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

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATMENT

Sale of Sliced Cheese at Farmers' Markets

I.D. No. AAM-29-11-00004-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of emergency rule making, I.D. No. AAM-29-11-00004-E, printed in the *State Register* on July 20, 2011.

Regulatory Impact Statement

1. Statutory authority:

Section 16(1) of the Agriculture and Markets Law (AML) authorizes the Commissioner of Agriculture and Markets (Commissioner) to execute and carry into effect the laws of the State and the rules of the Department of Agriculture and Markets (Department), relative to, among other things, the production, transportation, storage, marketing and distribution of food.

AML Section 18(2) authorizes the Commissioner to enact, amend and repeal necessary rules to provide for carrying into effect the provisions of this chapter and of the laws of the State with respect to food.

AML Section 18(6) authorizes the Commissioner to provide generally for the exercise of the powers and performances of the duties of the Department as prescribed in the Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules enacted as therein provided.

AML Section 214-b authorizes the Commissioner to promulgate regulations for the efficient enforcement of AML Article 17 relating to the adulteration, packing and branding of food and food products.

AML Section 251-z-4 authorizes the Commissioner to provide by regulation exemption from licensing of small food processing establishments when he finds that such exemptions would avoid unnecessary regulation and assist in the administration of Article 20-C (Licensing and Food Processing Establishments) without impairing its purposes.

AML Section 251-z-9 authorizes the Commissioner to promulgate and issue rules and regulations to implement the provisions of Article 20-C of the AML.

2. Legislative objectives:

AML Article 20-C generally requires each establishment that processes food to obtain a food processing license (license). In enacting Article 20-C, the Legislature intended to assure that foods processed for sale are safe for human consumption, and that the establishments that process food are maintained under sanitary conditions. The Legislature also provided, however, that the Commissioner of Agriculture and Markets could exempt certain small food processing establishments from having to obtain licenses if the public health would not be jeopardized and if other statutory objectives would be promoted.

The Commissioner has, on an emergency basis, adopted a rule that exempts cheese makers who slice and package cheese for sale to consumers at farmers' markets from the requirement that they obtain licenses. The Commissioner has determined that the rule would not jeopardize the public health because cheese makers would, pursuant to the rule, be required to comply with all appropriate food safety requirements set forth in 1 NYCRR Part 271. The Commissioner also determined that exempting cheese makers from the requirement to obtain food processing licenses would be consistent with the Legislature's objectives of promoting farmers' markets (AML Article 22) and promoting and developing the agricultural resources of the State (AML section 16(2), AML Article 25).

3. Needs and benefits:

The rule is needed by and will benefit New York's cheese industry, farmers' markets, and New York consumers. The rule would eliminate a regulatory burden upon cheese makers by exempting them from having to obtain licenses and having to pay the biennial license fee of $400.00. Cheese makers will, therefore, be more likely to offer their cheese for sale at farmers' markets, which will make such cheese more accessible and could result in an increase in sales and an increase in employment opportunities in the cheese industry specifically and in the dairy industry in general.

The rule will also benefit farmers' markets. Farmers' markets have become increasingly popular and cheese is one of the most popular items offered for sale at such markets. Because the rule will make it more likely that cheese makers will offer their cheese for sale at such

venues, the proposed rule will make it more likely that additional consumers will visit farmers' markets and spend their food dollars there.

Finally, the rule will benefit consumers who want to buy non-prepackaged cheese. Many consumers prefer cheese that has been cut ''fresh from the wheel,'' and this purchasing option will likely be more available to them.

4. Costs:

The rule imposes no costs upon regulated parties, the Department, or upon state or local governments to implement and to continue to comply therewith.

5. Paperwork:

None.

6. Local government mandates:

None.

7. Duplication:

There are no laws, rules or other legal requirements that duplicate, overlap, or conflict with the rule.

8. Alternatives:

The Department considered several alternatives during the development of the rule. The Department considered not exempting cheese makers who slice and package cheese for sale at farmers' markets from having to obtain licenses. The Department rejected this alternative because it felt that its duty to protect the public health could be met even if cheese makers were relieved of the regulatory burden of having to be licensed.

The Department also considered not requiring cheese makers to comply with specific applicable provisions of sanitary requirements for retail food stores set forth in 1 NYCRR Part 271 but, rather, requiring them to, generally, operate ''under sanitary conditions''. The Department rejected this alternative because it would not have given adequate notice to cheese makers as to the specific sanitation practices that they must follow, to ensure that the cheese that they slice and package for sale is safe for human consumption.

9. Federal standards:

There are no federal standards that relate or refer to the proposed rule.

10. Compliance schedule:

The proposed rule removes a regulatory burden upon cheese makers; there is, therefore, no compliance schedule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule, which has been adopted on an emergency basis, exempts cheese makers who slice and package their own cheese for sale at farmers' markets (cheese makers) from the requirement that they obtain food processing licenses (licenses) as otherwise required pursuant to Agriculture and Markets Law (AML) Article 20-C.

The rule will relieve a regulatory burden upon cheese makers while benefiting farmers' market patrons who wish to purchase non-prepackaged cheese. Furthermore, the rule could spur additional opportunities for cheese makers, thereby benefiting the State's dairy industry as a whole.

There are approximately eighty cheese makers in the state who meet the definition of ''cheese makers,'' set forth above. All of these cheese makers are small businesses who will be affected by the rule. No local governments will be affected by the rule.

2. Compliance requirements:

The rule relieves a regulatory burden upon cheese makers; no compliance requirements have, therefore, been imposed.

3. Professional services:

None.

4. Compliance costs:

None.

5. Economic and technological feasibility:

The rule allows but does not require cheese makers to slice and package cheese offered for sale at farmers' markets without having to obtain licenses. As such, the rule does not require cheese makers to purchase knives or any other equipment that can be used to slice cheese.

There are no economic or technological issues that will be encountered by local governments because the rule does not affect them.

6. Minimizing adverse impacts:

The Department foresees, for the reasons set forth above, that the rule will have no adverse impact upon regulated parties.

7. Small business and local government participation:

On June 30, 2011, Department personnel conducted an outreach meeting with the President of the New York State Farmstead and Artisan Cheese Makers' Guild, an association that has, as part of its membership, a large number of the State's cheese makers. Department personnel informed the representative as to the substance of the rule and requested input. The representative approved the intent of the rule and made comments which were considered in the drafting of the rule.

Because this rule has no impact upon local governments, the Department did not conduct outreach with such entities.

Rural Area Flexibility Analysis

The Commissioner of Agriculture and Markets has adopted, on an emergency basis, a rule exempting cheese makers who slice and package their own cheese for sale at farmers' markets from the requirement that they obtain food processing licenses, otherwise required pursuant to Agriculture and Markets Law Article 20-C. Because the rule does not impose an adverse impact upon rural areas and because it imposes no reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, no rural area flexibility has been prepared in connection with the adoption of the rule, pursuant to SAPA section 202-bb(4)(a).

Office of Children and Family Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Child Care Market Rate Regulations

I.D. No. CFS-30-11-00009-P

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

Proposed Action: Amendment of section 415.9(j) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410(1); and title 5-C

Subject: Child Care Market Rate Regulations.

Purpose: To revise the market rates in accordance with State and Federal requirements.

Text of proposed rule: Section 415.9(j)(1) is amended to read as follows:

(1) Effective October 1, [2009] *2011*, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Section 415.9(j)(3) is repealed and a new section 415.9(j)(3) is added to read as follows:

(3) The market rates are established in five groupings of social services districts. The rates established for a group apply to all districts in the designated group. The district groupings are as follows:

CHILD CARE MARKET RATES

Market rates are established in five groupings of social services districts as follows:

Group 1: Nassau, Putnam, Rockland, Suffolk, Westchester

Group 2: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group 3: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group 4: Albany, Dutchess, Orange, Ulster

Group 5: Bronx, Kings, New York, Queens, Richmond

GROUP 1 COUNTIES: Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

Under 1 1/2	1 1/2–2	3–5	6–12

WEEKLY	$335	$310	$284	$283
DAILY	$64	$53	$45	$43
PART-DAY	$43	$35	$30	$29
HOURLY	$9.50	$9.25	$10.00	$10.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$275	$263	$250	$250
DAILY	$56	$55	$55	$55
PART-DAY	$37	$37	$37	$37
HOURLY	$10.00	$10.00	$10.00	$9.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$275	$275	$265	$265
DAILY	$59	$55	$55	$53
PART-DAY	$39	$37	$37	$35
HOURLY	$10.00	$9.50	$8.75	$9.00

(Group 1 Counties)
SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$0	$0	$0	$283
DAILY	$0	$0	$0	$43
PART-DAY	$0	$0	$0	$29
HOURLY	$0	$0	$0	$10.00

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

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$179	$171	$163	$163
DAILY	$36	$36	$36	$36
PART-DAY	$24	$24	$24	$24
HOURLY	$6.50	$6.50	$6.50	$5.85

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

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$193	$184	$175	$175
DAILY	$39	$39	$39	$39
PART-DAY	$26	$26	$26	$26
HOURLY	$7.00	$7.00	$7.00	$6.30

GROUP 2 COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren
DAY CARE CENTER

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$242	$227	$211	$195
DAILY	$50	$46	$42	$38
PART-DAY	$33	$31	$28	$25
HOURLY	$8.50	$8.75	$8.50	$8.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$175	$170	$165	$160
DAILY	$40	$40	$40	$33
PART-DAY	$27	$27	$27	$22
HOURLY	$5.00	$5.00	$5.00	$5.75

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$183	$175	$175	$160
DAILY	$38	$36	$36	$35
PART-DAY	$25	$24	$24	$23
HOURLY	$6.00	$5.75	$5.50	$6.00

(Group 2 Counties)
SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$0	$0	$0	$195
DAILY	$0	$0	$0	$38
PART-DAY	$0	$0	$0	$25
HOURLY	$0	$0	$0	$8.00

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

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$114	$111	$107	$104
DAILY	$26	$26	$26	$21
PART-DAY	$18	$18	$18	$14
HOURLY	$3.25	$3.25	$3.25	$3.74

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

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$123	$119	$116	$112
DAILY	$28	$28	$28	$23
PART-DAY	$19	$19	$19	$15
HOURLY	$3.50	$3.50	$3.50	$4.03

GROUP 3 COUNTIES: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates
DAY CARE CENTER

AGE OF CHILD

	Under 1 1/2	1 1/2–2	3–5	6–12
WEEKLY	$190	$180	$170	$160
DAILY	$42	$40	$38	$35
PART-DAY	$28	$27	$25	$23

HOURLY	$6.75	$6.75	$6.25	$6.25

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$150	$140	$140	$140
DAILY	$30	$30	$30	$30
PART-DAY	$20	$20	$20	$20
HOURLY	$4.00	$4.00	$4.00	$4.25

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$150	$145	$140	$140
DAILY	$33	$32	$32	$31
PART-DAY	$22	$21	$21	$21
HOURLY	$4.00	$4.00	$4.00	$5.00

(Group 3 Counties)
SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$0	$160
DAILY	$0	$0	$0	$35
PART-DAY	$0	$0	$0	$23
HOURLY	$0	$0	$0	$6.25

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$98	$91	$91	$91
DAILY	$20	$20	$20	$20
PART-DAY	$13	$13	$13	$13
HOURLY	$2.60	$2.60	$2.60	$2.76

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$105	$98	$98	$98
DAILY	$21	$21	$21	$21
PART-DAY	$14	$14	$14	$14
HOURLY	$2.80	$2.80	$2.80	$2.98

GROUP 4 COUNTIES: Albany, Dutchess, Orange, and Ulster
DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$250	$230	$212	$206
DAILY	$52	$46	$45	$46
PART-DAY	$35	$31	$30	$31
HOURLY	$8.50	$8.25	$8.00	$8.25

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$200	$199	$190	$188
DAILY	$44	$40	$40	$40
PART-DAY	$29	$27	$27	$27
HOURLY	$7.00	$7.00	$7.00	$7.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$225	$204	$200	$200
DAILY	$46	$45	$43	$45
PART-DAY	$31	$30	$29	$30
HOURLY	$8.50	$8.00	$8.00	$8.00

(Group 4 Counties)
SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$0	$206
DAILY	$0	$0	$0	$46
PART-DAY	$0	$0	$0	$31
HOURLY	$0	$0	$0	$8.25

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$130	$129	$124	$122
DAILY	$29	$26	$26	$26
PART-DAY	$19	$18	$18	$18
HOURLY	$4.55	$4.55	$4.55	$4.55

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$140	$139	$133	$131
DAILY	$31	$28	$28	$28
PART-DAY	$20	$19	$19	$19
HOURLY	$4.90	$4.90	$4.90	$4.90

GROUP 5 COUNTIES: Bronx, Kings, New York, Queens, and Richmond
DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$330	$255	$217	$210
DAILY	$52	$47	$40	$37
PART-DAY	$35	$31	$27	$25
HOURLY	$15.75	$17.00	$15.75	$10.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$160	$160	$150	$150
DAILY	$32	$30	$32	$30
PART-DAY	$21	$20	$21	$20

HOURLY	$16.00	$12.00	$13.25	$13.00

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$199	$185	$175	$175
DAILY	$37	$36	$35	$35
PART-DAY	$25	$24	$23	$23
HOURLY	$18.75	$16.00	$13.25	$14.00

(Group 5 Counties)
SCHOOL-AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$0	$0	$0	$210
DAILY	$0	$0	$0	$37
PART-DAY	$0	$0	$0	$25
HOURLY	$0	$0	$0	$10.75

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$104	$104	$98	$98
DAILY	$21	$20	$21	$20
PART-DAY	$14	$13	$14	$13
HOURLY	$10.40	$7.80	$8.61	$8.45

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

AGE OF CHILD

	Under 1½	1½–2	3–5	6–12
WEEKLY	$112	$112	$105	$105
DAILY	$22	$21	$22	$21
PART-DAY	$15	$14	$15	$14
HOURLY	$11.20	$8.40	$9.28	$9.10

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	$335
DAILY	$64
PART-DAY	$43
HOURLY	$18.75

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

Section 410(1) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. OCFS is required to specify certain NYSCCBG requirements in regulation.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund.

2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

3. Needs and benefits:

The State is required under the Federal Child Care and Development Fund to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2009 through September 30, 2011 and the proposed State Plan for the period October 1, 2011 through September 30, 2013 will be submitted for approval by the federal government. A current survey of providers was conducted in February, March and April of 2011. These regulations are needed to adjust existing rates that were established based on a survey done in 2009. Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties.

Decreases in the child care market rates reflect the market place and provide comparable access to those families in receipt of a child care subsidy as compared with families that do not receive a child care subsidy, which is required by federal and State laws.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2011-2012, social services districts received their allocations of $736,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent (70%) up to 75 percent (75%), if social services districts select this option in their child and family services plan.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

6. Paperwork:
Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.
7. Duplication:
The requirements do not duplicate any existing State or federal requirements.
8. Federal standards:
The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.
9. Compliance schedule:
These provisions must be implemented effective on October 1, 2011.
10. Alternative approaches:
No alternative approaches were considered because federal regulation requires that payment rates be based on a local market rate survey.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:
The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 48,000 informal providers that may provide child care services to families receiving a child care subsidy.
2. Compliance requirements:
Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.
3. Professional services:
Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.
4. Compliance costs:
Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.
Under the State Budget for SFY 2011-12, social services districts received their allocations of $736,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.
Social services districts will be required to provide the subsidies on behalf of the parent for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency, at the enhanced rate of seventy percent (70%) of the family child care rate. Districts do have the option to pay up to seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by the legally-exempt caregiver enrollment agency, if the district selects this option in its Children and Family Services Plan.
5. Economic and technological feasibility:
The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.
6. Minimizing adverse impact:
The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,100 licensed and registered child care providers so that it was representative throughout the State.
In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from 5,096 providers and that information formed the basis for the updated market rates.
The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.
7. Small business and local government participation:
The regulations recognize that there may be differences in the needs among districts. To the extent allowed by statute, the regulations provide districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:
The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.
2. Reporting, recordkeeping, and other compliance requirements and professional services:
The regulations will not result in any new reporting or recordkeeping requirements for social services districts.
Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the appropriate market rate. Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.
A district will be required to provide subsidies on behalf of the parents for subsidized child care services to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by legally-exempt caregiver enrollment agency, for the enhanced rate, or by the district for those portions of the district that are not covered by a legally-exempt caregiver enrollment agency, at the rate of seventy percent (70%) of the family child care rate. A district has the option to pay up to seventy five percent (75%) of the family child care rate for the enhanced market rate to legally-exempt family child care and in-home care approved by an enrollment agency, if the district selects this option in its Child and Family Services Plan.
3. Costs:
Under the State Budget for SFY 2011-2012, social services districts received their allocations of $736,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.
Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.
In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent (70%) up to 75 percent (75%), if social services districts select this option.
4. Minimizing adverse impact:
The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of approximately 5,100 licensed and registered child care providers so that it was representative throughout the State.
In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from 5,096 providers and that information formed the basis for the updated market rates.
The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in

the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

5. Rural area participation:

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

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

Adjustments to the child care market rates reflect both increases and decreases. Decreases in the child care market rates reflect the market place and OCFS believes that they are not substantial enough to cause the loss of jobs in child care programs.

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-48-10-00010-E

Filing No. 628

Filing Date: 2011-07-07

Effective Date: 2011-07-07

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

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

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

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

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

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

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

Subject: Excelsior Jobs program.

Purpose: To update the provisions of the Excelsior Jobs Program per newly enacted statute.

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

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

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the ''Department''); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

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

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

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

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

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may

not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives.

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as 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. EDV-48-10-00010-P, Issue of December 1, 2010. The emergency rule will expire September 4, 2011.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

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

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Recreational Harvest Regulations for Summer Flounder (Fluke)

I.D. No. ENV-20-11-00011-A
Filing No. 632
Filing Date: 2011-07-12
Effective Date: 2011-07-27

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

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

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

Subject: Recreational harvest regulations for summer flounder (fluke).

Purpose: To maximize recreational angler opportunities for summer flounder while staying in compliance with the ASMFC and MAFMC.

Text or summary was published in the May 18, 2011 issue of the Register, I.D. No. ENV-20-11-00011-EP.

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

Text of rule and any required statements and analyses may be obtained from: John D. Maniscalco, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0437, email: jdmanisc@gw.dec.state.ny.us

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Procedures for Issuance of Summary Abatement Orders

I.D. No. ENV-30-11-00002-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 620.2(a) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 71-0301

Subject: Procedures for Issuance of Summary Abatement Orders.

Purpose: To correct two typographical errors from the original 1977 rulemaking to conform the regulatory language to the enabling statute.

Text of proposed rule: Subdivision 620.2(a) is amended to read as follows:

(a) Whenever the commissioner finds, after an investigation, that any person is causing, engaging in or maintaining a condition or activity which, in the judgment of the commissioner:

(1) presents an imminent danger to the health [of] *or* welfare of the people of the State, or results in or is likely to result in irreversible or irreparable damage to natural resources; and

(2) relates to the prevention and abatement powers of the commissioner in that the condition [of] *or* activity pertains to or affects any of the objectives or goals of the Environmental Conservation Law, or relates to any of the permit, licensing, or regulatory programs of the Department; so that it appears to be prejudicial to the interest of the people of the State to delay action until an opportunity for hearing can be provided, the commissioner may, without prior hearing or notice, order such person to discontinue, abate or alleviate such condition or activity.

Text of proposed rule and any required statements and analyses may be obtained from: James T. McClymonds, Chief Administrative Law Judge, NYSDEC, Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550, (518) 402-9003, email: jtmcclym@gw.dec.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

The Department of Environmental Conservation has determined that this proposed rule amendment is a "consensus rule" as defined by State Administrative Procedure Act (SAPA) § 102(11). The proposed amendments are strictly to correct two typographical errors in subdivision 620.2(a) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) to conform the regulatory language to the enabling statute at Environmental Conservation Law (ECL) § 71-0301. The typographical errors are from the original 1977 rulemaking that enacted the Part 620 summary abatement procedures.

These changes are minor and are for clarification purposes only. They do not change any practices regarding summary abatement proceedings. Therefore, we do not anticipate any objections to this proposal.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposed amendments to 6 NYCRR 620.2(a) will have no adverse impact on existing or future jobs and employment opportunities. The proposed amendments do not change any substantive requirements. They are strictly to correct two typographical errors from the original 1977 rulemaking that enacted the Part 620 summary abatement procedures to conform the regulatory language to the enabling statute. These changes are minor and are being proposed as a consensus rulemaking. This proposal does not impose any regulatory mandate on the regulated community, nor does it require any business to purchase or modify any equipment, purchase any special permit or license or modify the means by which it conducts business. Consequently, there could be no adverse impact on existing or future jobs and employment opportunities. This conclusion was reached based upon the Department's determination that there will be no adverse cost impact from this action.

Department of Health

EMERGENCY
RULE MAKING

Managed Care Organizations (MCOs)

I.D. No. HLT-30-11-00001-E
Filing No. 625
Filing Date: 2011-07-06
Effective Date: 2011-07-06

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

Action taken: Amendment of section 98-1.11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 4403(2)

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

Specific reasons underlying the finding of necessity: The SFY 2012 NYS Budget effective April 1, 2011 incorporates a proposal from the Medicaid Redesign Team (MRT Proposal #6) that reduces the allocation of surplus in the premium rates of Medicaid, Family Health Plus (FHP) and HIV SNP managed care plans from 3% to 1% effective April 1, 2011, resulting in savings to the Medicaid program of approximately $188 million. The actuarial firm employed by DOH, Mercer Consulting, which must certify the actuarial soundness of the premium rates to CMS, has determined the reduction in surplus allocation will require the lowering of the contingent reserve requirement specified in § 98-1.11(e)(1) from the current 10.5% to 7.25% of premium revenue in order to maintain the actuarial soundness of the premium rates. The SFY 2012 Article VII budget bill gives DOH the authority to adopt regulations on an emergency basis to implement provisions of the SFY 2012 budget. The amendments to 98-1.11(e) will allow DOH to reduce the surplus allocation in the mainstream Medicaid, FHP and HIV SNP premium rates consistent with the approved SFY 2012 budget.

In light of the amendments to 98-1.11(e), revisions to 98-1.11(b) are needed to clarify in regulation the criteria used to evaluate proposed transfers of assets or loans proposed by managed care organizations regulated by Part 98 that heretofore have been linked in policy to the contingent reserve requirement specified in § 98-1.11(e).

Subject: Managed Care Organizations (MCOs).

Purpose: To specify approval standards for asset transfers or loans proposed by MCOs.

Text of emergency rule: Subdivision (b) of section 98-1.11 is amended to read as follows:

(b) No funds [the aggregate of which involves five percent or more of the MCO's admitted assets at last year-end] shall be transferred or loaned from the MCO article 44 business to any other business, function or contractor of the MCO, or to any subsidiary or member of the MCO's holding company system *or to any member or stockholder* [over the course of a single calendar year,] without the prior approval of the commissioner and, except in the case of a PHSP, HIV SNP, [or] PCPCP[,] *or MLTC,* the superintendent. Repayment of any such approved loans, to the extent required, shall be made in accordance with schedules approved by the superintendent and commissioner. *Any such transfers or loans shall require a certification by the MCO that such transfer or loan is in compliance with and does not violate any provision of any applicable law or regulation.*

(1) No such transfer or loan shall be approved if the net worth of the MCO after the transfer or loan would fall below 12.5 percent of its annual net premium income, and all such transfers and loans must be accompanied by projections submitted by the MCO showing that its net worth shall continue to meet or exceed 12.5 percent of annual net premium income for two calendar years following the transfer or loan.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, no such proposed transfer or loan made by any MCO that received seventy-five percent or more of its net premium income from the New York State Medicaid, Family Health Plus, and Child Health Plus programs during the last calendar year shall be approved if the net worth of the MCO after such transfer or loan would fall below 15 percent of its annual net premium revenue, and all such transfers and loans must be accompanied by projections submitted by the MCO showing that its net worth shall continue to meet or exceed 15 percent of annual net premium revenue for two calendar years following the transfer or loan. In order to ensure the availability of quality health services for an enrolled population, the commissioner may waive the provisions of this paragraph should the proposed transfer of funds or loan be used to purchase a controlling interest, or a substantial portion of the assets, of a MCO certified to operate under Article 44 of the Public Health Law.

Subdivision (e) of section 98-1.11 is amended to read as follows:

(e) (1) Except for a PCPCP, a certified operating MCO, or an MCO that is initially commencing operations, shall maintain a reserve, to be designated as the contingent reserve [which must be equal to five percent of its annual net premium income].

(i) The contingent reserve for an HMO, PHSP or HIV SNP shall be equal to and shall not exceed:

[(i)] *(a)* 5 percent of net premium income for the first calendar year subsequent to the effective date of this Subpart;

[(ii)] *(b)* 6.5 percent of net premium income for the second calendar year subsequent;

[(iii)] *(c)* 7.5 percent of net premium income for the third calendar year subsequent;

[(iv)] *(d)* 8.5 percent of net premium income for the fourth calendar year subsequent;

[(v)] *(e)* 9.5 percent of net premium income for the fifth calendar year subsequent;

[(vi)] *(f)* 10.5 percent of net premium income for the sixth calendar year subsequent;

[(vii)] *(g)* 11.5 percent of net premium income for the seventh calendar year subsequent;

[(viii)] *(h)* 12.5 percent of net premium income for calendar years thereafter.

(ii) Notwithstanding the provisions of subparagraph (i) above, the contingent reserve applicable to net premium income generated from the Medicaid managed care, Family Health Plus and HIV SNP programs shall be:

(a) 7.25 percent of net premium income for 2011;

(b) 7.25 percent of net premium income for 2012;

(c) 8.25 percent of net premium income for 2013;

(d) 9.25 percent of net premium income for 2014;

(e) 10.25 percent of net premium income for 2015;

(f) 11.25 percent of net premium income for 2016;

(g) 12.25 percent of net premium income for 2017;

(h) 12.5 percent of net premium income for calendar years after 2017.

The provisions of this subparagraph shall not apply to HMOs and PHSPs beginning operations in 2011 or after.

(iii) Upon an HMO, PHSP or HIV SNP reaching its maximum contingent reserve of 12.5 percent of its net premium income for a calendar year, it must continue to maintain its contingent reserve at this level thereafter. Such contingent reserve requirement shall be deemed to have been met if the net worth of the HMO, PHSP or HIV SNP, based upon admitted assets, equals or exceeds the applicable contingent reserve requirement for such calendar year.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 3, 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:

Public Health Law section 4403(2) states the Commissioner may adopt and amend rules and regulations pursuant to the state administrative procedures act to effectuate the purposes and provisions of Article 44.

Legislative Objectives:

10 NYCRR 98 was extensively amended in 2005 to further implement the provisions of Article 44 of the Public Health Law. The proposed amendments to Sections 98-1.11(b) and 98-1.11(e) specify criteria to be used to evaluate requests for approval of asset transfers and loans proposed by Managed Care Organizations (MCOs) and allows implementation of certain provisions of the SFY 2012 budget and the Medicaid Redesign Team Proposal #6 by temporarily reducing the contingent reserve requirements applied to premium revenues from the Medicaid Managed Care (MMC), Family Health Plus (FHP) and HIV SNP programs.

Needs and Benefits:

Section 98-1.11(b) - Current regulation requires that the Department of Health (DOH) and State Insurance Department (SID), as applicable, must approve any asset transfers or loans of 5 percent or more of the MCO's admitted assets but fails to stipulate the criteria for approving such transactions. Both agencies follow a policy of approving a transfer or loan only when the net worth of the plan after the transaction would be equal to greater than 12.5 percent of annual premium revenue, or 5 percent for Managed Long Term Care (MLTC) plans. The 12.5 percent threshold was selected to coincide with the maximum contingent reserve established under Section 98-1.11(e)(1), which begins at 5 percent of premium revenue and increases by 1 percent per year until the maximum 12.5 percent standard is reached. The revision to Section 98-1.11(b) establishes this criteria for approval in regulation, applies the same criteria to all plans, including MLTC plans, and requires approval for any asset transfer or loan rather than only those that exceed 5 percent of admitted assets.

The revised regulation also establishes a higher standard for approval of asset transfers or loans made by MCOs that receive 75 percent or more of their annual premium revenue from managed care programs sponsored by NYS: Medicaid, Family Health Plus and Child Health Plus. The regulation would allow approval of asset transfers or

loans only if the net worth of the MCO after the transaction would be equal to or greater than 15 percent of annual premium revenue. The Commissioner would have the authority, however, to waive the latter provision when the purpose of the asset transfer or loan is for the purchase of another MCO or a controlling interest thereof, that the Commissioner finds is in the public interest.

MCOs would also be required to submit financial projections showing that their net worth would continue to meet or exceed 12.5 percent or 15 percent of premium revenue, as applicable, for two calendar years following the transfer or loan.

Section 98-1.11(e) - The approved SFY 2012 NYS Budget incorporates a proposal from the Medicaid Redesign Team that reduces the allocation of surplus in the premium rates of MMC, FHP and HIV SNP managed care plans from 3 percent to 1 percent effective April 1, 2011, resulting in savings to the Medicaid program of approximately $188 million. The actuarial firm employed by DOH, Mercer Consulting, which must certify the actuarial soundness of the premium rates to CMS, has determined the reduction in surplus allocation will require the lowering of the contingent reserve requirement specified in Section 98-1.11(e)(1) from the current 10.5 percent to 7.25 percent of premium revenue in order to maintain the actuarial soundness of the premium rates. The revision to 98-1.11(e) will allow DOH to reduce the surplus allocation in the mainstream Medicaid and FHP, and HIV SNP premium rates and allow Mercer to certify the actuarial soundness of the premium rates to CMS.

Costs:

The amended regulation imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Health Department or by the MCOs.

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.

Paperwork:

Paperwork associated with filings to DOH or SID should be minimal and would be no more substantial than the current regulation.

Duplication:

These regulations do not duplicate, overlap, or conflict with existing State and federal regulations.

Alternatives:

There were minimal alternative standards considered. Revisions to Section 98-1.11(b) in part codify current policy in evaluating requests for approval for asset transfers or loans. Removal of the 5 percent threshold before approval is required for asset transfers or loans and is consistent with the desire of DOH and SID to ensure MCO financial reserve levels do not fall below regulatory requirements via unregulated financial transactions.

Revisions to Section 98-1.11(e) are needed to implement provisions of SFY 2012 budget.

Federal Standards:

The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

Revisions to Section 98-1.11(b) would apply to MCOs immediately upon adoption. Revisions to Section 98-1.11(e) would be retroactive to January 1, 2011.

Regulatory Flexibility Analysis

Effect of Rule:

Companies affected by the proposed regulation include all MCOs certified under Article 44 of the Public Health Law. 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'' found in section 102(8) of the State Administrative Procedure Act. No local governments will be affected.

Compliance Requirements:

The amended regulation would not impose additional reporting, recordkeeping or other requirements on small businesses or local governments since the provisions contained therein apply only to MCOs authorized to do business in New York State and regulated by the NYS Health and Insurance Departments.

Professional Services:

There are no professional services that will need to be provided by small businesses or local government as a result of the amended regulation.

Compliance Costs:

The amended regulation would not impose any new reporting, recordkeeping or other requirements on small businesses or local governments.

Economic and Technological Feasibility:

There are no compliance requirements for small businesses or local governments.

Minimizing Adverse Impacts:

The amendment will have no adverse impact on small businesses or local governments since the provisions contained therein apply only to regulated MCOs authorized to do business in New York State.

Small Business and Local Government Participation:

As the amendments have no impact on small businesses or local governments, no input was sought from these entities.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Companies affected by the proposed regulation include all Managed Care Organizations (MCOs) certified under Article 44 of the Public Health law. The companies affected by this regulation do business in certain ''rural areas'' as defined under section 102(1) of the State Administrative Procedure Act, although none do so exclusively or have a significant portion of their business in rural areas. Some of the home offices of these companies may lie within rural areas. Further, companies may establish new office facilities and/or relocate in the future depending on their requirements and needs.

Reporting, Recordkeeping and Other Compliance Requirements:

None of the compliance requirements are significantly different from requirements presently contained in Part 98 and none pertain exclusively to rural areas. The amendments should not impose any significant additional paperwork, recordkeeping or compliance requirements upon any regulated party.

Costs:

The amended regulation imposes no additional compliance costs on MCOs or state and local governments.

Minimizing Adverse Impact:

The proposed regulation applies to all MCOs certified under Article 44 to do business in New York State, including rural areas. It does not impose any adverse impacts unique to rural areas.

Rural Area Participation:

In developing the amended regulation, the Health Department conducted outreach to regulated managed care organizations authorized to do business throughout New York State, including those located or domiciled in rural areas.

Job Impact Statement

Nature of Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Categories and Numbers Affected:

Not Applicable.

Regions of Adverse Impact:

No region in New York should experience an adverse impact on jobs and employment opportunities.

Minimizing Adverse Impact:

The Health Department finds that these amendments will have no adverse impact on jobs and employment opportunities.

Insurance Department

EMERGENCY RULE MAKING

Life Settlements

I.D. No. INS-30-11-00003-E
Filing No. 630
Filing Date: 2011-07-08
Effective Date: 2011-07-08

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

Action taken: Addition of Part 381 (Regulation 198) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2137, 7803 and 7804; L. 2009, ch. 499; and L. 2009, ch. 499, section 21

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

Specific reasons underlying the finding of necessity:

This part sets forth the license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries and financial accountability requirements for life settlement providers as required under sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009. These sections, along with other sections of the new life settlement legislation, became effective May 18, 2010.

These sections of the Insurance Law require licensing and registration of life settlement providers, life settlement intermediaries and life settlement brokers. In order to license and register these persons, the fees associated with the licensing and registration, as well as financial accountability requirements which life settlement providers must demonstrate at licensing, must first be established by regulation as required by the legislation. The licensing of these entities is a critical aspect of the new life settlement law in order to properly safeguard the public in life settlement transactions.

Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary, or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person files the appropriate application with the Superintendent not later than 30 days after the Superintendent publishes the application on the Department's website and certifies that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that these fees be established and maintained in effect on an emergency basis to facilitate the processing of these applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers will be able to continue to operate in New York without applying for licensing or registration and thereby engaging in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. It is also critical that the fees established by this emergency regulation remain in effect in order for the Department to continue to accept new applications for licensure by life settlement providers, life settlement intermediaries and life settlement brokers. If the Department was unable to accept new applications for licensure, a competitive disadvantage for new applicants seeking such licensure could result.

This regulation was previously promulgated on an emergency basis on April 23, 2010, July 19, 2010, October 14, 2010, January 11, 2011 and April 11, 2011. In addition, a proposal for the permanent adoption of the regulation was sent to the Governor's Office of Regulatory Reform on February 8, 2011, and the Department is awaiting approval to publish the proposed regulation in the State Register.

The Department is still focused on, and continues to be engaged in outreach to interested parties regarding, additional issues regarding licensing that need to be addressed in future amendments to the regulation (e.g., processing of submitted licensing applications; establishing internal procedures, processes and systems; responding to life settlement issues and inquiries).

Pending approval and adoption of the permanent proposal, Regulation No. 198 must remain in effect on an emergency basis for the general welfare.

Subject: Life Settlements.

Purpose: To implement chapter 499 of the Laws of 2009's provisions of license fees and financial accountability requirements.

Text of emergency rule: Chapter XV of Title 11 is renamed "Life Settlements".

Section 381.1 License fees and financial accountability requirements for life settlement providers.

(a) The application for a license as a life settlement provider shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of $10,000.

(b) The financial accountability of a life settlement provider required in accordance with section 7803(c)(2)(E) of the Insurance Law, to assure the faithful performance of its obligations to owners and insureds on life settlement contracts subject to Article 78 of the Insurance Law, shall be in an amount at least equivalent to $250,000, shall be maintained at all times and may be evidenced in one of the following manners:

(1) Assets in excess of liabilities in an amount at least equal to $250,000 as reflected in the applicant's financial statements;

(2) A surety bond in an amount at least equal to $250,000 placed in trust with the superintendent issued by an insurer licensed in this State to write fidelity and surety insurance under section 1113(a)(16) of the Insurance Law; or

(3) Securities placed in trust with the superintendent consisting of securities of the types specified in section 1402(b)(1) and (2) of the Insurance Law, estimated at an amount not exceeding their current market value, but with a total par value not less than $250,000; provided that:

(i) If the life settlement provider is incorporated in another state, the securities allowed for placement in the trust may consist of direct obligations of that state; and

(ii) If the aggregate market value of the securities in trust falls below the required amount, the superintendent may require the life settlement provider to deposit additional securities of like character.

(c) The application for the biennial renewal of a life settlement provider license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of $5,000.

Section 381.2 License fees for life settlement brokers.

(a) The application for a license as a life settlement broker shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

(b) The application for the biennial renewal of a life settlement broker license shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee for each individual applicant and for each proposed sub-licensee of forty dollars for each year or fraction of a year in which a license shall be valid.

Section 381.3 Registration fees for life settlement intermediaries.

(a) The application for registration as a life settlement intermediary shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of $7,500.

(b) The application for the biennial renewal of a life settlement intermediary registration shall be made on such forms and supple-

ments as prescribed by the superintendent and shall be accompanied by a non-refundable fee of $2,500.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 5, 2011.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5265, email: dneustad@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201 and 301 of the Insurance Law, sections 2137, 7803 and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, and section 21 of Chapter 499 of the Laws of 2009.

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

Section 2137, as added by Chapter 499 of the Laws of 2009, sets forth the licensing requirements for life settlement brokers. Section 2137(h)(8) requires licensing and renewal fee be determined by the Superintendent, provided that such fees do not exceed that which is required for the licensing and renewal of an insurance producer with a life line of authority.

Section 7803, as added by Chapter 499 of the Laws of 2009, sets forth the licensing requirements for life settlement providers. Section 7803(c)(1) requires the application for a life settlement provider's license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(h)(1) provides that an application for renewal of the license be accompanied by a fee in an amount to be established by the Superintendent. Section 7803(c)(2)(E) requires a life settlement provider to demonstrate financial accountability as evidenced by a bond or other method for financial accountability as determined by the Superintendent pursuant to regulation.

Section 7804, as added by Chapter 499 of the Laws of 2009, sets forth the registration requirements for life settlement intermediaries. Section 7804(c)(1) requires the application for a life settlement intermediary registration be accompanied by a fee in an amount to be established by the Superintendent. Section 7804(i)(1) provides that an application for renewal of the registration be accompanied by a fee in an amount to be established by the Superintendent.

Pursuant to State Administrative Procedure Act Section 202, the implementation of the fee requirements under Sections 2137, 7803 and 7804 requires the promulgation of regulations.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions.

2. Legislative objectives: Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, which became effective May 18, 2010, require the licensing of life settlement providers and life settlement brokers and the registration of life settlement intermediaries. Such sections also provide that the license and registration fees charged these persons and the financial accountability requirements that life settlement providers must demonstrate at licensing shall be established by the Superintendent.

Section 21(6) of Chapter 499 of the Laws of 2009 authorizes the Superintendent to promulgate rules and regulations necessary for the implementation of its provisions. This rule is necessary to implement Sections 2137, 7803 and 7804 of the Insurance Law.

3. Needs and benefits: Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person files the appropriate application with the Superintendent not later than 30 days after the Superintendent publishes the application on the Department's website and certifies that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that these fees be established on an emergency basis to facilitate the processing of these applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers will be able to continue to operate in New York without applying for licensing or registration and thereby continue to engage in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. It is also critical that the fees established by this emergency regulation remain in effect in order for the Department to accept new applications for licensure by life settlement providers, life settlement intermediaries and life settlement brokers. If the Department was unable to continue to accept new applications for licensure, a competitive disadvantage for new applicants seeking such licensure could result.

Adoption of this rule establishing license and registration fees and financial accountability requirements is necessary for the timely implementation of the life settlement legislation.

4. Costs: The rule requires an initial license application fee of $10,000 for life settlement providers and an initial registration application fee of $7,500 for intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of $5,000 and $2,500, respectively. The rule also sets an annual license fee of $40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by $250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than $250,000 in trust with the Superintendent.

In developing the license and renewal fees for life settlement providers, life settlement intermediaries and life settlement brokers, the following were considered:

- New York Insurance Law Section 332 provides that the expenses of the Department for any fiscal year, including all direct and indirect costs, shall be assessed by the Superintendent pro rata upon all domestic insurers and licensed United States branches of alien insures domiciled in New York. Life settlement providers and life settlement intermediaries are not subject to this assessment. As a result, these expenses will be borne by insurers through the Section 332 assessments, since fees collected by the Superintendent are turned over to the State's general fund, and do not directly reimburse the expenses of the Department. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration. Several factors were considered in arriving at appropriate fees.
- Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.
- Initial and renewal licensing fees charged to life settlement providers are set at rates greater than initial and renewal registration fees charged to life settlement intermediaries. The differences in such fees reflect the lesser time-based expenses associated with the registration of intermediaries than associated with provider licensing.

• New Insurance Law Sections 2137 provides that the licensing or renewal fees prescribed by the Superintendent for a life settlement broker shall not exceed the licensing or renewal fee for an insurance producer with a life line of authority. In accordance with the statute, this rule sets the licensing and renewal fee for a life settlement broker at $40, which is equal to the current licensing or renewal fee of an insurance producer with a life line of authority.

In developing the financial accountability requirements that a life settlement provider must comply with, the Superintendent considered the cash outlay of each offered compliance option. The establishment of a surety bond requires the purchase of the surety bond. The deposit of securities with the Superintendent requires the establishment of a custodian account and incurrence of the associated expenses. The maintenance of a required level of assets in excess of liabilities may require the addition of capital where such level is not currently maintained.

The rule does not impose additional costs to the Insurance Department or other state government agencies or local governments.

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

6. Paperwork: No additional paperwork should result from the provisions set by this rule.

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

8. Alternatives: In the development of the licensing and registration fees imposed on life settlement providers and life settlement intermediaries, the Department's draft proposal was premised on the Superintendent retaining the fees to cover Department costs, and the fees were significantly higher than as included in the emergency regulation. However, as noted, such fees are turned over to the State's general fund and thus do not directly reimburse the Department for its expenses.

The Department solicited comments from interested parties on the draft rule, which contained the higher fees. An outreach draft of the rule was posted on the Department's website for a two-week public comment period and a meeting was held at the Department on April 6, 2010 to discuss the rule with interested parties. The Life Insurance Settlement Association (LISA), a life settlement industry trade association, and other life settlement interested parties commented that the intended fees would present a financial barrier for some life settlement providers wishing to compete in the New York marketplace. LISA, as well as other interested parties, took the position that a decreased number of licensed providers in New York inhibits fair competition and industry growth, which would ultimately harm New York policyholders seeking the assistance of the secondary market for life insurance because of the lack of competition. In response to these comments, the initial license fee for life settlement providers was reduced from $20,000 to $10,000 and the initial registration fee for life settlement intermediaries was reduced from $10,000 to $7,500.

The Life Insurance Council of New York (LICONY), a life insurance trade association, has expressed support of a licensing and registration fee structure set at a level that is sufficient so that participating entities are paying for the regulation of their industry. The Superintendent attempted to balance the competing interests discussed above to arrive at a fee schedule that would be fair and equitable.

With regard to financial accountability requirements, the outreach draft posted to the Department's website for public comment had provided two options - surety bond and security deposit - to comply with such demonstration. After consideration of the comments received from LISA and other life settlement industry interested parties indicating that these options would create a financial barrier for some providers wishing to enter and operate in the New York market, the Superintendent added a third option that provides a less costly and less capital restrictive compliance alternative. The third option allows a life settlement provider to satisfy the financial accountability requirements by demonstrating that its assets exceed its liabilities by an amount no less than $250,000. These financial accountability requirements are on a par with the requirements in many other states.

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

10. Compliance schedule: The emergency adoption of this regulation ensures that the fees and financial accountability requirements can be included immediately in the license application for life settlement providers and life settlement brokers and registration application for life settlement intermediaries. To ensure the timely implementation of Sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009, the license application forms for life settlement providers and life settlement brokers and the registration form for life settlement intermediaries need to be published on the Department's website as soon as possible.

The emergency regulation was necessary in order to establish fees and financial accountability standards in order to commence licensing life settlement providers, intermediaries and brokers. Since the emergency regulation went into effect in April, 2010, the Department has focused on the issues that needed to be addressed regarding licensing (e.g., development of licensing applications and processing of submitted applications; establishing internal procedures, processes and systems; responding to life settlement issues and inquiries). The Department continues to be engaged in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries, and financial accountability requirements for life settlement providers.

This rule is directed to life settlement providers, life settlement brokers and life settlement intermediaries. Some of these entities may come within the definition of ''small business'' set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

This rule should not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at the entities allowed to conduct life settlement business, none of which are local governments.

2. Compliance requirements: The affected parties will need to accompany their applications along with fees as prescribed by this rule. Also, each life settlement provider applying for license has to comply with financial accountability requirements by demonstrating that its assets exceeds its liabilities by $250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than $250,000 in trust with the Superintendent.

3. Professional services: None is required to meet the requirements of this rule.

4. Compliance costs: The regulation requires a license fee of $10,000 for life settlement providers and a registration fee of $7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in amount of $5,000 and $2,500, respectively. The rule also sets an annual license fee of $40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must comply with financial accountability requirements by demonstrating that its assets exceed its liabilities by $250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than $250,000 in trust with the Superintendent.

5. Economic and technological feasibility: The affected parties will need to pay licensing and registration fees as prescribed by the rule.

6. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some small-business life settlement providers and life settlement intermediaries wishing to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settle-

ment intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the licensing and registration fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to small-business life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on small-business life settlement providers and intermediaries were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comment received by the Department from interested parties in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess of liabilities by an amount no less than $250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance in the rule.

7. Small business and local government participation: Affected small businesses had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19, 2010 and to participate (in person or by conference call) in a meeting held at the Department on April 6, 2010 to discuss the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: There may be some life settlement providers, life settlement brokers, and life settlement intermediaries that do business in rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting or recordkeeping requirements on public or private entities in rural areas. The affected parties that do business in rural areas will need to comply with the license and registration fees and financial accountability requirements imposed by the rule.

3. Costs: The rule requires a license fee of $10,000 for life settlement providers and a registration fee of $7,500 for life settlement intermediaries. Licensed providers and intermediaries are required to pay a renewal fee every two years, in the amount of $5,000 and $2,500, respectively. The rule also sets an annual license fee of $40 for life settlement brokers. In addition to paying the licensing fee and renewal fees, a life settlement provider must meet financial accountability requirements by demonstrating its assets exceed its liabilities by $250,000 at the time of initial licensing and at all times thereafter, or by placing either a surety bond or securities in an amount of not less than $250,000 in trust with the Superintendent.

4. Minimizing adverse impact: The initial and renewal licensing and registration fees and financial accountability requirements for life settlement providers and life settlement intermediaries prescribed by the rule may present a financial barrier for some life settlement providers and life settlement intermediaries doing business in rural areas that wish to compete in the New York market. Nonetheless, the Superintendent believes that it is appropriate for the initial and renewal licensing and registration fees charged to life settlement providers and life settlement intermediaries to reflect, if not approximate, the costs and expenses incurred by the Department in implementing this legislation. At the same time, the Superintendent must balance other competing interests: while being reasonable and sufficient to reflect a life settlement provider's or life settlement intermediary's commitment to the New York market and a level of financial resources of such persons that will enable them to create and maintain a compliance structure necessary to ensure the faithful performance of their obligations to owners and insureds on life settlement contracts subject to Insurance Law Article 78, and yet not be too excessive so as to discourage providers and intermediaries with lesser financial resources from seeking licensing or registration.

Renewal fees for both life settlement providers and life settlement intermediaries are considerably less than the initial fees. This reflects that expenses incurred on renewal applications are generally lower than on initial application.

With regard to the fees, alternatives (such as the direct billing of expenses, an assessment based allocation of expenses, or a reduction of licensing and registration fees charged to rural area life settlement providers and life settlement intermediaries) that may have reduced the impact of such fees on life settlement providers and intermediaries doing business in rural areas were considered. However, such alternatives would require legislative authority, which could not be secured in a timeframe necessary for the timely implementation of the life settlement legislation.

With regard to the financial accountability requirements imposed on life settlement providers, after consideration of the public comments received from interested parties by the Department in response to the posting of a draft of the rule on the Department website and a meeting held with such parties to discuss the rule, the Superintendent did include in the rule an additional compliance method - demonstration of assets in excess of liabilities by an amount no less than $250,000 - which provides a less costly and less capital restrictive alternative to the other two methods of compliance included in the rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period starting March 19, 2010 and participate (in person or by teleconference) in the Department meeting on April 6, 2010 with interested parties to discuss the rule.

Job Impact Statement

The Insurance Department finds that this rule should have no impact on jobs and employment opportunities. This rule sets license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries, and financial accountability requirements that life settlement providers must demonstrate at licensing. Additional licensing and registration requirements will be established by related rulemakings in the near future.

Office of Mental Health

NOTICE OF ADOPTION

Family Care Homes

I.D. No. OMH-18-11-00014-A
Filing No. 629
Filing Date: 2011-07-07
Effective Date: 2011-07-27

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

Action taken: Amendment of Part 585 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.03 and 31.04

Subject: Family Care Homes.

Purpose: To correct an error in current regulation and provide clearer direction in another section of the regulation.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. OMH-18-11-00014-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-18-01-00004-P	May 2, 2001
PSC-37-01-00003-P	September 12, 2001
PSC-41-01-00005-P	October 10, 2001
PSC-42-01-00007-P	October 17, 2001
PSC-12-02-00009-P	March 20, 2002
PSC-18-02-00020-P	May 10, 2002
PSC-44-02-00005-P	October 30, 2002
PSC-49-02-00026-P	December 4, 2002
PSC-53-02-00007-P	December 31, 2002
PSC-10-03-00002-P	March 12, 2003
PSC-20-03-00014-P	May 21, 2003
PSC-23-03-00007-P	June 11, 2003
PSC-29-03-00001-P	July 23, 2003
PSC-34-03-00011-P	August 27, 2003
PSC-37-03-00009-P	September 17, 2003
PSC-38-03-00010-P	September 24, 2003
PSC-38-03-00011-P	September 24, 2003
PSC-38-03-00012-P	September 24, 2003
PSC-41-03-00007-P	October 15, 2003
PSC-45-03-00006-P	November 12, 2003
PSC-45-03-00007-P	November 12, 2003
PSC-11-04-00030-P	March 17, 2004
PSC-12-04-00003-P	March 24, 2004
PSC-15-04-00021-P	April 14, 2004
PSC-22-04-00008-P	June 2, 2004
PSC-26-04-00004-P	June 30, 2004
PSC-29-04-00002-P	July 21, 2004
PSC-32-04-00012-P	August 11, 2004
PSC-34-04-00016-P	August 25, 2004
PSC-39-04-00007-P	September 29, 2004
PSC-48-04-00007-P	December 1, 2004
PSC-06-05-00010-P	February 9, 2005
PSC-10-05-00010-P	February 22, 2005
PSC-19-05-00012-P	May 11, 2005
PSC-21-05-00008-P	May 25, 2005
PSC-21-05-00009-P	May 25, 2005
PSC-24-05-00006-P	June15, 2005
PSC-17-06-00010-P	April 26, 2006
PSC-19-06-00006-P	June 24, 2006
PSC-23-06-00006-P	June 7, 2006
PSC-42-06-00010-P	October 18, 2006
PSC-01-07-00019-P	January 3, 2007
PSC-06-07-00013-P	February 7, 2007
PSC-08-07-00006-P	February 21, 2007
PSC-19-07-00006-P	May 9, 2007
PSC-26-07-00015-P	June 27, 2007
PSC-52-07-00003-P	December 26, 2007
PSC-39-09-00013-P	September 30, 2009

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Amend the June 23, 2011 Order Approving Electric Submetering

I.D. No. PSC-30-11-00005-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Union Grove Associates, LLC to amend the June 23, 2011 Order approving electric submetering.

Statutory authority: Public Service Law, sections 2, 4(1), 22, 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition to amend the June 23, 2011 Order approving electric submetering.

Purpose: Petition to amend the June 23, 2011 Order approving electric submetering.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Union Grove Associates, LLC to amend the June 23, 2011 Order approving electric submetering at Rev. Fletcher C. Crawford Housing, 1468 Hoe Avenue, Bronx, New York, located in the territory of Consolidated Edison Company of New York, Inc. The petitioner is requesting modifications to the Order to discontinue provision of submetered electricity for nonpayment of electric submetered charges after exhaustion of the required notices and protections required pursuant to Public Service Law Article 2, the Home Energy Practices Act, and to clarify information regarding EnergyStar® appliances installed in the apartment units.

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

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

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

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

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

(10-E-0489SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Issuance of Promissory Notes for the Period Beginning January 1, 2012 Through December 31, 2014

I.D. No. PSC-30-11-00006-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 a petition filed by National Fuel Gas Distribution Corporation (''Distribution'') for authorization to issue promissory notes up to $130,000,000.

Statutory authority: Public Service Law, section 69

Subject: Issuance of promissory notes for the period beginning January 1, 2012 through December 31, 2014.

Purpose: To permit National Fuel Gas Distribution Corporation to issue promissory notes and to authorize the application of the proceeds.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify a petition by National Fuel Gas Distribution Corporation (Distribution) to issue promissory notes in the aggregate principal amount of not more than $130,000,000. Distribution will use net proceeds for various purposes; including reimbursement of Distribution's treasury for moneys expended for capital purposes during the calendar years 2012 through 2014, repayment of existing debt, construction

expenditures, and for general corporate purposes. The Commission shall consider all other 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. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.state.ny.us

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

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

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

(11-G-0347SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lightened Regulatory Regime and Financing Approval for Stony Creek Energy, LLC

I.D. No. PSC-30-11-00007-P

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

Proposed Action: The Public Service Commission is considering an application filed by Stony Creek Energy, LLC for a provision of a lightened regulatory regime and approval of a debt financing plan.

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

Subject: Lightened regulatory regime and financing approval for Stony Creek Energy, LLC.

Purpose: Consideration of an application for lightened regulatory regime and financing approval.

Substance of proposed rule: In connection with its petition for a certificate of public convenience and necessity authorizing construction of a wind facility, Stony Creek Energy, LLC seeks an order establishing a lightened ratemaking regime and authorizing the issuance of long-term debt in an amount not to exceed $240 million to support facility construction.

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

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

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

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

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

(11-E-0351SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Purchased Power Adjustment

I.D. No. PSC-30-11-00008-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 proposed tariff filing by The Fishers Island Electric Corporation to make various changes in its rates, charges, rules and regulations contained in its Schedule for PSC No. 2—Electricity.

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

Subject: Purchased Power Adjustment.

Purpose: To establish an annual reconciliation to its Purchased Power Adjustment.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Fishers Island Electric Corporation (the Company) to establish an annual reconciliation to its Purchased Power Adjustment. The proposed filing has an effective date of October 1, 2011. The Commission may apply its decision in this case to other utilities.

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

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

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

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

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

(11-E-0359SP1)

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-11-00004-P

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

Proposed Action: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of proposed rule: Amendments to section 302.1(2)(b) of Title 8 NYCRR.

Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 [and 2] *through 5* are effective with the [2010] *2011* Fall term and thereafter.

		Charge per Semester		Charge per Semester credit hour[1] Special Students	
		New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1)	Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,485] *$2,635*	[$6,690] *$7,160* [$4,550][2] *$4,870*[2]	[$207] *$220* $175[3]	[$558] *$597* [$379][2] *$406*[2] *$175*[3]

(2)	Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,485] *$2,635*	[$6,690] *$7,160* *$7,360*[4] *$3,955*[5]	[$207] *$220*	[$558] *$597* *$613*[4] *$330*[5]
(3)	Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician Assistant) leading to a Master's, Doctor's or equivalent degree	[$4,185] *$4,435*	[$6,890] *$7,580* *$6,655*[5]	[$349] *$370*	[$574] *$632* *$555*[5]
(4)	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[$4,690] *$5,105*	[$7,570] *$8,325*	[$391] *$425*	[$631] *$694*
(5)	*Students enrolled in a graduate program leading to a Masters of Architecture*	*$4,605*	*$7,580*	*$384*	*$632*
(6)	*Students enrolled in a graduate program leading to a Masters of Social Work*	*$4,585*	*$7,580*	*$382*	*$632*
[(5)] *(7)*	Students enrolled in the professional program of pharmacy	[$9,060] *$9,875*	[$17,250] *$18,975*	[$755] *$823*	[$1,438] *$1,581*
[(6)] *(8)*	Students enrolled in the professional program of law	[$8,725] *$9,510*	[$14,555] *$16,010*	[$727] *$793*	[$1,213] *$1,334*
[(7)] *(9)*	Students enrolled in the professional program of medicine	[$12,425] *$13,545*	[$24,385] *$26,825*	[$1,035] *$1,129*	[$2,032] *$2,235*
[(8)] *(10)*	Students enrolled in the professional program of dentistry	[$10,710] *$11,675*	[$23,650] *$26,015*	[$893] *$973*	[$1,971] *$2,168*
[(9)] *(11)*	Students enrolled in the professional program of physical therapy and doctor of nursing practice	[$7,550] *$8,230*	[$13,315] *$14,645*	[$629] *$686*	[$1,110] *$1,220*
[(10)] *(12)*	Students enrolled in the professional program of optometry	[$8,690] *$9,300*	[$16,685] *$17,855*	[$724] *$775*	[$1,390] *$1,488*
(13)	*Students enrolled in the professional program of physician assistant*	*$4,560*	*$8,270*	*$380*	*$689*

[1] The Chancellor shall determine the equivalent of a credit hour.

[2] In accordance with chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for out-of-state students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

[3] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.

[4] *In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Albany, Binghamton, Buffalo, and Stony Brook are authorized to charge this rate for non-resident undergraduate students.*

[5] *As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).*

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, which has passed both houses of the Legislature.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

- In accordance with the NY-SUNY 2020 Challenge Grant Program Act, undergraduate tuition will increase by $300 for all resident students, and subject to approval by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers will increase by 10%
- Non-resident tuition for students at the Comprehensive Colleges, Colleges of Technology, and the Other Research/Doctoral institutions will be increased by 7%
- For graduate students enrolled in masters' and doctoral programs not otherwise specified, resident tuition will be increased by 6% and non-resident tuition will be increased by 10%
- Tuition rates for professional programs (medical, dental, law, pharmacy, doctorate of physical therapy, doctorate of nursing practice) will be increased by 9% for resident students and by 10% for non-resident students
- For students enrolled in the MBA program, rates for resident students will be increased 8.9% and by 10% for non-resident students
- For students enrolled in the Masters of Architecture program, rates for resident and for non-resident students will be increased by 10%
- For students enrolled in the Masters of Social Work program rates for resident students will be increased by 9.5% and by 10% for non-resident students
- For students enrolled in the Physician Assistant (Masters) program, rates will be increased by 9% for resident students and by 20% for non-resident students
- For students enrolled in the Optometry program, rates for resident and non-resident students will increase by 7%.

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems. Accordingly, the tuition increases on an annual basis proposed by this measure are as follows:

Undergraduate Degree: Tuition would increase by $300 to $5,270 for resident students. Undergraduate Degree: Tuition would increase by $1,340 to $14,720 for out-of-state students at the University Centers (Albany, Binghamton, Buffalo, Stony Brook); and, by $940 to $14,320 for all other campuses.

Graduate Degree Programs: Tuition would increase by $500 for resident students, to $8,870. Tuition would increase by $1,380 for out-of-state students, to $15,160. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by $830 to $10,210 for residents and by $1,510 to $16,650 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by $840 to $9,210 for residents and by $1,380 to $15,160 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by $800 to $9,170 for residents and by $1,380 to $15,160 for out-of-state students.

Medicine: Tuition would increase by $2,240 to $27,090 for residents and by $4,880 to $53,650 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by $1,570 to $19,020 for residents and by $2,910 to $32,020 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by $1,630 to $19,750 for residents and by $3,450 to $37,950 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by $1,360 to $16,460 for residents and by $2,660 to $29,290 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by $1,930 to $23,350 for residents and by $4,730 to $52,030 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by $1,220 to $18,600 for residents and by $2,340 to $35,710 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by $750 to $9,120 for residents and by $2,760 to $16,540 for out-of-state residents.

The rates for non-resident undergraduate and graduate, MBA, Medicine, Law, Pharmacy, Physical Therapy, Doctor of Nursing Practice, Dentistry, and Optometry were last increased in the Fall 2010; the rates for resident undergraduate and graduate, the Masters of Architecture and Social Work; and the Physician Assistant in Fall 2009.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from $300 per year for resident associate degrees to $4,880 for out-of-state resident students at the Schools of Medicine. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially for the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2011 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Susquehanna River Basin Commission

INFORMATION NOTICE

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to: Include definitions for new terms that are used in the proposed rulemaking; provide for administrative approval of interbasin transfers of flowback and production fluids between drilling pad sites that are isolated from the waters of the basin; provide for administrative approval of out-of-basin transfers of flowback or produced fluids from a Commission approved hydrocarbon development project to an out-of-basin treatment or disposal facility; insert language authorizing ''renewal'' of expiring approvals, including Approvals by Rule (ABRs); delete specific references to geologic formations that may be the subject of natural gas development using hydrofracture stimulation and replace with a generic category - ''unconventional natural gas development;'' broaden the scope of ABRs issued to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development; memorialize the current practice of requiring post-hydrofracture reporting; standardize at 15 years the term of ABR approvals for both gas and non-gas projects; and provide further procedures for the approval of water sources utilized at projects subject to the ABR process.

DATES: Comments on these proposed rules may be submitted to the Commission on or before August 23, 2011. The Commission has scheduled two public hearings on the proposed rules, to be held August 2, 2011, in Harrisburg, Pennsylvania, and August 4, 2011, in Binghamton, New York. The locations of the public hearings are listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by email to rcairo@srbc.net.

The public hearings will be held on Tuesday, August 2, 2011, at 10:00 a.m., at the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101, and on Thursday, August 4, 2011 at 7:00 p.m., at the Holiday Inn Binghamton Downtown, 2 8 Hawley Street, Binghamton, New York 13901. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission's project review regulations, most of which relate to the approval of hydrocarbon development projects.

New terms are used in these amendments that require further definition in 18 CFR § 806.3. These include definitions for the terms flowback, formation fluids, hydrocarbon development, hydrocarbon water storage facility, production fluids, tophole water, and unconventional natural gas development.

In order to encourage the reuse of least quality water instead of fresh water for hydraulic fracturing by unconventional natural gas development, the Commission proposes to add paragraph (a)(3)(iv) to § 806.4, which would provide for administrative approval of diversions involving flowback or production fluids from hydrocarbon development projects being transferred across the basin boundary from one drilling pad site to another drilling pad site, provided this water is handled in a manner that isolates it from the waters of the basin. Such diversions would be approved administratively under the provisions of § 806.22(f), rather than § 806.4. This change would incorporate into the regulation a policy adopted by the Commission on March 10, 2011.

To encourage reuse, treatment and proper disposal, paragraph (a)(3)(v) of § 806.4 would also be added, which would provide for diversions involving flowback or production fluids transferred to an out-of-basin treatment or disposal facility operating under separate governmental approval to be subject to administrative approval under the provisions of § 806.22(f), rather than being subject to docket approval under § 806.4.

Currently, § 806.4(a)(8) states that natural gas well development projects targeting the Marcellus and Utica shale formation, or any other shale formations identified in an Executive Director determination, involving a withdrawal, diversion or consumptive use of water in any quantity, must be approved by the Commission. Rather than attempting to name every possible geologic formation that may be the subject of development using hydrofracture stimulation (beyond Marcellus and Utica and the additional formations referenced in the Executive Director's recent Notice of Determination issued on April 21, 2011), the specific formation references would be deleted and replaced with a generic category - ''unconventional natural gas development,'' which relates to the extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation and recovery techniques. The ''gallon one'' regulatory threshold currently applicable

under the regulations to gas well development in the specifically named formations would instead be extended to this broader category.

Language is inserted into § § 806.13 and 14 authorizing ''renewal'' of expiring approvals, including Approvals by Rule (ABRs). Currently, the regulations have no specific reference to a ''renewal'' process for expiring approvals. Renewals are also provided for in additions to § 806.22(e)(6) and (f)(9).

Adjustments are made to § 806.15 - Notice of Application to account for changes and additions to § 806.22(f) described below relating to source registrations and administrative approvals of sources.

Currently, § 806.22(f) establishes an ABR process for consumptive use approvals related to natural gas well development. The Commission proposes to broaden the scope of ABRs issued under § 806.22(f) to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development. Rather than requiring such projects to go through review and docket approval under § 806.4, they would be regulated under the administrative ABR process for consumptive use approvals, which has become a very effective mechanism for managing this type of activity. The inclusion of ''unconventional natural gas well development'' as a subcategory of hydrocarbon development retains coverage of well development using unconventional stimulation or recovery techniques such as hydraulic fracturing under the ABR process.

Proposed § 806.22(f)(4) would clarify that post-hydrofracture reporting is intended to be included in the metering, daily use monitoring and quarterly reporting requirement specified in § 806.30. This would memorialize an ongoing practice of the Commission.

Proposed § 806.22(f)(8) would broaden the certification provided by project sponsors on their compliance with state and federal laws to include ''re-use'' as well as treatment and disposal of flowback and production fluids.

Revised § 806.22(f)(9) would extend the concept of ''renewal'' to an existing ABR, where it is not explicitly mentioned in the current regulations.

The current regulations only provide a 4-year duration for natural gas development project ABRs. This relatively short approval term was implemented to give the Commission a near-term opportunity to evaluate the use of an administrative approval process for natural gas-related consumptive use activity. Revised § 806.22(f)(10) would extend the term of an approval by rule from 4 years to 15 years from the date of notification by the Executive Director, reflecting the knowledge and experience gained by the Commission in reviewing natural gas development projects. A 15-year term is the standard approval term for all other ABRs.

Water source approvals under the hydrocarbon development ABR program are restructured in three ways. First, language would be inserted in § 806.22(f)(11) to identify water sources that are authorized for use by operation of the rule, rather than by separate approval. These sources would continue to be subject to tracking, recordkeeping and reporting requirements. The existing provisions of § 806.22(f)(12) would be split apart, resulting in revised language and the creation of a new § 806.22(f)(13). As revised, § 806.22(f)(12) sets out the registration procedure for hydrocarbon developers to use a source of water approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor. The new § 806.22(f)(13) authorizes approvals for sources, including, but not limited to public water supplies, wastewater, and hydrocarbon water storage facilities not otherwise associated with docket approvals issued by the Commission or ABRs issued by the Executive Director. By issuing approvals for such hydrocarbon water storage facilities, a tracking mechanism would be created authorizing use of these sources by operation of the rule, rather than needing individual registrations or approvals. Such an approach provides the necessary management controls.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Part 806 as follows:

PART 806-REVIEW AND APPROVAL OF PROJECTS

Subpart A - General Provisions

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. Amend § 806.3 by adding definitions for ''Flowback'', ''Formation fluids'', ''Hydrocarbon development'', ''Production fluids'', ''Project'', ''Tophole water'', and ''Unconventional natural gas development'' to read as follows:

§ 806.3 - Definitions.

* * * * *

Flowback. The return flow of water and formation fluids recovered from the well bore of an unconventional natural gas or hydrocarbon development well within 30 days following the release of pressures induced as part of the hydraulic fracture stimulation of a target geologic formation, or until the well is placed into production, whichever occurs first.

Formation fluids. Fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, vugs, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.

* * * * *

Hydrocarbon development. Activity associated with the siting, drilling, casing, cementing, stimulation and completion of wells, including but not limited to unconventional natural gas development wells, undertaken for the purpose of extraction of liquid or gaseous hydrocarbon from geologic formations.

Hydrocarbon water storage facility. An engineered barrier or structure, including but not limited to tanks, pits or impoundments, constructed for the purpose of storing water, flowback or production fluids for use in hydrocarbon development.

* * * * *

Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a by-product of the production activity.

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of hydrocarbon development activity, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

* * * * *

Tophole water. Groundwater that is encountered collected at the surface during drilling operations undertaken in conjunction with hydrocarbon development.

Unconventional natural gas development. Activity associated with the siting, drilling, casing, cementing, stimulation and completion of wells undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

* * * * *

3. In § 806.4, revise paragraph (a)(3) introductory text, add paragraphs (a)(3)(v) and (a)(3)(vi), and revise paragraph (a)(8), as follows:

§ 806. 4 - Projects Requiring Review and Approval

(a) * * *

(3) Diversions. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (3)(i) through (3)(iv) below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (3)(v) and (3)(vi) below shall be subject to regulation pursuant to § 806.22(f).

* * * * *

(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, and handled in such a manner as to isolate it from the waters of the basin, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f).

(vi) The out-of-basin diversion of flowback or production fluids from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept the same, shall not be subject to separate review and approval as a diversion under this paragraph.

* * * * *

(8) Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

* * * * *

Subpart B - Application Procedure

4. Revise § 806.13, as follows:

§ 806.13 - Submission of Application

Project sponsors of projects subject to review and approval of the Commission under §§ 806.4, 806.5 or 806.6, or project sponsors seeking renewal of an existing approval of the Commission, shall submit an application and applicable fee to the Commission, in accordance with this subpart.

5. In § 806.14, revise paragraph (a), as follows:

§ 806.14 - Contents of Application

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

* * * * *

6. In § 806.15, revise paragraphs (d), (e) and (f) and add paragraph (g), as follows:

§ 806.15 - Notice of Application

* * * * *

(d) For applications submitted under § 806.22(f)(13) for a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(13) for a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will be used for natural gas development.

(f) For applications submitted under § 806.22(f)(13) for a hydrocarbon water storage facility, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area in which the project is located.

(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

Subpart C - Standards for Review and Approval

7. In § 806.22, revise paragraphs (e)(1), (e)(6), (f), (f)(1), (f)(4), (f)(8), (f)(9), (f)(10), (f)(11), and (f)(12), and add paragraph (f)(13), to read as follows:

§ 806.22 - Standards for consumptive uses of water

* * * * *

(e) * * *

(1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

* * * * *

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

* * * * *

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development.

(1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under § § 806.4, 806.5, or 806.6 of this part, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

* * * * *

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

* * * * *

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

* * * * *

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member State.

(10) An approval by rule shall be effective upon written notification from the Executive Director to the project sponsor and shall expire 15 years from the date of such notification.

(11) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site:

(i) Water sources approved for use by the project sponsor for unconventional natural gas development, or hydrocarbon development, whichever is applicable, pursuant to § 806.4 or this section.

(ii) Tophole water encountered during the drilling process.

(iii) Precipitation or stormwater collected on the drilling pad site.

(iv) Flowback or production fluids obtained from a hydrocarbon water storage facility, provided it is used for hydrofracture stimulation only, and is handled in such a manner as to isolate it from the waters of the basin.

(v) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a) and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in a manner as prescribed by the Commission. The project sponsor shall also provide a copy of same to the appropriate agency of the member State. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered hereunder.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply, wastewater discharge, or a hydrocarbon water storage facility not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in a manner as prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part. Any approval issued hereunder shall be subject to such monitoring and reporting requirements as may be contained therein.

Dated: July 11, 2011.

Thomas W. Beauduy,

Deputy Executive Director.