunting season as a means to increase hunting success is not lawful.

Comment:

Houndsmen should be permitted to maintain a list of bait locations with GPS coordinates rather than a map to comply with the regulations' mapping requirement.

Response:

The department agrees that maintaining a list of GPS coordinates of bait locations is sufficient for recordkeeping and site identification. The text of section 187.2(c)(4)(xiv) has been amended to accommodate this request.

Comment:

Use of bait by houndsmen may be unnecessary.

Response:

Some houndsmen may train their dogs in areas where bear densities and road networks are sufficient for their hounds to readily strike bear scent without the need of bait stations. However, those conditions do not exist in all parts of New York. Bait stations allow dog handlers to select safe, workable locations and guarantee that inexperienced hounds are being trained to follow the scent of bears rather than other wildlife.

Comment:

The DEC should allow hunting bears with hounds or a limited lottery for hunting bears with bait.

Response:

This rule making is not associated with black bear hunting regulations. The New York State ECL prohibits use of bait or hounds for hunting black bear.

Comment:

Houndsmen should be allowed to place bait within 500 feet of structures when permission is granted by the owner.

Response:

The department believes the proposed rule making provides sufficient flexibility for houndsmen to select safe locations to train their dogs to track bears without placing baits in close proximity to structures on private property other than those owned by the licensee or agent.

Comment:

Bear dog tracking license holders and their agents should not be required to keep additional paperwork while tending a bait site or maintain a map of bait site locations.

Response:

This rule making requires licensees and agents to maintain a list of agents who may place baits, carry a copy of the license while placing baits, and maintain a map or list of GPS coordinates of all bait locations. Such requirement is not an onerous burden on licensees or agents and will help law enforcement officers distinguish between legitimate baiting activity associated with licensed dog training and illicit feeding activity.

Department of Health

EMERGENCY RULE MAKING

Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-44-10-00002-E

Filing No. 1337

Filing Date: 2010-12-28

Effective Date: 2010-12-28

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010 and updated thereafter. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts. Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Substance of emergency rule: The amendments to Part 86 of Title 10 (Health) NYCRR are required to update the Ambulatory Patient Groups (APGs) methodology, implemented on December 1, 2008, which governs reimbursement for certain ambulatory care fee-for-service (FFS) Medicaid services. APGs group procedures and medical visits that share similar characteristics and resource utilization patterns so as to pay for services based on relative intensity.

86-8.1 - Scope

The proposed amendments to section 86-8.1 of Title 10 (Health) NYCRR add a new subdivision (a) paragraph (6) to establish new rates of payment for ambulatory care services for hospital-based mental hygiene services for the following categories of facilities: mental retardation clinics, mental health clinics, alcoholism and drug abuse clinics, and methadone clinics.

86-8.2 - Definitions

The proposed amendments to section 86-8.2 of Title 10 (Health) NYCRR amend subdivision (q) to revise the definition of peer group so that it may include facility licensure and add a new subdivision (v) that

defines a patient-specific peer group consisting of those persons designated as mentally retarded, developmentally disabled, or suffering from traumatic brain injury.

86-8.7 - APGs and relative weights

The proposed revision to section 86-8.7 of Title 10 (Health) NYCRR repeals all of section 86-8.7 effective July 1, 2010 and replaces it with a new section 86-8.7 that includes revised APG weights and procedure-based weights, adds two new procedures and procedure-based weights for D9248 Sedation (non-iv) and T1013 Sign Lang/Oral Interpretation.

86-8.8 Base rates

The proposed revision to section 86-8.8 of Title 10 (Health) NYCRR amends subdivision (a) and subdivision (b) to establish base rates for a new MR/DD/TBI peer group effective July 1, 2010. Additionally, the proposed revision adds a new subdivision (f) that establishes a licensure-specific, provider-specific methodology for calculating blend rates for hospitals operating under the Mental Hygiene Law and establishes a schedule for implementation of the new blend rates.

86-8.9 Diagnostic coding and rate computation

The proposed revision to section 86-8.9 of Title 10 (Health) NYCRR amends subdivision (e) to remove APG 322 Medication Administration and Observation from the list of no blend APGs.

86-8.10 Exclusions from payment

The proposed revision to section 86-8.10 of Title 10 (Health) NYCRR amends subdivisions (h) and (i) to remove APG 312 Full Day Partial Hospitalization for mental illness, APG 320 Case Management - Treatment Plan Development - Mental Health or Substance Abuse, and 427 Biofeedback and Other Training from the never pay APG list and removes APG 414 Level I Immunization and Allergy Immunotherapy, APG 415 Level II Immunization and APG 416 Level III Immunization, and APG 280 Vascular Radiology Except Venography of Extremity from the if stand alone do not pay list and adds APG 448 After Hours Services to the if stand alone do not pay list.

86-8.13 Out of state providers

The proposed revision to section 86-8.13 of Title 10 (Health) NYCRR amends subdivisions (a) paragraph (1) to correct the spelling of Middlesex.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-44-10-00002-P, Issue of November 3, 2010. The emergency rule will expire February 25, 2011.

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

Regulatory Impact Statement

Statutory Authority:

Authority for the promulgation of these regulations is contained in section 2807(2-a)(e) of the Public Health Law, as amended by Part C of Chapter 58 of the Laws of 2008 and Part C of Chapter 58 of the Laws of 2009, which authorize the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature's mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through Ambulatory Patient Groups ("APGs"). The APGs refer to the Enhanced Ambulatory Patient Grouping classification system which is owned and maintained by 3M Health Information Systems. The Enhanced Ambulatory Group classification system and the clinical logic underlying that classification system, the EAPG software, and the Definitions Manual associated with that classification system, are all proprietary to 3M Health Information Systems. APG-based Medicaid Fee For Service payment systems have been implemented in several states including: Massachusetts, New Hampshire, and Maryland.

Needs and Benefits:

The proposed regulations are in conformance with statutory amendments to provisions of Public Health Law section 2807(2-a), which mandated implementation of a new ambulatory care reimbursement methodology based on APGs.

This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. It also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treat-

ment Centers). By linking payments to the specific array of services rendered, APGs will make Medicaid reimbursement more transparent. APGs provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

These amendments include updated APG and/or procedure-based weights which will provide greater procedure level reimbursement precision and specificity. Additionally, these amendments add new MR/DD/TBI base rates for hospitals which reflect the greater resource requirements associated with providing care to the MR/DD/TBI populations. Medication Administration and Observation was removed from the no blend APG list; certain mental health and substance abuse procedures (i.e., Full Day Partial Hospitalization, Case Management and Treatment Plan Development, and Biofeedback and Other Training) were removed from the Never Pay APG list; certain APGs were removed from the If Stand Alone Do not Pay list (e.g., APG 280 Vascular Radiology Except Venography of Extremity, 414 Immunization and Allergy Immunology, and 415 Level II Immunology) and APG 448 After Hours Services was added to the If Stand Alone do Not Pay list to meet primary care enhancement policy objectives and the conversion of mental hygiene facilities to APGs; and a technical revisions were made to correct the spelling of two counties impacted by the implementation of APGs.

COSTS

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

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments. All expenditures under this regulation are fully budgeted in the SFY 2009-10 and 2010-11 enacted budgets.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

There are no local government mandates.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-a)(e). Although the 2009 amendments to PHL 2807 (2-a) authorize the Commissioner to adopt rules to establish alternative payment methodologies or to continue to utilize existing payment methodologies where the APG is not yet appropriate or practical for certain services, the utilization of the APG methodology is in its relative infancy and is otherwise continually monitored, adjusted and evaluated for appropriateness by the Department and the providers. This rulemaking is in response to this continually evaluative process.

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009, June 10, 2009 and January 20, 2010.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009, June 10, 2009 and January 20, 2010.

Job Impact Statement

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

**EMERGENCY
RULE MAKING**

Potentially Preventable Readmissions

I.D. No. HLT-46-10-00008-E

Filing No. 1336

Filing Date: 2010-12-28

Effective Date: 2010-12-28

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

Action taken: Amendment of section 86-1.37 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)(b)(v)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to meet the statutory timeframes prescribed by Chapter 109 of the Laws of 2010 related to implementing a new hospital inpatient rate adjustment to address potentially preventable readmissions (PPRs). PPRs address the inadequacies of the current system by using certain quality benchmarks to incentivize hospitals to provide better care upfront; thereby reducing or averting costly care during a readmission. Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute hospital inpatient rates, including adjustments related to PPRs.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of this new policy related to readmissions, which is a continuation to the historic health care reform previously enacted in the State.

Subject: Potentially Preventable Readmissions.

Purpose: Implements a revised reimbursement policy related to hospital readmissions that are determined to be potentially preventable.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35) of the Public Health Law, Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new Section 86-1.37, effective July 1, 2010, to read as follows:

Part 86-1.37 Readmissions

(a) For discharges occurring on and after July 1, 2010, Medicaid rates of payment to hospitals that have an excess number of readmissions as defined in accordance with the criteria set forth in subdivision (c), as determined by a risk adjusted comparison of the actual and expected number of readmissions in a hospital as described by subdivision (d), shall be reduced in accordance with subdivision (e).

(b) Definitions. For purposes applicable to this section the following terms shall be defined as follows:

(1) Potentially Preventable Readmission (PPR) shall mean a readmission to a hospital that follows a prior discharge from a hospital within 14 days, and that is clinically-related to the prior hospital admission.

(2) Hospital shall mean a general hospital as defined pursuant to section 2801 of the Public Health Law.

(3) Observed Rate of Readmission shall mean the number of admissions in each hospital that were actually followed by at least one PPR divided by the total number of admissions.

(4) Expected Rate of Readmission shall mean a risk adjusted rate for each hospital that accounts for the severity of illness, APR-DRG, and age of patients at the time of discharge preceding the readmission.

(5) Excess Rate of Readmission shall mean the difference between the observed rates of potentially preventable readmissions and the expected rate of potentially preventable readmissions for each hospital.

(6) Behavioral Health shall mean an admission that includes a primary or secondary diagnosis of a major mental health related condition, including, but not limited to, chemical dependency and substance abuse.

(7) Managed Care Encounter Data shall mean claims-like data that describes services provided by managed care plans to their enrollees.

(c) Readmission Criteria.

(1) A readmission is a return hospitalization following a prior discharge that meets all of the following criteria:

(i) The readmission could reasonably have been prevented by the provision of appropriate care consistent with accepted standards in the prior discharge or during the post discharge follow-up period.

(ii) The readmission is for a condition or procedure related to the

care during the prior discharge or the care during the period immediately following the prior discharge and including, but not limited to:

(a) The same or closely related condition or procedure as the prior discharge.

(b) An infection or other complication of care.

(c) A condition or procedure indicative of a failed surgical intervention.

(d) An acute decompensation of a coexisting chronic disease.

(iii) The readmission is back to the same or to any other hospital.

(2) Readmissions, for the purposes of determining PPRs, excludes the following circumstances:

(i) The original discharge was a patient initiated discharge and was Against Medical Advice (AMA) and the circumstances of such discharge and readmission are documented in the patient's medical record.

(ii) The original discharge was for the purpose of securing treatment of a major or metastatic malignancy, multiple trauma, burns, neonatal and obstetrical admissions.

(iii) The readmission was a planned readmission or one that occurred on or after 15 days following an initial admission.

(iv) For readmissions occurring during the period up through March 31, 2012, the readmission involves an original discharge determined to be behavioral health related.

(d) Methodology.

(1) Rate adjustments for each hospital shall be based on such hospital's 2007 Medicaid paid claims data and managed care encounter data for discharges that occurred between January 1, 2007 and December 31, 2007.

(2) The expected rate of readmissions shall be reduced by 24% for each hospital for periods prior to September 30, 2010; 38.5% for the period October 1, 2010 through December 31, 2010; and 33.3% on and after January 1, 2011.

(3) Excess readmission rates are calculated based on the difference between the observed rate of PPRs and the expected rate of PPRs for each hospital.

(4) In the event the observed rate of PPRs for a hospital is lower than the expected rate of PPRs, the excess number of readmissions shall be set at zero.

(e) Payment Calculation.

(1) For the excess readmissions identified in paragraph (3) of subdivision (d) of this section, each hospital's projected payment rate for the 2010 rate period, as otherwise computed in accordance with this subpart, will be used to compute the relative aggregate payments, excluding behavioral health, associated with the risk adjusted excess readmissions in each hospital.

(2) For each hospital, a hospital specific readmission adjustment factor shall be computed as one minus the ratio of the hospital's relative aggregate payments associated with the excess readmissions from paragraph (3) of subdivision (d) of this section and the hospital's relative aggregate payments for all non-behavioral health Medicaid discharges as determined pursuant to this subdivision.

(3) Non-behavioral health related payments to hospitals shall be reduced by applying the hospital readmission adjustment factor from paragraph (2) of this subdivision to the applicable case payment or per diem payment amount for all non-behavioral health related Medicaid discharges to the hospital.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-46-10-00008-P, Issue of November 17, 2010. The emergency rule will expire February 25, 2011.

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

Regulatory Impact Statement

Statutory Authority:

The requirement to implement a rate adjustment to hospitals to address potentially preventable readmissions (PPRs) using a methodology that is based on a comparison of the actual and the expected number of PPRs in a given hospital pursuant to regulations is set forth in section 2807-c(35)(b)(v) of the Public Health Law.

Legislative Objectives:

After discussions between the Executive, Legislature, and hospital associations, the Legislature chose to address the issue of a high rate of readmissions in hospitals that could have been avoided. Pursuant to statute, the PPR methodology was chosen as the vehicle to address this through a rate adjustment that would reduce reimbursement to hospitals that had a historically (based on 2007 data) high rate of clinically related readmissions.

Needs and Benefits:

The proposed regulations implement the provisions of Public Health Law section 2807-c(35)(b)(v) which requires a rate adjustment related to PPRs. Hospital readmissions are increasingly viewed as indicative of quality of care issues, ranging from complications during the hospital stay or immediately afterward, incomplete treatment of the underlying medical problem during the hospitalization, or poor or no outpatient care. Readmissions are also costly; thereby fueling the interest in linking payment to quality of care, especially when these readmissions might have been avoided.

This regulation, in concert with enacted statute, implements an adjustment to hospital rates to incentivize these providers to become more accountable to the individuals that they are discharging. Better quality of care, upfront, will likely reduce the rate of readmissions thereby saving funds that would have otherwise been expensed simultaneously resulting in better patient outcomes. It is anticipated that this payment adjustment is the first step into addressing the policy issue of readmission rates in hospitals and will likely be refined in future regulation amendments to address a broader Medicaid population and more recent data sources.

COSTS:

Costs to State Government:

Section 2807-c(35)(b)(v) of the Public Health Law requires that the rates of payment for hospital inpatient services be reduced to result in a net statewide decrease in aggregate Medicaid payments of no less than \$35 million for the period July 1, 2010 through March 31, 2011 and no less than \$47 million for the period April 1, 2011 through March 31, 2012.

Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments because local districts' share of Medicaid costs is statutorily capped.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

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

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law sections 2807-c(35)(b)(v) to promulgate implementing regulations. However, alternatives may be available at a later date as a result of the requirement that the Department enters into consultations with representatives of the health care facilities regarding potential prospective revisions to the methodologies and benchmarks set forth in this amendment by no later than April 1, 2011.

Federal Standards:

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

Compliance Schedule:

The proposed amendment establishes a new rate adjustment to address potentially preventable readmissions (PPRs) in hospitals for discharges on or after July 1, 2010; there is no period of time necessary for regulated parties to achieve compliance.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

In aggregate, health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding, but this is not anticipated for all affected providers.

This rule will have no direct effect on Local Governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of the amendment to 86-1.37 there will be an anticipated decrease in statewide aggregate hospital Medicaid revenues for hospital inpatient services.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements. This amendment is the result of ongoing discussions with industry associations regarding the appropriate implementation of a risk adjusted PPR methodology. The Department is required by Public Health Law sections 2807-c(35)(b)(v) to enter into consultations with representatives of health care facilities regarding potential prospective revisions to the applicable methodologies and benchmarks set forth in this amendment by no later than April 1, 2011.

Small Business and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing hospitals and comments were solicited from all affected parties. Informational briefings were held with such associations.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuylers
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements. The Legislature considered various alternatives for addressing hospital readmissions that are determined to be clinically related to an initial discharge; however, the enacted budget adopted the risk adjusted PPR methodology.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the reimbursement system for inpatient hospital services. The proposed regulations have no implications for job opportunities.

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

Cost of Examinations - Medicaid

I.D. No. HLT-02-11-00005-P

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

Proposed Action: This is a consensus rule making to amend section 360-5.5 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 368-a(1)(f)

Subject: Cost of Examinations - Medicaid.

Purpose: Change in citation referenced within existing regulation.

Text of proposed rule: Section 360-5.5 is amended to read as follows:

The cost of examinations, consultations, completion of medical forms, and tests requested by MA-only disability review teams must be paid by the local agency. Reimbursement is available for these services as an administrative expense in accordance with section [595.3(b)] 609.5(b) of this Title.

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

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

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

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

Consensus Rule Making Determination

Statutory Authority:

Social Services Law 365(1) is the site of statutory authority that establishes responsibility for furnishing medical assistance to persons residing in a public welfare district's territory. The site of statutory authority for claiming medical assistance expenditures as administrative is found at SSL 368-a(1)(f).

Basis:

Regulation 18 of NYCRR 360-5.5 states, "The cost of examinations, consultations, completion of medical forms, and tests requested by MA-only disability review teams must be paid by the local agency. Reimbursement is available for these services as an administrative expense in accordance with section [595.3(b)] of this Title." The reference to 18 NYCRR 595.3(b) was repealed on March 31, 1987, effective July 1, 1988. It was to be replaced by 18 NYCRR 609.5(b), which was filed on June 10, 1988, effective July 1, 1988. This change was apparently overlooked when the fiscal regulations were revised. The revision to Regulation 18 NYCRR 360-5.5 is a technical correction. It is non-controversial and should not generate public comment. A consensus regulation is warranted since this technical correction merely complies with fiscal regulations.

Job Impact Statement

A Job Impact Statement is not required. The proposed regulatory amendment will not have an adverse impact on jobs and employment opportunities.

The proposed regulatory amendment is required to comply with the provision of Section 368-a (1)(f) of Social Services Law concerning statutory authority for claiming medical assistance expenditures as administrative.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Audited Financial Statements

I.D. No. INS-02-11-00001-P

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

Proposed Action: Repeal of Part 89; and addition of new Part 89 (Regulation 118) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b)

Subject: Audited Financial Statements.

Purpose: To implement provisions of Insurance Law Section 307(b), and add provisions required pursuant to the Federal Sarbanes-Oxley Act of 2002.

Substance of proposed rule (Full text is posted at the following State website: www.ins.state.ny.us): Part 89 (Regulation No. 118) consists of 17 sections addressing the regulation of audits conducted by regulated insurers, fraternal benefit societies and managed care organizations (collectively the "companies").

Section 89.0 states that the purpose of the regulation is to apply audit and reporting standards upon each company.

Section 89.1 lists all definitions needed for the application of the regulation.

Section 89.2 contains the requirement that each company file audited financial statements and also directs each company to its correct filing location.

Section 89.3 sets forth the details of the items to be included in each audited financial statement.

Section 89.4 requires each company to notify the superintendent of the identity of its certified independent public accountant ("CPA") and any replacement.

Section 89.5 details the necessary qualifications for a CPA and restrictions upon employment of the same CPA for an extended period.

Section 89.6 provides rules for consolidated or combined audits of groups of companies.

Section 89.7 describes the scope of the audit and report of the CPA.

Section 89.8 requires both the company and its CPA to notify the superintendent upon the occurrence of a material misstatement or adverse financial condition.

Section 89.9 imposes a duty upon each company to report unremediated material weaknesses in its internal control over financial reporting.

Section 89.10 specifies terms to be included in the contract between a company and its CPA.

Section 89.11 requires each company to ensure that work papers of the CPA will be retained for review.

Section 89.12 contains rules for the appointment and duties of each company's audit committee.

Section 89.13 specifies the rules of conduct to be followed by the company with respect to the preparation of reports and documents.

Section 89.14 describes the requirements for management's report of internal control over financial reporting and incorporates the reports prepared by some of the companies to comply with the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq.

Section 89.15 sets forth special rules needed for Canadian and British insurers.

Section 89.16 contains the effective dates and special rules.

The full text of the regulation may be found at the Department's website (<http://www.ins.state.ny.us/>).

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us.

Data, views or arguments may be submitted to: Ann Logan, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-6297, email: alogan@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 307(b), 1109 and 5904(b) of the Insurance Law. These sections establish the superintendent's authority

to promulgate regulations governing audited financial statements for authorized insurers as defined by section 107 of the Insurance Law and for fraternal benefit societies and managed care organizations.

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

Insurance Law Section 307(b) requires insurers to file annual financial statements on forms prescribed by the superintendent.

Insurance Law Section 1109 authorizes the superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Section 5904(b) requires a risk retention group that is not chartered and licensed as a property/casualty insurer to file a copy of the annual financial statement submitted to the state in which the risk retention group is chartered and licensed.

2. Legislative objectives: 11 NYCRR 89 (Regulation 118) was originally promulgated in 1984 to implement the provisions of Section 307(b) of the Insurance Law. The proposed repeal of the current regulation and promulgation of the new regulation continues to implement the provisions of section 307(b), which requires all but specified small insurers to file annual statements with the superintendent for his review and oversight. The new regulation adds provisions modeled on those required pursuant to the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. (SOX).

3. Needs and benefits: SOX imposes on publicly held companies a comprehensive regime of audits and internal management controls and reports designed to ensure greater transparency and accountability. The concept is that a statutory mandate to regularly review internal processes and to disclose both the processes and the examination will lead to greater care in attending to the obligations owed shareholders and customers.

The proposed regulation is closely patterned upon a National Association of Insurance Commissioners model regulation (NAIC model) that reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The NAIC model is similar to current Regulation 118, but imposes additional rules patterned on SOX. For example, the NAIC model and proposed regulation both require the regulated insurer to prohibit its CPA from entering into an agreement of indemnity or release from liability. The proposed regulation will apply not only to companies already subject to SOX, but also to other companies, such as mutual companies, fraternal benefits societies and managed care organizations that are presently governed by Regulation 118.

The proposed regulation, once adopted, will ensure that regulated companies engage in best practices related to auditor independence, corporate governance and internal controls over financial reporting.

4. Costs: This regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. Costs to be incurred by the affected parties differ depending upon the size of the company and whether the company is publicly held and thus already required to comply with SOX. Publicly held companies, which are already regulated by SOX, will incur few additional costs. Many other companies are also regulated by other states, or by United States territories, that have already adopted a version of the NAIC model and thus have already incurred much of the compliance costs associated with this regulation. For this reason, a cross-section of affected companies, which range from large mutual life insurers to fraternal benefit societies, that are not subject to SOX most often estimated compliance costs to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts ranged from \$25,000 per year to in excess of \$2 million (for one large mutual life insurer).

The proposed regulation includes provisions that allow small companies for which the expenditures may be material to seek a waiver of any or all of the proposal's requirements on the basis of organizational or financial hardship.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Additional Paperwork associated with filings to the superintendent should be minimal. The additional paperwork associated with the audit and controls regime required by the proposed regulation should also be minimal.

7. Duplication: None.

8. Alternatives: In developing this regulation, the Department obtained industry input and hued to the NAIC model to implement SOX to the extent possible. However, the model has been modified, as necessary, to comply with New York statutes and regulations. The proposed regulation restricts its application to only those entities over which the Department has jurisdiction, unlike the NAIC model that also contains rules that apply to CPAs. The Department has also included an exemption process by which a company may seek a waiver of any provision based on financial or organizational hardship.

Comments received by the Department from an international law firm, two large insurer groups the American Institute of Certified Public Accountants (AICPA), and representatives of the major accounting firms noted the compliance difficulties faced by foreign companies and United States branches of alien insurers, specifically with respect to the roles to be performed by persons not residing in the United States and the reporting requirements to be imposed upon an integrated enterprise containing insurers in New York as well as entities with no nexus to New York. In response, the Department modified the regulation to provide detailed rules as to whether members of management may attest to filings, and to establish limited exceptions available only to these entities, in addition to the provision that permits a waiver of any provision of the regulation upon evidence of financial or organizational hardship.

The New York Health Plan Association requested that the definition of a managed care organization (MCO), entities that are included within the companies subject to this regulation, be restricted to exclude those entities that operate only in New York and that only serve public programs (i.e., Medicaid, Family Health Plus and Child Health Plus). After consideration and consultation with the Department of Health, the Department narrowed the definition of an MCO to exclude all MCOs that are primarily subject to the oversight of the Department of Health, and that also do not file financial documents with the Department other than for escrow accounts. Other MCOs that do file financial documents with the Department will still be governed by this regulation.

The New York Insurance Association, Inc. objected to restrictions on using the same CPA for SOX audit work and tax return preparation for more than a five-year period for small companies. The exemption from any provision of the proposed regulation available upon proof of financial or organizational hardship now addresses this comment.

A large law firm and the major accounting firms noted that a company may be required to file both SOX reports and the reports required by the NAIC model as adopted by the various states. Companies want to avoid making duplicative filings to those required by the state of domicile. The proposed regulation contemplates accepting the domiciliary state filings as New York filings to the extent that they are substantially similar to those required by the proposed regulation.

The AICPA also noted differences between the NAIC model and the proposed regulation on filing deadlines, exceptions and the rules governing confidentiality of work papers. Different dates or deadlines are due to restrictions in New York laws that require modification to the NAIC model. Certain automatic exclusions from the NAIC model could not be included in the proposed regulation to the extent that they conflict with New York law. Finally, the confidentiality of commercial information, including work papers, obtained by state and local government is already subject in New York to a comprehensive regime of rules, exceptions and requirements, and thus did not need to be addressed in the proposed regulation.

The Life Insurance Council of New York, the AICPA and the major accounting firms requested clarification of the requirement to name the staff to be assigned to an audit. The commenters asked that transmittal to the Department of the specific personnel and their qualifications be delayed until the audit was submitted to the Department for review. The concern was that the accountants might be unable to provide an adequate response at the beginning of the audit as appeared to be required. The language has been modified as requested.

Finally, a reinsurer and an insurer group asked whether alien accredited reinsurers were included within the scope of the proposed regulation's rules. They are not, under the explicit definition of the companies that are to be governed, which does not include such reinsurers.

9. Federal standards: The federal rules under SOX are extensive. The provisions in the proposed regulation are similar to the comparable federal provisions. The regulation does not conflict with any federal rules.

10. Compliance schedule: The regulation applies to companies for reporting periods beginning on or after January 1, 2010. Provisions of the regulation allow the company time to bring audit systems and controls into compliance without the need to ask for an extension or waiver. This timetable is contemplated by the NAIC model and has been adopted by many, but not all, states. The Department believes it is highly desirable to conform the application date of this proposed regulation to the effective date in other states.

Regulatory Flexibility Analysis

The Insurance Department finds that this regulation would not impose reporting, recordkeeping or other requirements on small businesses since the provisions contained therein apply only to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business in New York State. Inasmuch as most of these companies are not independently owned and operated and employ more than 100 individuals, they do not fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act.

This regulation specifically considers the impact of the requirements

contained therein on small businesses by exempting assessment cooperative property/casualty insurance companies having direct premiums written in New York State of less than \$250,000 in any calendar year and having fewer than 500 policyholders at the end of such calendar year from the requirement to file an annual statement. Further, the proposed regulation allows any company, including a small business, to request an exemption from any and all of its requirements upon written application to the superintendent based upon a financial or organizational hardship upon the company.

This regulation contains, as does current Regulation No. 118, minimum requirements that must be included in the contract between a regulated company and the independent certified public accountant ("CPA") retained by the company. Accordingly, CPAs, regardless of whether they are small businesses or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of the continuation of these rules to be minimal, especially since if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

If the pool of available CPAs in a particular rural area who are qualified to perform the services required by this regulation does not allow for periodic substitution of staff, the company may apply for an exception to the usual requirements requiring such replacements. The Insurance Department will view this circumstance as one of financial or organizational hardship.

The regulation does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirement on any local government.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Companies affected by the proposed regulation include regulated insurers, fraternal benefit societies, and managed care organizations authorized to do business in New York State. For this purpose, a managed care organization means the term as defined in 10 NYCRR 98-1.2(x), except for: (1) A prepaid health services plan, as defined in 10 NYCRR 98-1.2(ff); (2) A primary care partial capitation provider, as defined in 10 NYCRR 98-1.2(gg); and (3) A comprehensive HIV special needs plan, as defined in 10 NYCRR 98-1.2(i). The companies affected by this regulation do business in every county in this state, including "rural areas" as defined under section 102(1) of the State Administrative Procedure Act. Some of the home offices of these companies lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

2. Reporting, recordkeeping and other compliance requirements: Many of the compliance requirements (such as filing due date and record retention period) are consistent with the requirements presently contained in Regulation 118 and should not impose upon any regulated party, regardless of whether they are located in a rural area or not, any additional paperwork, recordkeeping or compliance requirements. The obligations imposed by the proposed regulation with regard to establishment and maintenance of audit controls and standards are either consistent with or less than those required by current Regulation 118 and a federal statute, the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX"), that imposes similar rules. If there are failures in the audit and controls process, a company is required to notify the superintendent. The regulation contains automatic exclusions from compliance for certain small companies. Further, any company that faces organizational or financial hardship can seek an exemption from any requirement imposed by the regulation.

The proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a certified independent public accountant ("CPA"). The terms of the employment of the CPA and the period for which work papers and communications are to be retained (contained in 11 NYCRR 243 ("Standards of Record Retention by Insurance Companies")) are both specified in the proposed regulation. Accordingly, CPAs, regardless of whether they are located in rural areas or not, could be considered affected parties under this regulation. However, the Insurance Department estimates the impact of these rules on CPAs, regardless of whether they are located in rural areas or not, should be negligible, if any at all. Indeed, if a CPA agrees to audit a regulated company, the price of the engagement will compensate the CPA for costs incurred. Additionally, CPAs retained by insurers tend to be large limited liability corporations or partnerships that are not small businesses. In any event, a CPA may choose not to audit a company that will require execution of a contract subject to this regulation.

If the pool of available CPAs in a particular rural area who are qualified to perform the services required by this regulation does not allow for periodic substitution of staff, the company may apply for an exception to

the usual requirements requiring such replacements. The Insurance Department will view this circumstance as one of financial or organizational hardship.

3. Costs: The proposed regulation implements requirements largely based on the rules imposed by current Regulation 118 and SOX. The cost of complying with the new requirements will depend on the size of the company and whether the company is already subject to SOX because it is publicly held. Companies regulated by SOX will incur few additional costs beyond those imposed by current Regulation 118 and the federal statute. Compliance cost estimates with respect to the proposed regulation were received from a cross-section of companies that are not subject to SOX. If the company is already required to comply with similar regulations in other states, the additional expense of the New York proposed regulation is estimated to be minimal or negligible. Of those companies that stated compliance would require additional expenditures, the amounts range from \$25,000 a year to in excess of \$2 million (for one very large domestic mutual insurance company).

However, the proposed regulation requires a regulated company to perform the audit of its operation and controls with the assistance of a certified independent public accountant ("CPA"). The terms of the employment of a CPA is specified in the proposed regulation in a manner that is consistent with the current Regulation 118. Further, a CPA can obtain compensation for additional costs as part of the contract entered into with the regulated company. Accordingly, CPAs, regardless of whether they are located in rural areas or not, should not have to incur uncompensated additional costs to comply with the proposed regulation.

4. Minimizing adverse impact: The proposed regulation applies to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

5. Rural area participation: In developing this regulation, the Department conducted extensive outreach to regulated insurers, fraternal benefit societies and managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

The Insurance Department finds that this regulation will have no adverse impact on jobs and employment opportunities since, for publicly held companies, its requirements largely reflect obligations already contained in the present Regulation 118 and those imposed by the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq. ("SOX"). For insurers, fraternal benefit societies or managed care organizations not already subject to SOX, the regulation contain minor refinements of those companies' current obligations under Regulation 118 to establish, maintain and report internal audit and oversight. Compliance may require the employment of additional personnel or outside contractors.

No region in New York should experience an adverse impact on jobs and employment opportunities. This regulation should not have a negative impact on self-employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Valuation of Life Insurance Reserves

I.D. No. INS-02-11-00002-P

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

Proposed Action: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

Subject: Valuation of Life Insurance Reserves.

Purpose: Remove restrictions on the mortality adjustment factors (known as X factors) in deficiency reserves calculation.

Text of proposed rule: Subparagraphs (ii) and (iii) of Section 98.4(b)(5) of this Part are repealed and subparagraphs (iv) through (ix) are renumbered (ii) through (vii).

Section 98.4(b)(5)(v) of this Part, as re-lettered by this amendment above, is amended to read as follows:

(v) The appointed actuary may decrease X at any valuation date as long as X [does not decrease in any successive policy years and as long as it] continues to meet all the requirements of this paragraph;

New subdivisions (c) and (d) are added to section 98.5 to read as follows:

(c) For policies subject to a non-elective change in valuation mortality rates because the requirements for continued use of the prior rates were no longer satisfied, the insurer may, but shall not be required to, recalculate the segments.

(d) For policies subject to an insurer-election to substitute the 2001 Preferred Class Structure Mortality Table for the 2001 CSO Mortality Table:

(1) If the policy was issued on a policy form filed for approval prior to January 1, 2009, the insurer may, but shall not be required to, recalculate the segments; and

(2) If the policy was issued on a policy form filed for approval after January 1, 2009, the insurer shall recalculate the segments using the new valuation mortality rates.

Section 98.9(c)(2)(viii)(b)(2) is amended to read as follows:

For policies issued on or after January 1, 2007 and prior to January 1, [2011]2014, for the purposes of applying section 98.7(b)(1) of this Part, an insurer may use a lapse rate of no more than two percent per year for the first five years, followed by no more than one percent per year to the policy anniversary specified in the following table based on issue age, and zero percent per year thereafter.

Section 98.9(c)(2)(viii)(e) is amended to read as follows:

For purposes of calculating the net single premium for policies issued on or after January 1, 2007 and prior to January 1, [2011]2014, a lapse rate subject to the same criteria as the lapse rate used in applying clause (b) of this subparagraph may be used.

Section 98.9(c)(2)(viii)(h)(2) is amended to read as follows:

Calculate both net premiums using the maximum allowable valuation interest rate and the minimum mortality standards allowable for calculating basic reserves. However, except for policies issued on or after January 1, 2007 through January 1, [2011]2014, if no future premiums are required to support the guarantee period being valued, there is no reduction for surrender charges.

Section 98.9(c)(2)(viii)(j) is amended to read as follows:

With respect to any policy issued pursuant to this subparagraph, on or after January 1, 2007 and prior to January 1, [2011]2014, the insurer shall annually submit an actuarial opinion and memorandum on or before March 1, in form and substance satisfactory to the superintendent, which satisfies the requirements of Part 95 of this Title (Regulation 126).

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Jennifer Roig, New York State Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-6805, email: jroig@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the Third Amendment to Regulation No. 147 (11 NYCRR 98) derives from Sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law. These sections establish the Superintendent's authority to promulgate regulations governing reserve requirements for life insurers and fraternal benefit societies.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded the Superintendent by the Insurance Law, and prescribe regulations interpreting the Insurance Law.

Section 1304 of the Insurance Law requires every insurer authorized under this chapter to transact the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter to maintain reserves necessary on account of such insurer's policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted, and the effect that reinsurance will have on reserves.

Section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding

policies and contracts of every life insurance company doing business in New York. Section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of the reserves. Reserving has not historically included lapse as a factor in calculations, because it was not relevant to traditional forms of life insurance contracts, and therefore Section 4217 does not expressly include references to lapses. However, new products have been developed that were not contemplated at the time Section 4217 was written, such that lapses may be relevant in reserve calculations in some cases.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of Section 4217(c)(6).

Section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for Section 4217 to such policies and contracts as the Superintendent deems appropriate.

Section 4217(c)(9) requires that, in the case of any plan of life insurance that provides for future premium determination, the amounts of which are to be determined by the insurance company based on estimates of future experience, or in the case of any plan of life insurance or annuity that is of such a nature that the minimum reserves cannot be determined by the methods described in Section 4217(c)(6) and Section 4218, the reserves that are held under the plan must be appropriate in relation to the benefits and the pattern of premiums for that plan, and must be computed by a method that is consistent with the principles of Sections 4217 and 4218, as determined by the Superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for the policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for the policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which the modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) states that the Superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

Section 4517(b)(2) provides, for fraternal benefit societies, that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits, or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of subsection (b).

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principle focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. At the same time, an insurer benefits when the insurer has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: This amendment to section 98.4(b)(5) of Regulation No. 147 (11 NYCRR 98) is necessary to help ensure the solvency of life insurers doing business in New York. The original version of Regulation No. 147, which incorporated the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), was permanently adopted in 2003. In 2004, the Department and other states became aware that some insurers were creating new products in order to avoid

the reserve methodologies described in Regulation No. 147. As a result, the NAIC began developing an Actuarial Guideline in 2004 that addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the standards for policies issued July 1, 2005 and later. This revision was adopted by the NAIC in October 2005, and Regulation No. 147 thereafter was amended on an emergency basis to reflect the principles of Section 4217 of the Insurance Law and the NAIC standards for policies issued July 1, 2005 and later. The amendment was permanently adopted effective January 10, 2007.

In September 2006, the NAIC adopted a new version of Actuarial Guideline 38, which included provisions on lapse decrements and a separate asset adequacy analysis requirement for certain universal life with secondary guarantee policies. Regulation 147 was thereafter amended again, and the amendments were adopted on December 26, 2007.

In September 2009, the NAIC adopted revisions to its model regulation related to X factors used for calculating deficiency reserves. The purpose of the X factor in the deficiency reserve calculation is to allow companies to adjust the valuation mortality to mortality that approximates the expected mortality experience of the company. Specifically, the NAIC's revisions remove the following provisions: (1) X could not be less than 20%; and (2) X could not decrease in successive policy years. Additionally, the NAIC adopted a new Actuarial Guideline 46, which provides guidance on the interpretation of the calculation of segment length when there is a change in the valuation mortality rates subsequent to issuance of the policy. For policies issued prior to January 1, 2009, the segment length would not need to be recalculated.

The current restrictions on the X factors in Regulation No. 147 prevent some companies from obtaining mortality with a slope similar to their expected mortality. The removal of these restrictions will enable companies to adjust the valuation mortality to mortality that approximates the expected mortality experience of the company. However, in order to safeguard insureds against inappropriate reserve levels by insurers, the Department requires every insurer using X factors to submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves.

Additionally, in September 2010, the NAIC extended the sunset provision in Actuarial Guideline 38, which allowed the use of lapse decrements in the reserve calculations for certain universal life with secondary guarantee policies, from January 1, 2011 to January 1, 2014.

This amendment to Regulation No. 147 incorporates both the NAIC revisions to the model regulation and the interpretation of the Actuarial Guideline, thus resulting in consistency between the NAIC and New York and promoting regulatory uniformity across the U.S. Companies domiciled in states that do not adopt these changes by December 31, 2009 year-end will be forced to hold higher reserves relative to companies domiciled in states that have adopted these changes.

Adoption of the amendment will decrease reserves on inforce business for New York authorized life insurers - in some cases by a material amount. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure to maintain higher risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to manage, and thereby increase costs to consumers. Thus, the amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if these amendments are not adopted. Failure to implement the changes in New York at the same time they are implemented in other states will make New York authorized companies look weaker financially than their peer companies. If New York authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies - an impression that may negatively impact market share of New York authorized insurers throughout the year.

4. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefit societies authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in Regulation No. 147 have been in effect since the adoption of the prior two amendments in 2007, most insurers would only need to update their current computer programs to implement the changes in the X factor requirements for those policies that use an X factor in calculating the deficiency reserves. The Department does not expect any material additional costs to be incurred related to modifications for the calculation of the segment length. An insurer that needs to modify its current system could produce the modifications internally, or if the system was purchased from a consultant, have its consultant produce the modifications. The cost would include the actual modifications, as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred.

Based on an American Council of Life Insurers study, the industry-wide impact of the change in the X factor provisions would be an estimated decrease in reserves of approximately \$2 to \$3 billion. That, in turn, will result in insurers realizing greater capital. It is not expected that there would be any reserve relief related to the calculation of the segment length. However, in order to safeguard against inappropriate reserve levels, every company using X factors must submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves. The opinion must be supported by an actuarial report which complies with the requirements of the Actuarial Standards of Practice.

Costs to the Insurance Department of this amendment will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The amendment to the regulation imposes no new reporting requirements.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered by the Department was to not remove the provisions for the X factors and to not include the guidance included in Actuarial Guideline 46 that were adopted by the NAIC in September 2009. The X factor provisions consisted of removing the requirement that X could not be less than 20% and that X could not decrease in successive policy years. The Actuarial Guideline 46 guidance relates to policies issued prior to January 1, 2009, and does not require the contract segments to be recalculated when the valuation mortality rates change after issuance of the policy.

The Department has had numerous discussions with affected insurers and their trade associations, including the Life Insurance Council of New York and American Council of Life Insurers, during the course of the development of a national standard through the National Association of Insurance Commissioners. These items are part of a larger capital and surplus relief plan for insurers. Adopting these standards will allow New York insurers to be subject to the same standards that have already been adopted by the NAIC and which are being implemented in other states. Insurers authorized in states that do not adopt these changes will be forced to hold higher reserves relative to companies authorized in states that have adopted these changes and in those circumstances, New York authorized companies would be at a deficit, from the impression that there is a significant difference in financial stability of New York authorized insurers and those authorized outside the state.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment to the regulation applies

to financial statements filed on or after December 31, 2009. This amendment removes two provisions from the X factors used in calculating deficiency reserves. However, these changes are voluntary, and insurers are not required to make either of these changes. Additionally, these changes would only affect those insurers that use X factors in calculating deficiency reserves. Since the removal of these provisions were already adopted by the NAIC, insurers that wish to incorporate these changes into their reserve methodology should have adequate time to make these changes.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers and fraternal benefit societies authorized to do business in New York State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societies, and believes that none of them fall within the definition of "small business", because there are none that are both independently owned and have under one hundred employees.

2. Local governments:

The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and fraternal benefit societies covered by the amendment do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: There are no reporting, recordkeeping or other compliance requirements associated with this amendment to the regulation. Entities subject to the regulation will not need to engage professional services to comply with the amendment.

3. Costs: This amendment provides for lower minimum standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefit societies authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in Regulation No. 147 have been in effect since the adoption of the prior two amendments in 2007, most insurers would only need to update their current computer programs to implement the changes in the X factor requirements for those policies that use an X factor in calculating the deficiency reserves. The Department does not expect any material additional costs to be incurred related to modifications for the calculation of the segment length. An insurer that needs to modify its current system could produce the modifications internally, or if the system was purchased from a consultant, have its consultant produce the modifications. The cost would include the actual modifications, as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred.

Based on an American Council of Life Insurers study, the industry-wide impact of the change in the X factor provisions would be an estimated decrease in reserves of approximately \$2 to \$3 billion. That, in turn, will result in insurers realizing greater capital. It is not expected that there would be any reserve relief related to the calculation of the segment length. However, in order to safeguard against inappropriate reserve levels, every company using X factors must submit an actuarial opinion that states whether the mortality rates resulting from the application of the X factors meet the requirements for deficiency reserves. The opinion must be supported by an actuarial report which complies with the requirements of the Actuarial Standards of Practice.

Costs to the Insurance Department of this amendment will be

minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: The Department has had numerous discussions with affected insurers and their trade associations, including the Life Insurance Council of New York and American Council of Life Insurers, during the course of the development of a national standard through the National Association of Insurance Commissioners.

Job Impact Statement

The Insurance Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment sets standards for setting life insurance reserves for insurers and fraternal benefit societies. Compliance should not require the employment of additional personnel or outside contractors.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Determining Minimum Reserve Liabilities And Nonforfeiture Benefits

I.D. No. INS-02-11-00003-P

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

Proposed Action: Amendment of Part 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240 and 4517; and arts. 24 and 26

Subject: Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.

Purpose: Extend the use of the 2001 CSO Preferred Structure Mortality Table to policies issued on or after January 1, 2004.

Text of proposed rule: Paragraph (3) of subdivision (a) of section 100.6 is amended to read as follows:

(3) Part 98.4(b)(5) of this Title: The 2001 CSO Mortality Table is the minimum mortality standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Parts 98.4(b)(5)(i) - 98.4(b)(5)(ix)(vii) of this Title. In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by regulation or necessary to be in compliance with relevant Actuarial Standards of Practice.

Subdivision (a) of section 100.8 is amended to read as follows:

(a) At the election of the insurer, for each calendar year of issue, for any one or more specified plans of insurance and subject to satisfying the conditions stated in section 100.9 of this Part, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker or Nonsmoker Mortality Table as the minimum mortality standard for policies issued on or after January 1, 2007. *For policies issued on or after January 1, 2004, and prior to January 1, 2007, the 2001 CSO Preferred Class Structure Mortality Table may be substituted with the prior approval of the superintendent and subject to the conditions of section 100.9 of this Part.* A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this Part, will only be treated as part of the 2001 CSO Mortality Table for purposes of reserve valuation.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Jennifer Roig, New York State Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-6805, email: jroig@ins.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: The superintendent's authority for the adoption of 11 NYCRR 100 (Regulation No. 179) derives from sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240, 4517, Article 24, and Article 26 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers and fraternal benefit societies.

Sections 201 and 301 of the Insurance Law authorize the superintendent to effectuate any power accorded to him by the Insurance Law, and prescribe regulations interpreting the Insurance Law.

Section 1304 of the Insurance Law requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners (NAIC) after 1980, and approved by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table, adopted by the NAIC after 1980, and approved by the superintendent, for use in determining the minimum nonforfeiture standard.

Section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

Section 4240(d)(7) states the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section, which covers various issues related to separate accounts of insurance companies, including reserve issues.

Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

Article 24 describes unfair methods of competition and unfair and deceptive acts and practices.

Article 26 describes unfair claim settlement practices, other misconduct and discrimination.

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principal focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when the insurer has adequate capital for company uses such as expansion, product innovation, and other forms of business development.

3. Needs and benefits: This amendment extends the use of the 2001 CSO Preferred Structure Mortality Table to policies issued on or after January 1, 2004. Use of this table allows for the reserves to better match the risks associated with different underwriting classifications. However, use of the 2001 CSO Preferred Class Structure Mortality Table is not mandatory. While the anticipated impact of this amendment will vary by insurer and product, some insurers may experience a material reduction in reserves for policies issued on a preferred basis. Based on a survey conducted by the American Council of Life Insurers, the industry wide impact of allowing the use of this table for policies issued on or after January 1, 2004 is estimated to be a decrease in reserves of approximately \$600 million - \$1.2 billion. The retroactive use of such table will not jeopardize New York's long-standing tradition of protecting insureds from insurers that under-reserve since the use of such table is conditional, dependent upon the requirements set forth in the current rule being met by the insurer. Companies domiciled in states that do not adopt these changes by December 31, 2009 year-end will be forced to hold higher reserves relative to companies domiciled in states that have adopted these changes.

Adoption of the proposed amendment will decrease reserves on inforce business for New York authorized life insurers - in some cases, by a material amount. Given the difficult economic environment in which the insurance industry continues to operate, there is significant pressure to maintain higher risk based capital ("RBC") ratios needed to compete successfully in the marketplace, as well as significant capital costs associated with reserves that are greater than necessary. Redundant reserves cost companies additional money to manage, and thereby increase costs to consumers. Thus, the proposed amendment also will benefit consumers by enabling insurers to keep costs at a reasonable level.

New York authorized insurers will be at a competitive disadvantage if this amendment is not adopted. Failure to implement the changes in New

York at the same time they are implemented in other states will make New York authorized companies look weaker financially than their peer companies. If New York authorized insurers are not given the same opportunity as non-New York insurers to reduce their reserves, the lower RBC ratios generated by the higher reserves will create the impression among producers and consumers that there is a real difference in financial stability among the companies - an impression that may negatively impact market share of New York authorized insurers throughout the year.

4. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current computer systems if it continues to maintain higher reserves. Administrative costs to most insurers and fraternal benefits societies authorized to do business in New York State will be minimal, since the 2001 CSO Preferred Class Structure Mortality Table has been available for use by insurers since January 1, 2007. This amendment will extend the date for using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004, and the use of this table is optional.

Costs to the Insurance Department of this amendment will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by this amendment to Regulation No. 179. There are no costs to other government agencies or local governments.

5. Local government mandates: The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The current rule imposes reporting requirements related to the actuarial certification and supporting actuarial report required for insurers using the 2001 CSO Preferred Class Structure Mortality Table for valuation. Additionally, the current rule requires that insurers opting to use the table provide data for mortality and other company specific experience in a statistical report for life insurance policies and group life insurance products sold to individuals by certificate with premium rates guaranteed from issue for at least two years.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The only alternative considered was to not extend the date of using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004. However, this would result in higher reserve requirements for New York authorized life insurers and fraternal benefit societies on some policies, since this change was adopted by the NAIC in September 2009. This change was discussed during various NAIC conference calls and the Department conducted outreach with affected stakeholders, including the Life Insurance Council of New York. Additionally, the American Council of Life Insurers was instrumental in drafting the language for the revised regulation.

This item is part of a larger capital and surplus relief plan for insurers. Adopting this amendment will allow New York insurers to be subject to the same standard that has already been adopted by the NAIC and which is being implemented in other states. Insurers authorized in states that do not adopt this change will be forced to hold higher reserves relative to companies authorized in states that have adopted this change and in those circumstances, New York authorized companies would be at a disadvantage, from the impression that there is a significant difference in financial stability of New York authorized insurers and those authorized outside the state.

9. Federal standards: There are no federal standards in the subject area.

10. Compliance schedule: This amendment to the regulation applies to financial statements filed on or after December 31, 2009. This amendment allows the use of 2001 CSO Preferred Class Structure Mortality Table for policies issued on or after January 1, 2004. Use of the 2001 CSO Preferred Class Structure Mortality Table, however, is not mandatory. Voluntary election of such table is conditional, dependent upon the requirements set forth in the current rule being met by the insurer. The actuarial certification and supporting actuarial report is due annually on March 1. The statistical report required for insurers that use the 2001 CSO Preferred Class Structure Mortality Table is due annually on July 1. Since use of the 2001 CSO Preferred Class Structure Mortality Table was previously in effect and this amendment only extends the date for using the table, insurers should have ample time to meet the reporting requirements.

Regulatory Flexibility Analysis

1. Small Businesses:

The Insurance Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers and fraternal benefit societies authorized to do business in New York State, none of which fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and fraternal benefit societ-

ies and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local Governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers covered by the regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The amendment extends the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004. The current regulation imposes reporting requirements related to the actuarial certification and supporting actuarial report required for insurers using the 2001 CSO Preferred Class Structure Mortality Table for valuation. Additionally, the current rule requires that insurers opting to use the table provide data for mortality and other company specific experience in a statistical report for life insurance policies and group life insurance products sold to individuals by certificate with premium rates guaranteed from issue for at least two years. Use of the 2001 CSO Preferred Class Structure Mortality Table is not mandatory. Voluntary election of such table is conditional on the requirements set forth in the prior version of the regulation, which became effective on December 26, 2007, being met by the insurer.

3. Costs: This amendment provides for lower minimum reserve standards, and an insurer need not modify its current systems if it continues to maintain higher reserves.

Administrative costs to most insurers and fraternal benefits societies authorized to do business in New York State will be minimal, since the 2001 CSO Preferred Class Structure Mortality Table has been able to be used since January 1, 2007. This amendment will extend the date for using the 2001 CSO Preferred Class Structure Mortality Table back to January 1, 2004 and the use of this table is optional.

Costs to the Insurance Department will be minimal, as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by this rule. There are no costs to other government agencies or local governments.

4. Minimizing adverse impact: The regulation does not impose any adverse impact on rural areas.

5. Rural area participation: This amendment was discussed during various public NAIC conference calls, and the Department conducted outreach with affected stakeholders, including the Life Insurance Council of New York. Additionally, the American Council of Life Insurers was instrumental in drafting the language for the revised regulation.

Job Impact Statement

The Insurance Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment extends the use of the 2001 CSO Preferred Class Structure Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits back to policies issued on or after January 1, 2004. Previously, this table could be used for policies issued on or after January 1, 2007. This rule will lower reserve requirements for those insurers that elect to use this table for policies issued on or after January 1, 2004 and therefore decrease the cost of doing business in New York. Compliance should not require the employment of additional personnel or outside contractors.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-02-11-00004-P

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

Proposed Action: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

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

Subject: Financial statement filings and accounting practices and procedures.

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

Substance of proposed rule (Full text is posted at the following State website: <http://www.ins.state.ny.us/>): Subdivision (c) of Section 83.2 of Part 83 is amended to update the publication dates for the Accounting Practices and Procedures Manual (“Accounting Manual”), which is incorporated by reference in Regulation 172. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles (“SSAPs”).

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

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

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

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

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

Paragraph (2) of Subdivision (g) has been amended to refer to SSAP No. 25, Paragraphs 7 and 8, in order to be consistent with a similar change to SSAP No. 25.

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

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

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

Subdivision (k) is relettered (i).

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

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

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

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

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

Subdivision (o) is relettered (l).

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

Subdivision (q) is relettered (m).

Subdivision (r) is relettered (n).

Subdivision (s) is relettered (o).

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

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

Subdivision (v) is relettered (q).

Subdivision (w) is relettered (r).

Subdivision (x) is relettered (s).

A new subdivision (t) is added to recognize an asset for the gross reinsurance premiums which were paid to the reinsurer for coverage beyond the paid-to-date of the policy for insurers receiving credit for reinsurance pursuant to paragraph 25 of SSAP No. 61.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Sam Wachtel, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5269, email: swachtel@ins.state.ny.us

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

Regulatory Impact Statement

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

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

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

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

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

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

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

Insurance Law Section 1301(a)(18) provides that the superintendent may, by regulation, modify any requirement of Section 1301(a) to conform to any subsequent amendment to the NAIC’s Accounting Practices and Procedures Manual (“Accounting Manual”).

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

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

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

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

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

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

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

Insurance Law Article 15 contains provisions that govern the establishment and operation of holding company systems, including controlled insurers. Insurance Law Section 1501 provides for an administrative determination of the existence or absence of control to determine whether the insurer is a member of a holding company system. Insurance Law Sec-

tion 1505 establishes standards for transactions between a controlled insurer and other members of the holding company system to safeguard the interests of the insurer and policyholders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative objectives: Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Sections 307 and 308 of the Insurance Law, which require the filing of what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except with regard to filings made by Underwriters at Lloyd's, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that have been adopted from time to time by the NAIC, as supple-

mented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Manual, sets forth Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation.

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

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

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

The NAIC adopted a new Accounting Manual as of March, 2010. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of the SSAPs. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Codification provides examiners and analysts with uniform accounting rules against which insurers' financial statements can be evaluated.

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

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

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

On December 8, 2009, the NAIC adopted a new accounting guidance relating to Deferred Tax Assets (SSAP #10R) which was effective for the annual statement for the year ending December 31, 2009. The accounting guidance has been included in the Accounting Manual.

The proposed rule adopts SSAP #10R. SSAP #10R extends the period over which deferred tax assets ("DTAs") are projected to be realized from one year to three years and increases the limit of DTAs as a percentage of statutory capital and surplus from 10%, as provided in Insurance Law Section 1301(a)(16), to 15%.

In 2010, the Insurance Department issued Circular Letter No. 11, dated August 6, 2010, describing the parameters for an insurer to calculate an asset for the premium payments not yet received (the "deferred premium asset") and the rules for reducing the asset when the risk is reinsured. The proposed rule adds language to Paragraph 25 of SSAP No. 61 affirming that Circular Letter 11 and Paragraph 25 conform.

4. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. Each insurer will need to determine how many copies (either print or CD-ROM) it needs to obtain to fulfill its statutory accounting functions. In any event, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

The changes to Regulation 172, most of which amend the regulation to conform with changes that have already been made to the Insurance Law, will result in changes to insurance companies' net worth. The changes will have different effects on various insurance companies. The changes are not intended to increase or decrease insurers' overall net worth; rather, the changes are intended to bring New York statutory accounting rules into closer conformance with the rules set forth in the NAIC's Accounting Practices and Procedures Manual and adopted in other states.

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

5. Paperwork: To the extent that this rule makes changes in accounting principles, regulated insurers will need to familiarize themselves with this regulation. To the extent that the rule conforms New York's requirements to those of other states, the need for separate New York filings will be reduced. Once insurers are familiar with the changes, there should be no increase in required paperwork or a net decrease because of the reduced necessity for separate New York filings in other states.

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

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

8. Viable alternatives: Chapter 311 amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent. Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis.

The superintendent determined that, as compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

The Department also contacted four law firms who have health insurer clients. All four acknowledged receipt of the Department's request and none of the four raised any objections.

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

10. Compliance schedule: Regulated insurers already should be aware of the need to comply with the provisions of the Accounting Manual, since the NAIC issued the Accounting Manual in March, 2010. In addition, the NAIC publishes changes to accounting guidance during the interim period before issuance of the new Accounting Manual. Regulated insurers use the Accounting Manuals in preparing their Quarterly Statements and the Annual Statements.

Regulatory Flexibility Analysis

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

The Insurance Department is not aware of any adverse impact that this rule will have on small businesses or of any reporting, recordkeeping or other compliance requirements that it will impose on small businesses. This rule is directed at regulated insurers, most of which do not come within the definition of "small business" found in Section 102(8) of the State Administrative Procedure Act, because none is independently owned and operated, and employs less than one hundred individuals.

Rural Area Flexibility Analysis

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

2. Reporting, recordkeeping and other compliance requirements, and

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

3. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. Each insurer will need to determine how many copies (either print or CD-ROM) it needs to obtain to fulfill its statutory accounting functions. In any event, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

The changes to Regulation 172, most of which amend the regulation to conform with changes that have already been made to the Insurance Law, will result in changes to insurance companies' net worth. The changes will have different effects on various insurance companies. The changes are not intended to increase or decrease insurers' overall net worth; rather, the changes are intended to bring New York statutory accounting rules into closer conformance with the rules set forth in the NAIC's Accounting Practices and Procedures Manual and adopted in other states.

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

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

5. Rural area participation: The Department contacted four law firms who have health insurer clients. All four acknowledged receipt of the Department's request and none of the four raised any objections. All affected parties, including those doing business in rural areas of the State, will have the opportunity to comment upon and discuss the rule after the proposal is published in the State Register.

Job Impact Statement

The Insurance Department has no reason to believe that this rule will have any impact on jobs and employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner.

The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minimum Standards for the Form, Content and Sale of Health Insurance, Including Full and Fair Disclosure

I.D. No. INS-02-11-00013-P

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

Proposed Action: Amendment of Part 52 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512

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

Purpose: To establish standards for an internal appeal procedure for long term care insurance.

Text of proposed rule: Section 52.25 is hereby amended to add a new subdivision (f) to read as follows:

(f) *Internal Appeal.*

(1) *General requirement.*

(i) *This subdivision establishes minimum standards for internal appeal benefits found in long term care insurance, nursing home and home care insurance, nursing home insurance only, and home care insurance only policies and certificates.*

(ii) *No policy or certificate shall be delivered or issued for delivery in this State as long term care insurance, nursing home insurance only, home care insurance only, or nursing home and home care insurance unless the policy or certificate contains provisions setting forth an internal appeal benefit that, at a minimum, complies with the requirements of this subdivision.*

(iii) *The requirements of this subdivision are in addition to any external appeal benefits afforded to insureds as required by the New York State Partnership for Long Term Care program established under Section 367-f of the Social Services Law.*

(2) *Reasonable opportunity to appeal an adverse claim determination.* (i) Every insurer issuing a policy or certificate subject to this section shall establish, and describe in the policy or certificate, a procedure providing the insured, subscriber or an authorized representative thereof with reasonable opportunity to appeal to the insurer an initial adverse claim determination. The insurer shall allow an internal appeal for an adverse claim determination involving expense incurred coverage where the insured, subscriber or the estate thereof has been billed a valid charge for long term care services. For coverage provided without regard to expenses incurred as permitted under the Internal Revenue Code, the insurer shall allow an internal appeal for an adverse claim determination where a plan of care has been prescribed by a licensed health care practitioner for the insured.

(ii) Every insurer shall provide an initial adverse claim determination in writing, which contains the information provided in subparagraph (iii) of this paragraph.

(iii) The policy or certificate shall state that the initial adverse claim determination shall be in writing and include:

(a) The specific reason for the initial adverse claim determination, including a specific reference to policy or certificate language that supports the denial, if applicable;

(b) Instructions to the insured, subscriber or an authorized representative thereof on how and when to initiate and facilitate the insurer's effective handling of an internal appeal, which shall:

(1) include the mailing address and other contact information where the written appeal must be sent and the time frame available for initiating such internal appeal;

(2) specify that the insurer will consider any new or modified information or explanations the insured, subscriber or an authorized representative thereof sends to the insurer; and

(3) state the insurer will accept the names, addresses and phone numbers of persons who may facilitate the insurer's effective handling of the internal appeal; and

(c) A notification that the insured, subscriber or an authorized representative thereof is entitled to all documents, records and other information relevant to the claim.

(3) *Request to appeal.* The insurer shall permit the insured, subscriber or an authorized representative thereof at least 60 days from receipt of the initial adverse claim determination to appeal the denial to the insurer. The insurer shall require that the appeal of the initial adverse claim determination must be in writing; however, the insurer shall not require the insured, subscriber or an authorized representative thereof to use a special form to appeal the initial adverse claim determination.

(4) *Internal appeal procedures.*

(i) Every insurer shall issue a determination with regard to an internal appeal within 60 days of the insurer's receipt of the appeal.

(ii) If the insurer reasonably needs additional information from the insured, subscriber or an authorized representative thereof to issue a determination on the internal appeal, the insurer shall request in writing the additional information from the insured, subscriber or authorized representative thereof within 15 business days of receipt of the internal appeal. The insurer shall allow the insured, subscriber or the authorized representative thereof at least 45 days from receipt of the insurer's written request to provide the additional information to the insurer.

(iii) If the insurer cannot reasonably decide the internal appeal within the 60-day timeframe because the insurer is awaiting additional information from the insured, subscriber or an authorized representative thereof, then the insurer shall provide the insured, subscriber or authorized representative thereof with written notice of an extension to decide the internal appeal prior to the expiration of the initial 60-day period. The written notice of an extension shall describe the need to await further information and indicate the date by which the insurer expects to issue the determination. In no event shall the extension afforded the insurer exceed 120 days from receipt of the internal appeal by the insurer.

(iv) If the additional information is not received within 120 days from receipt of the internal appeal by the insurer, the insurer shall immediately issue an internal appeal determination based on the information available to the insurer at that time.

(v) The internal appeal determination shall be made by a person not involved in the initial adverse claim determination by the insurer, and the person shall have the ability and expertise to reasonably evaluate and decide the internal appeal.

(5) *Internal appeal determination.* The internal appeal determination shall be made in writing to the insured, subscriber or an authorized representative thereof and include:

(i) A statement as to whether the initial adverse claim determination is upheld or reversed in whole or in part;

(ii) A detailed explanation, with references to specific policy or certificate language if applicable, of the reason(s) why the initial adverse claim determination is being upheld in whole or in part;

(iii) If the denial is reversed in whole or in part, a detailed description of the benefits that will be paid; and

(iv) A notification that the insured, subscriber or an authorized representative thereof is entitled to copies of all documents, records or other relevant information regarding the claim and the internal appeal.

Subdivision (a) of section 52.90 is amended by adding a new paragraph (19) to read as follows:

(19) *Effective upon adoption, with respect to section 52.25(f) of this Part, affecting policies and certificates delivered or issued for delivery in this State six months or more from such effective date.*

Text of proposed rule and any required statements and analyses may be obtained from: Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5257, email: amais@ins.state.ny.us

Data, views or arguments may be submitted to: Colleen Rumsey, NYS Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 473-7470, email: crumsey@ins.state.ny.us

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

Regulatory Impact Statement

1. **Statutory authority:** The Superintendent's authority for the promulgation of the forty-third amendment to Regulation 62 derives from Insurance Law Sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512.

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

Section 1109 of the Insurance Law authorizes the Superintendent to promulgate regulations affecting health maintenance organizations (HMOs) and effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Section 1117 of the Insurance Law authorizes the Superintendent to permit the sale of plans providing coverage for long term care services by insurers, HMOs, Article 43 corporations and fraternal benefit societies; indicates that all contracts issued pursuant to Section 1117 are subject to all provisions of the Insurance Law and regulations promulgated under the Insurance Law; and authorizes the Superintendent to modify or suspend any provision or regulations upon making the determinations set forth in subsection (f) of Section 1117.

Section 2601 of the Insurance Law prohibits insurers doing business in this state from engaging in unfair claims settlement practices.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.

Section 3234 of the Insurance Law requires insurers to provide the insured or subscriber with an explanation of benefits form in response to the filing of any claim under a policy or certificate providing coverage for nursing home expense or home care expense benefits.

Section 4512 of the Insurance Law authorizes the Superintendent to alter or supersede reasonable rules prescribing the required, optional and prohibited provisions in accident and health insurance certificates issued by fraternal benefit societies.

2. **Legislative objectives:** The statutory sections cited above establish a framework for the form, content and sale of insurance containing long term care benefits. The Superintendent is granted authority under Sections 1117 and 3217 of the Insurance Law to promulgate regulations that establish minimum standards for the form, content, and sale of health insurance, including long term care insurance. One of the purposes of establishing minimum standards is reasonable standardization and simplification of coverages to facilitate understanding and comparisons. This rule furthers the legislative objective by adopting current industry best practices as the minimum standards applying to internal appeals for long term care insurance across the industry. Recent adoption of long term care internal appeal provisions in the NAIC (National Association of Insurance Commissioners) Long Term Care Insurance Model Regulation provides the impetus to examine legislative objectives under New York Insurance Law and regulations and pursue this amendment.

3. **Needs and benefits:** Long term care insurance plans were first approved by the Insurance Department during 1986. These plans provided benefits that were somewhat limited in amount and in the type of services covered. Only a few insurers showed initial interest in writing long term care insurance. In order to encourage more insurers to offer such plans, the Insurance Department did not, at that time, establish minimum standards, but approved the plans under Section 1117 of the Insurance Law.

In 1991, following a public hearing, the Insurance Department promulgated the Sixteenth Amendment to Insurance Department Regulation 62 (11 NYCRR Part 52), which established minimum standards and set forth disclosure requirements for long term care insurance. The amendment took effect on January 1, 1992. In establishing the minimum standards, the

Insurance Department recognized that long term care insurance should provide a comprehensive range of benefits. The Department was also aware that such a benefit package could price many people out of the long term care insurance market and was also mindful that consumers have differing needs and desires concerning coverage of long term care services. The amendment established four categories of insurance policies providing long term care benefits: long term care insurance, nursing home & home care insurance, nursing home insurance only and home care insurance only. The amendment set minimum standards for the four categories of policies and other standards that applied to all four categories, such as make available inflation protection and non-forfeiture benefits.

The proposal establishes minimum standards for internal appeal procedures for long term care insurance, nursing home & home care insurance, nursing home insurance only and home care insurance only. As stated above, long term care insurance has been sold in New York for almost 25 years. Due to the long tailed nature of this product, consumers purchase the policy not expecting to make a claim for benefits for years. As more consumers purchase long term care insurance and file claims on their coverage, this regulation helps ensure that consumers are adequately protected at time of claim by requiring insurers to have an internal appeal procedure available to insureds, subscribers and their authorized representatives. Currently, all long term care insurers offer their insureds an internal appeal procedure for denied claims but these procedures and the form language regarding internal appeals can be dissimilar among insurers. The establishment of these minimum standards for internal appeal procedures will assure adequate public protection by making pertinent policy and certificate provisions less confusing and easier to understand by facilitating the comparison of different policies or certificates by insureds or subscribers with regard to internal appeal procedures. The minimum standards that are established under the rule will help to promote more consistent and detailed descriptions about internal appeals in insurer form language.

4. Costs: Insurers issuing long term care insurance have been aware of the Department's intent to promulgate this regulation for several years; for example, notice was published in the January and June 2009 and 2010 Regulatory Agendas. Insurers will have to update their appeals language, if necessary, to comply with this amendment. As stated above, all insurers have existing internal appeal procedures, and those that are similar to this rule may not need to update their policy and certificate form language. If updated language is necessary, insurers can submit a one-page rider to the Department for approval to be inserted into their policies and certificates. This change can be performed with existing staff at the insurers, who already submit various form and rate filings to the Insurance Department. Thus, insurers will have minimal, if any, costs to alter their current internal appeal procedures to comply with this rule.

Costs to the Insurance Department also should be minimal, as existing personnel are already available to review any filings necessitated by the amendment. These rules impose no compliance costs on state or local governments or health care providers.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The proposal imposes no new reporting requirements. Insurers may need to revise policy form filings to comply with the regulation, but the changes will be minor, as most policy forms already contain an appeal provision that is similar to the proposed rule.

7. Duplication: The long term care insurance market in New York is predominantly individual, as 76% of insureds are covered by individual policies. For this vast segment of the market, no other rule governs internal appeals and no duplication exists. For group plans offered by employers or labor unions, the U.S. Department of Labor promulgated a rule (29 C.F.R. Section 2560.503-1) setting minimum standards for claim payment procedures, including internal appeal procedures. The federal rule allows states to exceed the minimum standards set in the federal rule. This federal rule, first promulgated in 1977 and updated in 2001, has broad application to all types of group employer/union employee benefit plans and is not specifically tailored to long term care insurance. For this much smaller group segment of the long term care insurance market in New York, this rule complements and enhances the federal rule by indicating a definite time frame for actions by both insurer and insured to better provide for prompt determinations of internal appeals when additional information is needed to decide the internal appeal. The requirements of this rule are the same as the federal rule except that this rule has an enhanced time requirement when an insurer needs additional information to decide an internal appeal. Under that limited circumstance, the insurer must request the additional information within 15 business days of receiving the internal appeal. Under this rule, the insured must act more promptly and provide the additional information within 45 days of the request from the insurer. This enhancement was made because of comment from an insurer during outreach that highlighted the importance of prompt action and finality on

internal appeals so that claims information does not become stale while an extended amount of time elapses while the insurer awaits additional information. Thus, this rule is not duplicative of the federal rule for more than three-fourths of the New York market. For group employer/union plans, this rule enhances the federal minimum standards as a result of outreach to insurers. Insurers are receiving greater volumes of long term care insurance claims in recent years, making application of the federal rule more prevalent and adoption of this rule necessary.

8. Alternatives: The Department sent out an outreach draft to insurers and a trade group representing most insurers writing long term care insurance in New York on December 2, 2009, asking interested parties to submit comments. The Department met with the insurers and interested parties on January 28, 2010 to discuss the comments. Based upon some of the comments the proposal has been revised.

The outreach draft contained a provision requiring the insurers to establish procedures for an expedited internal appeal under certain extenuating circumstances involving the insured's condition. The insurer would have been required to issue a determination on an expedited appeal within 30 days from receipt of the appeal. Insurers indicated that an expedited appeal was unnecessary since long term care insureds are typically seeking reimbursement for services already provided and insurers are not managing the care of the insureds before the care is rendered to the long term care insured. The Department agreed with the insurers' suggestion and removed the expedited appeal procedure from the rule.

Insurers suggested following the recently adopted NAIC Long Term Care Insurance Model Regulation, which limits internal appeals only to benefit trigger determinations. The Department receives claim denial reports from insurers, on an NAIC form, required to be sent by federal law. The NAIC form in 2008 shows approximately 29% of net denied claims were for benefit trigger determinations and 35% of net denied claims were because the services were not covered under the contract. A reason for claim payment delay is that the elimination period time limit has not yet been met. Under the NAIC model, these other claim denials (other than benefit trigger denials) or delays would not be eligible for an internal appeal. Furthermore, current appeal language in policies and certificates does not restrict the right to an internal appeal to benefit trigger denials only. However, the NAIC model states that it sets minimum standards for internal appeal procedures and permits states to exceed the minimums set forth in the model. The Department determined that it would be of even greater benefit to the insured to expand beyond the NAIC model and include the other reasons for claim denials or delays as the NAIC model permits.

9. Federal standards: As discussed in the duplication section above, this rule complements a rule promulgated by the Federal Department of Labor. 29 C.F.R. Section 2560.503-1(k) states that the federal regulation shall not be construed to supersede any provision in State law that regulates insurance, except to the extent that such law prevents the application of the federal regulation. Also, 29 C.F.R. Section 2560.503-1(a) states that the federal regulation sets minimum requirements for employee benefit plan procedures, allowing states to exceed the federal minimum requirements. This rule complements the federal regulation, is more beneficial to consumers, and will not prevent the application of the federal regulation.

10. Compliance schedule: The rule will take effect immediately upon its adoption, and will affect policies and certificates delivered or issued for delivery in this State six months or more from such effective date.

Regulatory Flexibility Analysis

1. Small businesses: The Insurance Department believes that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this belief is that this rule is directed at insurers that write accident and health insurance, none of which falls within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act. Indeed, the Insurance Department has reviewed filed Reports on Examination and Annual Statements of these entities, and believes that there are none that are both independently owned and that employ fewer than 100 persons. Accordingly, there is no need to prepare any special guidance materials for small businesses with regard to this rule.

2. Local governments: The regulations do not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers that write accident and health insurance, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: All insurers that write accident and health insurance, to which this regulation is applicable, do business in every county of the State, including rural areas as defined under section 102(13) of the State Administrative Procedure Act. Since the rule applies to the insurance market throughout New York, not only to

rural areas, the same regulation will apply to regulated entities across the state.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The regulation imposes no new reporting requirements. Insurers may need to revise policy form filings to comply with the regulation, but the changes will be minor, as most policy forms already contain an appeal provision that is similar to the proposed rule. Parties in rural areas will not incur expenses to access this data.

3. Costs: This regulation does not impose any new cost requirements on regulated parties. As stated above, all insurers have existing internal appeal procedures that are similar to this rule and may not need to update their policy and certificate form language. If updated language is necessary, insurers will submit a one page rider to the Department for approval to be inserted into their policies and certificates. This change can be performed with existing staff at the insurers, who already submit various form and rate filings to the Insurance Department. This rule closely follows the existing internal appeal procedures now used by insurers. Thus, insurers will have minimal, if any, costs to alter their current internal appeal procedures to comply with this rule.

4. Minimizing adverse impact: This rule will not impose any adverse impacts on entities in rural areas.

5. Rural area participation: Notification of the Department's intent to propose these regulations were included in the Department's Regulatory Agenda for January 2010. In addition, the Department sent an outreach draft to insurers and a trade group representing most insurers writing long term care insurance in New York on December 2, 2009, asking interested parties to submit comments. The Department met with the insurers and interested parties on January 28, 2010 to discuss the comments. Through this comment process and meeting on January 28, 2010, insurers located in and/or doing business in rural areas had an opportunity to participate in the rulemaking process for this regulatory change. Based upon some of the comments the proposal has been revised.

Job Impact Statement

The amendment to Regulation 62 will not adversely impact job or employment opportunities in New York. The regulation will involve the establishment of an internal appeal procedure to which all issuers of long term care insurance must adhere. The adoption of an internal appeal procedure for long term care insurance will not have any negative effect on jobs or employment opportunities.

Insurers issuing long term care insurance have been aware of the Department's intent to promulgate this regulation for several years; for example, notice was published in the Regulatory Agenda. Insurers will have to update their appeals language, if necessary, to comply with this amendment. All insurers have existing internal appeal procedures, and those insurers with procedures that are similar to this rule may not need to update their policy and certificate form language. If updated language is necessary, insurers can submit a one-page rider to the Department for approval to be inserted into their policies and certificates. This change can be performed with existing staff at the insurers, who already submit various form and rate filings to the Insurance Department. Thus, insurers will have minimal, if any, costs to alter their current internal appeal procedures to comply with this rule.

Long Island Power Authority

NOTICE OF ADOPTION

The Authority's Tariff for Electric Service

I.D. No. LPA-41-10-00007-A

Filing Date: 2010-12-27

Effective Date: 2010-12-27

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

Action taken: The Long Island Power Authority ("Authority") adopted a proposal modifying its Tariff for Electric Service with regard to miscellaneous provisions.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: The Authority's Tariff for Electric Service.

Purpose: To modify the Authority's Tariff for Electric Service with regard to miscellaneous provisions.

Text or summary was published in the October 13, 2010 issue of the Register, I.D. No. LPA-41-10-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

Assessment of Public Comment

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

Public Service Commission

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00009-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of 3462 Third Avenue Owner Realty LLC to submeter electricity at 3462 and 3480 Third Avenue, Bronx, NY located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 3462 Third Avenue Owner Realty LLC to submeter electricity at 3462 and 3480 Third Avenue, Bronx, NY.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of 3462 Third Avenue Owner Realty LLC to submeter electricity at 3462 and 3480 Third Avenue, Bronx, 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-0868SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00010-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of 424 Bedford Plaza LLC to submeter electricity at 424 Bedford 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), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 424 Bedford Plaza LLC to submeter electricity at 424 Bedford Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of 424 Bedford Plaza LLC to submeter

electricity at 424 Bedford 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-0668SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00016-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, Brooklyn, NY.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of 230 Livingston Street Owner LLC to submeter electricity at 236 Livingston Street, 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-0730SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-05-10-00017-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of 110 Green Street Development, LLC to Submeter Electricity at 130 Green Street, Brooklyn, New York located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 110 Green Street Development, LLC to Submeter Electricity at 130 Green Street, Brooklyn, New York.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of 110 Green Street Development, LLC to

Submeter Electricity at 130 Green Street, 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-0779SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-09-10-00011-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of 400 Fifth Owner Realty LLC to submeter electricity at 400 Fifth Avenue, Bronx, NY located in the territory of Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of 400 Fifth Owner Realty LLC to submeter electricity at 400 Fifth Avenue, Bronx, NY.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of 400 Fifth Realty LLC to submeter electricity at 400 Fifth Avenue, New York, 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.

(10-E-0078SA1)

NOTICE OF ADOPTION

Tariff Schedule P.S.C. No. 1 — Water, Eff. 1/1/11, Containing the Commission Staff's Recommended Reduced Rates

I.D. No. PSC-17-10-00009-A

Filing Date: 2010-12-22

Effective Date: 2010-12-22

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

Action taken: On 12/16/10, the PSC adopted an order directing Covered Bridge Water Corp. to file its electronic tariff schedule, P.S.C. No. 1 — Water, containing the Commission Staff's recommended reduced rates to become effective January 1, 2011.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10), 89-j, 113 and 114

Subject: Tariff schedule P.S.C. No. 1 — Water, eff. 1/1/11, containing the Commission Staff's recommended reduced rates.

Purpose: To approve tariff schedule P.S.C. No. 1 — Water, eff. 1/1/11, containing the Commission Staff's recommended reduced rates.

Substance of final rule: The Commission, on December 16, 2010 adopted an order directing Covered Bridge Water Corp. to file its electronic tariff schedule, P.S.C. No. 1 — Water, containing the Commission Staff's recommended reduced rates, which produce a decrease in annual revenue of \$13,549 or 11.5% to become effective January 1, 2011, 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.

(10-W-0157SA1)

NOTICE OF ADOPTION

Petition for the Submetering of Electricity

I.D. No. PSC-19-10-00016-A

Filing Date: 2010-12-23

Effective Date: 2010-12-23

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

Action taken: On 12/16/10, the PSC adopted an order approving the petition of Trident Developers NY, LLC to submeter electricity at 585 6th 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), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To approve the petition of Trident Developers NY, LLC to submeter electricity at 585 6th Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on December 16, 2010, adopted an order approving the petition of Trident Developers NY, LLC to submeter electricity at 585 6th 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.

(10-E-0107SA1)

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

Approval for the New York Independent System Operator, Inc. to Incur Indebtedness and Borrow Up to \$45,000,000

I.D. No. PSC-02-11-00006-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a petition by the New York Independent System Operator, Inc. for approval to borrow up to \$45,000,000 to finance the renovation and construction of facilities.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4), (5) and 69

Subject: Approval for the New York Independent System Operator, Inc. to incur indebtedness and borrow up to \$45,000,000.

Purpose: To finance the renovation and construction of the New York Independent System Operator, Inc.'s power control center facilities.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, a petition by the New York Independent System Operator, Inc. (NYISO) for approval to incur indebtedness, for a term in excess of twelve months, by borrowing up to \$45,000,000 to finance the renovation and construction of the NYISO's alternate and primary power control center facilities, and to undertake other related improvements.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0640SP1)

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

Continuation of National Fuel Gas Distribution Corporation's Area Development Program

I.D. No. PSC-02-11-00007-P

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

Proposed Action: The Commission is considering a petition from National Fuel Gas Distribution Corporation to extend its economic development program known as the "Area Development Program".

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

Subject: Continuation of National Fuel Gas Distribution Corporation's Area Development Program.

Purpose: Consideration to continue National Fuel Gas Distribution Corporation's Area Development Program.

Substance of proposed rule: The Commission is considering a filing dated December 3, 2010 from National Fuel Gas Distribution Corporation (National Fuel) in which National Fuel is requesting that its Area Development Program be extended for one year or until funding is exhausted. The proposed funding will be \$500,000, funded with the unspent Non-Residential Conservation Incentive Program collections. The Commission may adopt, reject or modify, in whole or in part, the filings submitted, and may also consider related matters.

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

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

(04-G-1047SP8)

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

RG&E's Plan for Expanding Mandatory Hourly Pricing to Additional Non-Residential Customers

I.D. No. PSC-02-11-00008-P

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

Proposed Action: The Commission is considering a petition from Rochester Gas and Electric Corporation (RG&E) proposing a plan for expanding mandatory hourly pricing to additional non-residential customers.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: RG&E's plan for expanding mandatory hourly pricing to additional non-residential customers.

Purpose: Consideration of RG&E's plan for expanding mandatory hourly pricing to additional non-residential customers.

Substance of proposed rule: The Commission is considering a petition from Rochester Gas and Electric Corporation (RG&E) filed on December 17, 2010 proposing a plan establishing procedures, terms and conditions for expanding mandatory hourly pricing to additional non-residential customers whose peak demands are in excess of 300 kW. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0717SP2)

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

Special Telephone Equipment for Hearing Impaired Persons

I.D. No. PSC-02-11-00009-P

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

Proposed Action: The PSC is considering a petition filed by the Targeted Accessibility Fund of NY Inc. for a two-year extension for Sprint Communications Company L.P. to provide Telecomm Relay Service (TRS) & Captioned Telephone Service in NY from 7/1/2011 - 6/30/2013.

Statutory authority: Public Service Law, section 92-a

Subject: Special telephone equipment for hearing impaired persons.

Purpose: The PSC was authorized to establish the NY TRS Center and to develop an RFP to provide TRS in NYS.

Substance of proposed rule: The Commission is considering a petition filed by the Targeted Accessibility Fund of NY Inc. for a two-year extension for Sprint Communications Company L.P. to provide Telecomm Relay Service & Captioned Telephone Service in NY from 7/1/2011 - 6/30/2013. The Commission may grant, deny, or modify the petition or take a related action concerning relay service.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-C-0649SP1)

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

Approval of Issues of Stock

I.D. No. PSC-02-11-00010-P

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

Proposed Action: The Commission is considering whether to approve or reject a request by Corning Natural Gas Corporation to allow the Company to implement its proposed Stock Dividend plan.

Statutory authority: Public Service Law, section 69

Subject: Approval of issues of stock.

Purpose: Approval of issues of stock.

Substance of proposed rule: The Public Service Commission is considering a petition by Corning Natural Gas Corporation (Company/Corning) to implement its proposed Stock Dividend plan. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0647SP1)

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

Methods of Calculating Energy Savings for the Purpose of Cost/Benefit Analysis

I.D. No. PSC-02-11-00012-P

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

Proposed Action: The Commission is considering whether to adopt, in whole or in part, Department of Public Service Staff proposals for benefit/cost analysis requirements for Energy Efficiency Portfolio Standard (EEPS) programs.

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

Subject: Methods of calculating energy savings for the purpose of cost/benefit analysis.

Purpose: To encourage energy conservation and facilitate cost-effective programs under the Energy Efficiency Portfolio Standard.

Substance of proposed rule: The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to the following proposals of the Staff of the Department of Public Service regarding benefit/cost analysis for Energy Efficiency Portfolio Standard (EEPS) programs:

1. Assuming the other criteria are met, for replacement of equipment to be eligible for Special Circumstance treatment, the "savings" dual baseline method would set eligibility for replacement of the equipment at 125% or higher of the prescribed Effective Useful Life (EUL) in cases where the

age of the equipment in relation to the 125% threshold can be determined. Also assuming the other criteria are met, if the age of equipment in relation to the 125% threshold cannot be determined, for replacement of the equipment to be eligible for Special Circumstance treatment, the consumption of the old equipment in place must exceed the consumption of the new high efficiency equipment by 20% or more.

2. For replacement of the eligible equipment of Special Circumstance customers, the "savings" dual baseline would consist of an initial baseline at the rate of consumption of the old removed equipment for a period equal to 25% of the measure's prescribed Effective Useful Life (EUL), and a secondary baseline at the rate of consumption of current standard/minimally compliant efficiency models for the period of the 75% remainder of the measure's prescribed Effective Useful Life (EUL).

3. For Special Circumstance replacements, a cap would be imposed on incentives such that the incentive amount could not be more than 80% of the measure cost, or 80 % of the resource benefits, whichever is lower.

4. An amendment would be made to the Technical Manual relating to refrigerators in multi-family programs, such that (a) for normal end-of-life replacement, the default value for the incremental cost between the high-efficiency model and the standard compliant model would be \$75, except that program administrators may use a lesser value if they can document it, but not less than \$35; and (b) the metering requirement can be waived by the program administrator for early replacement and instead the nameplate rating of the refrigerator can be used adjusted upward as follows: (i) age more than 9 years, add 10%; (ii) age more than 14 years, add 15%; and (iii) gasket/seal deteriorated, add 5%.

5. Staff is proposing a "Consolidated Table of Measure Effective Useful Lives" dated December 28, 2010, to be used in all cost/benefit analyses.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-0548SP30)

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Assistance Program to Encourage Local Governments to Reassess on a Cyclical Basis

I.D. No. TAF-02-11-00011-EP

Filing No. 1338

Filing Date: 2010-12-28

Effective Date: 2010-12-28

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

Proposed Action: Addition of Subpart 201-3 to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 201(1), 202(1)(k) and 1573(1)(a); and L. 2010, ch. 56, parts W and Y

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

Specific reasons underlying the finding of necessity: The amendments to Real Property Tax Law section 1573 enacted by Chapter 56 took effect immediately and apply to the 2010 assessment rolls for municipalities with a taxable status date on or after March 1, 2010. These rolls are final

and the assistance payments for the 2010 rolls must be made before the end of the current fiscal year. Emergency rules were needed to continue the implementation of the program and to insure that the payments could be made. Emergency rules were adopted on October 6, 2010. Re-adoption of the emergency rules is needed in connection with the continued administration of the program.

Subject: Assistance Program to encourage local governments to reassess on a cyclical basis.

Purpose: To provide rules to implement the statutory authorized assistance to local governments to encourage a cycle of reassessments.

Text of emergency/proposed rule: Section 1. A new subpart 201-3 is added to such regulations to read as follows:

Subpart 201-3 ASSESSMENT ROLLS WITH TAXABLE STATUS DATES OCCURRING ON OR AFTER MARCH 1, 2010

Section 201-3.1 Applicability. *The provisions of this Subpart shall pertain to applicants for state assistance for purposes of assessment rolls with taxable status dates occurring on or after March 1, 2010, pursuant to section 1573(1) and (2) of the Real Property Tax Law, as amended by Chapter 56 of the Laws of 2010, Part Y.*

Section 201-3.2 Plan to be filed for state assistance.

(a) A written plan containing the reappraisal schedule and the reinspection schedule for the applicant must be received no later than 120 days prior to the filing date of the tentative assessment roll implementing the first reappraisal in that plan. The plan must be signed by the chief executive officer of the assessing unit and the assessor. For plans involving a coordinated assessment program, the assessor may file a single plan providing that it contains the signatures of the chief executive officer of each member municipality.

(b) In accordance with an approved plan, state assistance shall be payable in an amount not to exceed five dollars per parcel for an assessment roll upon which a reassessment is implemented, and not to exceed two dollars per parcel for an assessment roll upon which a reassessment is not implemented. The amount payable on a per parcel basis shall exclude parcels which are wholly exempt or assessed by the state.

Section 201-3.3 State standards for quality assessment administration.

The standards for quality assessment administration are:

(a) In reassessment years.

(1) The reassessment must:

(i) be conducted pursuant to a plan for cyclical reassessment of not less than four years,

(ii) provide for the reappraisal of all parcels in the first and last year of the plan,

(iii) provide for a reappraisal of all parcels at least once every four years; and

(iv) collect inventory data at least once every six years.

(2) Reappraisal means developing and reviewing a new determination of market value for each parcel, based upon current data, by the appropriate use of one or more of the three accepted approaches to value (cost, market, or income).

(3) Review of the appraisal values consists of a visit to each property, and includes a review of the recorded inventory, examination and analysis of the appraisal estimates, and determination and documentation of a final appraised value. An office review may be substituted if appraisers have collected data or reinspected the property characteristics data as part of the reappraisal, or if the review utilizes oblique aerial, orthophoto, or street-level photography that was taken within three years of the reappraisal. In special assessing units an office review may be substituted if the property characteristics data has been systematically collected from other governmental sources.

(b) Annually. The assessor or the chairman of the board of assessors has filed a signed statement verifying that the following actions were taken in accordance with the statute or rule:

(1) Parcels on the data file have complete and accurate inventories as of taxable status date,

(2) Pertinent sales data on the data file is complete and accurate,

(3) Parcels on the assessment roll filed pursuant to Article 15-C of the Real Property Tax Law have valid property tax exemption codes,

(4) The final assessment roll meets the requirements of Part 190 of this Title,

(5) The assessor's report meets the requirements of Part 193 of this Title and is reconciled by the Office of Real Property Tax Services,

(6) Data files required pursuant to Article 15-C of the Real Property Tax Law and Part 190 of this Title are filed in accordance with Section 1590 of the Real Property Tax Law,

(7) Sales corrections required by Part 191 of this Title are received in an Office of Real Property Tax Services approved computerized format. Transactions are received on a timely basis,

(8) Notice of assessment inventory was published as required by section 501 of the Real Property Tax Law,

(9) Notice of tentative assessment roll was published as required by section 506 of the Real Property Tax Law,

(10) Assessment change notices were sent as required by section 510 of the Real Property Tax Law,

(11) Assessment disclosure notices as required by section 511 of the Real Property Tax Law are sent and required meetings have been held,

(12) The tentative assessment roll was posted on the Internet as required by section 1590 of the Real Property Tax Law,

(13) Notice of final assessment roll was published as required by section 516 of the Real Property Tax Law,

(14) Renewal forms for the senior citizens' exemptions were sent as required by section 467 of the Real Property Tax Law,

(15) Notices of denial for the STAR exemptions were sent as required by section 425 of the Real Property Tax Law,

(16) The uniform percentage appears on the tentative assessment roll or in instances where a tentative assessment roll is not printed, a sign that contains the uniform percentage is posted in a conspicuous location,

(17) In a reassessment year, all parcels were reappraised and reviewed in accordance with the Assessing Unit's plan, and

(18) The Assessing Unit has a method to collect or reinspect all parcels at least once every six years in accordance with section 201-3.3(a) of this Subchapter.

Section 201-3.4 Application for state assistance.

(a) A written application for state assistance must be filed with the Office of Real Property Tax Services annually. Applications must be filed no later than 90 days after the filing of the final assessment roll for which state assistance is applied.

(b) A written application for state assistance must be signed by the chief executive officer of the assessing unit and the assessor. For purposes of this section assessor means the assessor or the chairman of the board of assessors or the county director where the county is assessing on behalf of a city or town assessing unit or the assessor of a consolidated assessing unit or coordinated assessment program or the Chairman of the Board of Directors of a consolidated assessing unit.

(c) For applications involving a coordinated assessment program, the assessor may file a single application, providing that it contains the signatures of the Chief Executive Officer of each member municipality.

Section 201-3.5 Review of Application.

(a) The Office of Real Property Tax Services shall adopt procedures that contain acceptable performance indicators of substantial compliance with standards contained in section 201-3.2 of this Subpart, including ranges of acceptable performance determined in accordance with nationally recognized standards. Office of Real Property Tax Services staff will review applications in accordance with such procedures.

(b) The determination made pursuant to the procedures for the applicable full value measurement as provided in 9 NYCRR 186-2.15 shall be conclusive as to whether a reassessment occurred and a uniform percentage of value was attained.

(c) An applicant must provide assessment roll, inventory, sales files and the corresponding libraries in an Office of Real Property Tax Services approved computerized format. The files must be supplied with the data files submitted pursuant to Article 15-C of the Real Property Tax Law.

(d) In determining compliance, facts and conditions are assumed as of the final roll date for the assessment roll for which state assistance is requested, unless otherwise stated.

(e) Upon approval, Office of Real Property Tax Services staff shall certify the amount of state assistance payable pursuant to this Part.

(f) For computing the amount of state assistance payable pursuant to this Part, the number of parcels are obtained from the data files submitted pursuant to Article 15-C of the Real Property Tax Law.

(g) Upon disapproval, Office of Real Property Tax Services staff will notify the applicant of the disapproval and the reason for the disapproval. The assessing unit shall have 30 days from the date of the mailing of the notification to appeal this denial to the Deputy Commissioner.

(h) Applications for state assistance made pursuant to section 1573 of the Real Property Tax Law are subject to audit. A state-wide verification process with detailed audits of randomly selected individual assessing units will be conducted annually before payments are certified.

(i) Where an applicant receives payment as a result of a false or erroneous statement on the application, or any other act of omission or commission on the part of the applicant, such that the recipient would otherwise have been considered ineligible to receive such payment, the recipient shall be required to refund the improper payment to the state.

Section 201-3.6. Transition provisions for 2010 assessment rolls.

(a) For purposes of assessment rolls completed in 2010, the applicant will be deemed to meet the reappraisal requirement of section 201-3.2 of this Subpart if a reassessment was implemented pursuant to a six-year plan filed in compliance with Subpart 201-2 of this Part.

(b) Notwithstanding the provisions of section 201-3.2(a) and 201-3.4(a) of this Subpart, for purposes of assessment rolls completed in 2010, a plan

and an application may be filed no later than 60 days after the effective date of these rules.

(c) For applications involving a coordinated assessment program, a participant municipality shall be eligible for state assistance if it meets the state standards for quality assessment administration as outlined in 201-2.2 of this subpart, notwithstanding the failure of another participant municipality to qualify.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 25, 2011.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax_regulations@tax.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority: Real Property Tax Law, sections 201(1), 202(1)(k), and 1573(1)(a). Section 201(1) of Real Property Tax Law, assumption of responsibilities by the Department of Taxation and Finance, provides that certain functions, powers and duties of the State Board of Real Property Services are considered functions, powers and duties of the Commissioner of Taxation and Finance. Section 202(1)(k) of the Real Property Tax Law authorizes the Commissioner of Taxation and Finance in relation to real property tax administration to adopt such rules not inconsistent with law, as may be necessary for the exercise of his or her powers and the performance of his or her duties. Section 1573 of the Real Property Tax Law provides that the assessing units must satisfy standards of quality assessment administration to qualify for assistance, as established pursuant to regulations promulgated by the commissioner. Part W of Chapter 56 of the Laws of 2010 added section 201(1) and amended section 202(1) and Part Y of Chapter 56 of the Laws of 2010 amended section 1573.

2. Legislative Objectives: The rule is being proposed pursuant to such authority to administer statutory amendments made by Part Y of Chapter 56 of the Laws of 2010 to restructure the State's reassessment assistance program to better encourage local governments to maintain updated property assessments on a regular cycle within available funding levels.

3. Needs and Benefits: Under the previous reassessment assistance program, a local assessing unit could receive assistance for conducting a full value reassessment without making any commitment to reassess again. Assessment equity can quickly deteriorate if not actively maintained. Recent amendments to section 1573 of the Real Property Tax Law have changed the reassessment assistance program so that to receive assistance, an assessing unit would have to adopt a multi-year plan of at least four years that calls for a full value reassessment to be completed in the first and last years of the plan, thereby establishing a reassessment cycle of the local government's own choosing. The amount payable on a per parcel basis shall exclude parcels which are wholly exempt or assessed by the state. If an assessing unit withdraws from an approved plan, it will only be responsible for remission of per parcel payments for non-revaluation years.

Anticipated benefits include a reduced effort to maintain equity if reassessments are conducted on a cyclical basis rather than having a long gap ensue, improved clarity for taxpayers if their assessment closely mirrors the actual value of their property, and less drastic shifts in assessed values if reassessments are conducted once every four years rather than at longer intervals. The public can better understand and withstand small changes in value every few years rather than annual changes or huge changes that would likely occur if assessed values are left unchanged for long intervals.

The purpose of these amendments is to make necessary regulatory changes related to the implementation of these provisions and to assure that the funds for the assistance program are effectively managed. This rule provides: plan requirements, the state standards for quality assessment administration that must be satisfied by the assessing unit to qualify for state assistance, requirements for applications for state assistance, and transitional rules for 2010 assessment rolls.

4. Costs:

(a) Costs to regulated persons: None - there are no regulated persons; the regulated parties are the local governments.

(b) Costs to the State and its local governments including this agency: Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance.

Chapter 55 of the Laws of 2010 contained an appropriation of

\$6,900,000. This level of funding reflects a \$1,350,000 reduction from the 2009-10 budget. The effect will be limited in 2010 as there are provisions in the rules to provide assistance for revaluations conducted in 2010 according to the provisions of the previous program. In future years some local governments which had received assistance of \$5 per parcel for annual reassessments will only receive assistance of \$2 per parcel for the years between reassessments.

(c) Information and methodology: The appropriation figures were determined by the Division of Budget and Chapter 55 of the Laws of 2010.

5. Local Government Mandates: None. Participation in this assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance.

6. Paperwork: If the local government elects to participate in this assistance program, a written plan and application are prescribed by the rule along with statutorily required documentation.

7. Duplication: There are no conflicting state or federal requirements.

8. Alternatives: There were no significant alternatives to consider. The special transitional provisions of the rule were needed to implement this new program because this law became effective after most municipalities filed their tentative assessment rolls and would have otherwise failed to qualify for the program.

This newly established program of Aid for Cyclical Reassessments replaces both the Annual and Triennial Aid programs. Outreach was conducted with the Real Property Tax Administration Committee (RPTAC) and their feedback was considered. In addition to ORPTS executive staff, RPTAC is comprised of Assessors and County Directors of Real Property Tax Services who represent a cross section of large and small assessing units from both the upstate and downstate areas. Most of the comments that were received were technical questions about how the program would work. More comments may be forthcoming as the program is implemented and as local governments prepare their annual assessment rolls. As such, it is too soon to fully evaluate the effectiveness of the program.

9. Federal Standards: There are no federal regulations concerning this subject.

10. Compliance Schedule: The compliance schedule for a local government that elects to participate in the assistance program is specifically set forth in the rule. A written plan must be received no later than 120 days prior to the filing date of the tentative assessment roll implementing the first reappraisal in that plan.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the rule because the rule will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small business or local governments. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this rule because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it would have no impact on jobs and employment opportunities. Section 1573 of the Real Property Tax Law was amended by Chapter 56 of the Laws of 2010 to provide a new assistance program to local governments to encourage reassessments. Participation in the assistance program is purely voluntary; no local government is required to conduct a reassessment or to apply for the assistance. The rules are the administrative structure to implement the statutorily authorized assistance program.

Workers' Compensation Board

NOTICE OF ADOPTION

Independent Livery Driver Benefit Fund

I.D. No. WCB-45-10-00004-A

Filing No. 1334

Filing Date: 2010-12-28

Effective Date: 2011-01-19

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

Action taken: Amendment of section 300.1(a)(9); and addition of Part 309 to Title 12 NYCRR.

Statutory authority: Executive Law, section 160-eee; and Workers' Compensation Law, sections 2(9), 18-c(2)(a) and 117

Subject: Independent Livery Driver Benefit Fund.

Purpose: To set criteria for membership in Independent Livery Driver Benefit Fund, termination from the Fund and presumptive wage.

Text or summary was published in the November 10, 2010 issue of the Register, I.D. No. WCB-45-10-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Cheryl M. Wood, Esq., NYS Workers' Compensation Board, 20 Park Street, Room 400, Albany, New York 12207, (518) 408-0469, email: regulations@wcb.state.ny.us

Assessment of Public Comment

The agency received no public comment.