

RULE MAKING ACTIVITIES

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

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

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

Office for the Aging

EMERGENCY RULE MAKING

Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services

I.D. No. AGE-12-11-00002-E

Filing No. 238

Filing Date: 2011-03-08

Effective Date: 2011-03-08

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

Action taken: Amendment of sections 6654.15, 6654.16 and 6654.17 of Title 9 NYCRR.

Statutory authority: Elder Law, sections 201(3) and 214

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

Specific reasons underlying the finding of necessity: Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer

directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends.

NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) grant which are tied to the adoption and implementation of state funded consumer directed in-home services. Thus far, three counties (Broome, Onondaga and Oneida) are participating in the NHDMP and are required to transition the federally funded consumer directed in-home services portion of this grant to state funded consumer directed in-home services under EISEP by the end of September 2010, when the grant expires. Additionally, there are seven counties participating in the CLP grant (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed in-home services under EISEP in September 2010.

The Notice of Emergency Adoption is necessary to enable NYSOFA to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP. Accordingly, it would only apply to the ten counties participating in the two grants and would expire when the regulations are published for final adoption in the State Register.

Subject: Expanded In-Home Services for the Elderly Program (EISEP) Consumer Directed In-Home Services.

Purpose: The purpose of the proposed rule is to incorporate the Consumer Directed In-Home Services delivery model into EISEP.

Substance of emergency rule: The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under the Expanded In-home Service for the Elderly Program (EISEP). The proposed amendments to 9 NYCRR sections 6654.15, 6654.16 and 6654.17 incorporate a consumer directed in-home services delivery model into EISEP.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. Specifically, the amendments address the requirements an individual or their representative must meet in order to participate in the consumer directed in-home services delivery model. In addition, several terms have been defined in order to provide the regulated parties with clear direction as to what is meant when each of the defined terms are used in the regulations. Some of these terms are new to EISEP (e.g., Consumer, Consumer Representative, Consumer Directed In-home Services and Fiscal Intermediary) and others are not, though they had not been defined previously (e.g., In-home Services, In-home Services Agency and In-home Services Worker).

In addition, for purposes of this emergency adoption the eligibility criteria for those who can participate in Consumer Directed In-home Services found in § 6654.15, is limited to individuals who may be served by the ten counties currently participating in the two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services, currently being administered by New York State Office for the Aging.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorporated into the EISEP regulations. Specifically, NYSOFA clearly delineated those tasks that are the responsibility of the case manager in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. This section of the regulations also articulates that while case managers will work with and assist consumers and/or consumer representatives who receive services under the consumer directed in-home services model, responsibility for the interviewing, selecting, scheduling, training, supervising and dismissing the in-home services worker lays with the consumer or the consumer rep-

representative and not the case manager. NYSOFA also made several technical amendments in this section that brought the regulations up to date with current practice.

NYSOFA also amended § 6654.17 of the regulations to incorporate the consumer directed in-home services model into EISEP. Again, the major focus of the changes in this section of the regulations was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. The amendments to this section also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA clarified when a criminal background check is required and the type of criminal background check that is required. NYSOFA also made some technical amendments to this section to bring the regulations in line with current practice and enhance the consistency with the New York State Department of Health's (DOH) regulations for the Medicaid funded Personal Care Program and regulations for licensed home care services agencies. Among the amendments in this category are the changes to the guidelines regarding the qualifications needed by the nurse who supervises the in-home services worker who is providing home care under EISEP. Section 6654.17 provides guidance as to the type and content of records that must be maintained by the fiscal intermediary that is providing the administrative functions under consumer directed in-home services. The amendments also incorporate by reference the DOH's regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and incorporating the DOH's requirements into the EISEP regulations by reference will facilitate regulatory compliance for regulated parties.

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 June 5, 2011.

Text of rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: stephen.syzdek@ofa.state.ny.us

Regulatory Impact Statement

1. Statutory Authority – Section 201(3) of the New York State Elder Law allows the Director of the New York State Office for the Aging (NYSOFA) with the advice of the advisory committee for the aging to promulgate, adopt, amend or rescind rules and regulations necessary to carry out the provisions of Article II of the Elder Law.

New York State Elder Law Section 214 governs the administration of the Expanded In-home Services for the Elderly Program (EISEP).

2. Legislative Objectives – The legislative objectives of the statute that created EISEP are to increase the availability of in-home support services to non-Medicaid eligible elderly persons in need of assistance and improve access to and management of appropriate care through the use of comprehensive case management. In addition, the legislative intent of EISEP is to foster the use of non-medical supports to avoid the inappropriate use of more costly forms of care at home and in institutional settings; improve the targeting of aging network resources to those most in need and make optimal use of informal caregivers; and assist elderly clients to remain in their homes and communities. One of the ten main objectives found in the Older Americans Act (OAA) is to enable older people to secure equal opportunity to the full and free enjoyment of the following: freedom, independence and the free exercise of individual initiative in planning and managing their own lives, full participation in the planning and operation of community-based services and programs provided for their benefit, and protection against abuse, neglect and exploitation (Subsection 10 of Section 101 of the OAA).

3. Needs and Benefits – The purpose of this rule is to allow consumers the opportunity to manage their own in-home services under EISEP. NYSOFA has received two federal grants, the Nursing Home Diversion Modernization Program (NHDMP) and the Community Living Program (CLP) which are tied to the adoption and implementation of state funded consumer directed in-home services. Three counties (Broome, Onondaga and Oneida) are participating in the first NHDMP and are required to transition the federally funded consumer directed portion of this grant to state funded consumer directed services - EISEP - by the end of September, when the grant expires.

Additionally, there are seven counties participating in the CLP (Albany, Cayuga, Dutchess, Orange, Otsego, Tompkins and Washington) who need to be positioned to begin implementing consumer directed services under EISEP in September. The Notice of Emergency Adoption would only ap-

ply to the ten counties that are participating in the federal grants referenced above and would expire when the regulations are published for final adoption in the State Register.

NYSOFA is filing a Notice of Emergency Adoption in order to ensure that it is able to meet its obligations under both grants by ensuring that there is no interruption of the consumer directed in-home services currently being provided to consumers located in the three counties participating in the NHDMP and to ensure that consumer directed in-home services will be provided to consumers located in the seven counties participating in the CLP.

Consumer direction is a service delivery model that provides consumers with more control and choice in the delivery of the care that they receive than the traditional models of care. Consumer direction has many variations and the scope of what is included within the construct of consumer direction varies from program to program. However, all consumer directed programs stem from the idea that individuals with needs should be empowered to make decisions about their care. Depending on the parameters established by a program, consumers select, train, schedule, supervise and dismiss their in-home services workers; decide what services and goods to spend their budget on and which providers or workers (other than for in-home services) to hire and when work will be performed.

Consumer direction is the service delivery model that is strongly encouraged by both the Administration on Aging (AoA) and the Centers for Medicare and Medicaid Services. By allowing consumers to direct their own care, consumers are more satisfied, have better outcomes and tend to stay out of nursing homes for a longer period of time. By staying out of nursing homes, consumers can age in the least restrictive setting and protect their assets by not having to spend down to Medicaid in order to be able to afford institutional care. Furthermore, the State of New York saves money as consumers either delay or avoid relying on Medicaid to pay for their long term care. While not mandating that states implement consumer directed care into their programs, the AoA is strongly encouraging it in the OAA. In addition, to further encourage states to develop consumer directed service delivery models, the AoA is offering several federal grant programs that expect states to continue to provide consumer directed services after the federal grant money ends. New York State is participating in two such grant programs.

EISEP services are provided to seniors through the Area Agencies on Aging (AAA's). Under the traditional EISEP model, case managers use the assessment and care planning process to determine the type, amount and the delivery method for the services to be provided. In-home services are provided by an agency, which is usually either a licensed home care services agency or a certified home health agency.

Under the consumer directed in-home services delivery model, consumers will have much more control, authority and decision-making capacity regarding the home care services that they receive. They will determine who will provide their home care, how the care will be provided and when it will be provided. They will establish the worker's schedule, deciding when each task will be performed. The consumer will do so within the context of the assessment and care plan that is developed by the case manager with the consumer. However, the participation of the consumer in this process will be stronger and their role enhanced as a strength based and person centered approach is adopted.

By creating the consumer directed in-home services delivery model under EISEP, New York State continues to move toward the AoA's objective that states incorporate consumer directed models of service delivery into their programs. Moving in this direction allows for innovative, creative, flexible and cost saving options to meet the needs of older New Yorkers.

AAA's will not be mandated to implement consumer directed in-home services under EISEP. Each AAA will decide if, when and how to implement consumer direction. However, it is anticipated that over time all of New York State's AAA's will choose to implement the consumer directed model. It should also be noted that the traditional home care services delivery model remains the same and unchanged by these regulations. AAA's and clients will be free to continue to provide and receive traditional home care services.

This rule making amends three sections (9 NYCRR § 6654.15, 6654.16 and 6654.17) of the EISEP regulations to accommodate consumer direction.

The amendments to § 6654.15 add consumer directed in-home services eligibility criteria and definitions. As a result of extensive outreach to interested parties, NYSOFA learned that the eligibility criteria and terms needed to be expanded and clarified. As a result, NYSOFA clearly lays out who is eligible to participate in consumer directed in-home services and defines key terms so that regulated parties can better understand the regulations.

Section 6654.16 of the regulations was amended so that the consumer directed in-home services delivery model could be incorporated into the

case management regulations. Specifically, NYSOFA clearly delineates those tasks that are the responsibility of the case managers in traditional EISEP but which are the responsibility of the consumer or the consumer representative under consumer directed in-home services. NYSOFA also made several technical amendments in this section that made the regulations more reflective of the way that EISEP is currently administered.

NYSOFA also amended § 6654.17 to incorporate the consumer directed in-home services model into the in-home services regulations. Again, the major focus of these changes was to identify the tasks and responsibilities of the consumer and/or consumer representative under consumer direction, including those that are usually the responsibility of the agency that is providing home care in the traditional services delivery model. NYSOFA also clearly establishes training responsibilities for all parties involved in consumer directed in-home services. These amendments also establish the role and responsibilities of the fiscal intermediary, an entity responsible for many of the administrative tasks including financial transactions. NYSOFA has also made some technical amendments to this section to more accurately reflect the current administration of EISEP. The amendments also incorporate by reference the New York State Department of Health's (DOH) regulations regarding criminal background checks, health status and training of in-home services workers. NYSOFA's regulations have always mirrored the DOH's requirements regarding these three subjects and NYSOFA has decided that incorporating the DOH's requirements into the EISEP regulations will facilitate regulatory compliance for regulated parties.

4. Costs – This proposed rule imposes no additional costs to the regulated parties, NYSOFA or state and local governments to implement and to continue to comply with this proposed rule. It should be noted that as mandated by the new 9 NYCRR section 6654.19(d), EISEP continues to be the payer of last resort and any services that are able to be provided through another source or program may not be provided through EISEP.

5. Paperwork – The proposed rule does not change any of the reporting requirements, forms or other paperwork from what is already required of the AAAs administering the program. However, for those AAA's that do decide to undertake consumer directed in-home services there will be some additional paperwork such as authorizations and releases that will need to be completed.

6. Local Government Mandates – The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district other than what is already required of the AAAs administering the program.

7. Duplication – There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this proposed rule.

8. Alternatives – NYSOFA's internal workgroup discussed several significant programmatic alternatives during the development of this proposal. Some in the community of aging services providers believe that older adults will not have their needs met and be at greater risk of fraud and abuse under the consumer direction service model. NYSOFA rejected these notions as studies continue to demonstrate that older adults who manage their own care are more satisfied with the services that they receive, effective managers, less likely to be subjected to fraud and/or abuse at the hands of their caregivers and remain out of long term care facilities for a longer period of time. As a result, NYSOFA made the decision to allow for consumer directed in home services to be provided under EISEP. NYSOFA also considered limiting who could participate in the consumer directed in-home services program. Again, some are of the opinion that older adults with physical or mental disabilities should not be allowed to direct their own care. After discussing this concern with advocacy groups and other state units on aging that have implemented consumer directed care, NYSOFA believes that as long as the AAA delivering services is able to confirm that the consumer or the consumer's representative is able to assume responsibility for managing the consumer's care, these individuals should be given an opportunity to attempt to do so. Additionally, there were suggestions that the regulations place too much responsibility on the fiscal intermediary. NYSOFA, in drafting these amendments, discovered that there are varying degrees to which fiscal intermediaries involve themselves in the administrative duties and/or the support they provide to consumers who direct their own care. As a result, NYSOFA has rejected suggestions that limit the role of the fiscal intermediary and decided that the level of involvement of the fiscal intermediary will be determined by the AAA and particular fiscal intermediary involved in the consumer's care plan.

9. Federal Standards – This rule does not exceed Federal standards.

10. Compliance Schedule – AAAs will be able to comply with this proposed rule immediately after promulgation.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP

on small businesses or local governments. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, recordkeeping or compliance requirements above those already required under EISEP on public or private entities in rural areas. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule simply changes the way in which EISEP is administered. The proposed rule only affects the AAA's, in-home services providers and the clients served by EISEP by allowing consumers or their representatives to direct and manage the in-home services portion of their own care plans.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Incident Reporting in Chemical Dependency and Problem Gambling Treatment Provider Services

I.D. No. ASA-03-11-00008-A

Filing No. 239

Filing Date: 2011-03-08

Effective Date: 2011-03-23

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

Action taken: Repeal of Part 306; and addition of Part 836 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.21, 19.40, 22.07, 32.01, 32.02, 32.07, 33.16, 33.23 and 33.25; and L. 2008, ch. 323, section 19

Subject: Incident reporting in chemical dependency and problem gambling treatment provider services.

Purpose: To ensure compliance with state and federal laws regarding reporting of incidents.

Text or summary was published in the January 19, 2011 issue of the Register, I.D. No. ASA-03-11-00008-EP.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Disqualification from Participation in the New York State Health Insurance Plan ("NYSHIP") and Receiving Benefits Thereunder

I.D. No. CVS-47-10-00001-A

Filing No. 230

Filing Date: 2011-03-02

Effective Date: 2011-03-23

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

Action taken: Amendment of section 73.2(e) of Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 160, 161(1), 163 and 164

Subject: Disqualification from participation in the New York State Health Insurance Plan ("NYSHIP") and receiving benefits thereunder.

Purpose: To clarify that grounds for disqualification from NYSHIP participation apply to dependents.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00001-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Separate Units for Suspension, Demotion of Displacement (Layoff Units)

I.D. No. CVS-47-10-00002-A

Filing No. 229

Filing Date: 2011-03-02

Effective Date: 2011-03-23

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

Action taken: Amendment of section 72.1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 80(5) and 80-a(4)

Subject: Separate units for suspension, demotion of displacement (layoff units).

Purpose: To designate the Agency Law Enforcement Services negotiating unit as a separate layoff unit with Department of Environmental Conservation.

Text or summary was published in the November 24, 2010 issue of the Register, I.D. No. CVS-47-10-00002-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-11-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of the Budget," by deleting therefrom the position of Manager Information Services and in the Executive Department, by adding thereto the subheading "Statewide Financial System," and the position of Manager Information Services.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-12-11-00012-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by adding thereto the position of Chief Information Security Officer (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-12-11-00013-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the position of Associate Counsel.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-12-11-00014-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified

Service, listing positions in the non-competitive class, in the Department of Health, by deleting therefrom the position of Director of Dental Health.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-12-11-00015-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Agricultural and Technical Colleges," by deleting therefrom the position of øKeyboard Specialist 3 (1) at Farmingdale.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-12-11-00016-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by deleting therefrom the position of øAssistant Director, Excise Tax Investigations (1) and by adding thereto the position øAssistant Director Investigations (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-12-11-00017-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the positions of øWorkers' Compensation Fraud

Investigator 1 (8) and by adding thereto the positions of øWorkers' Compensation Fraud Investigator 1.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Department of Environmental Conservation

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

**New Source Review Requirements for Proposed New Major
Facilities and Major Modifications to Existing Facilities**

I.D. No. ENV-12-11-00004-P

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

Proposed Action: Amendment of Parts 200, 201 and 231 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105; and Federal Clean Air Act, sections 160-169 and 171-193 (42 USC Sections 7470-7479, 7501-7515)

Subject: New Source Review requirements for proposed new major facilities and major modifications to existing facilities.

Purpose: To comply with 2008 and 2010 Federal NSR rules, correct typographical errors, and clarify existing rule language.

Public hearing(s) will be held at: 2:00 p.m., June 1, 2011 at Department of Environmental Conservation Region 8 Office Conference Rm., 6274 E. Avon-Lima Rd. (Rtes. 5 and 20), Avon, NY; 2:00 p.m., June 2, 2011 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129, Albany, NY; and 2:00 p.m., June 3, 2011 at Department of Environmental Conservation, Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY.

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

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

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): The Department of Environmental Conservation (Department) is proposing to amend Parts 200, 201, and 231 of Title 6

of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review for New and Modified Facilities" respectively.

The Part 200 amendments will revise the definitions of potential to emit and PM-2.5 and add definitions for greenhouse gases and CO₂ equivalent. The definition of potential to emit will now state that secondary emissions are not to be included when calculating an emissions source's potential to emit. The definition of PM-2.5 will no longer refer to Appendix L of Part 50 of the Code of Federal Regulations and will now state that PM-2.5 is the sum of filterable PM-2.5 and material that condenses after exiting the stack forming solid or liquid particulates. Greenhouse gases are defined as the aggregate group of carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. The definition of CO₂ equivalent states that each of the six greenhouse gases are multiplied by their global warming potential and summed to obtain emissions in terms of CO₂ equivalents.

The Part 201 amendments revise the definition of major stationary source or major source or major facility to add a CO₂ equivalent based greenhouse gas emission threshold. In addition to the current mass based thresholds applicable to greenhouse gases, the proposed revisions establish a CO₂ equivalent threshold of 100,000 tons per year for the purposes of determining if a stationary source, source, or facility is major. The definition is also revised to state that 201-2.1(b)(21)(iii) is a "Source Category List" and removes municipal waste landfills from the list.

Existing Subpart 231-2 will be revised to insert "February 19, 2009" in place of "the effective date of Subparts 231-3 through 231-13" in the title of 231-2.

Existing Subpart 231-3 will be revised by changing the title of 231-3.2 and stating in sections 231-3.2 and 3.6 that "complete application" is referring to its definition under section 621.2. Section 231-3.3 will be removed and subsequent sections renumbered.

Existing Subpart 231-4 will be revised by adding the definition of calendar year and renumbering subsequent paragraphs, alphabetically. The definition of contemporaneous will be revised to state that it means different periods of time depending on attainment status of the location. The definitions of baseline area, major facility baseline date, and minor facility baseline date will be revised to include PM-2.5. The definition of nonattainment contaminant will be revised to include PM-2.5 precursors in the PM-2.5 nonattainment area.

Existing Subparts 231-5 and 231-6 will be revised to add regulation of PM-2.5 precursors. As a result, SO₂ will be regulated as a nonattainment contaminant in the PM-2.5 nonattainment area. Interpollutant trading ratios will also be added for PM-2.5 precursors so that direct emissions of PM-2.5 can be offset by reductions in PM-2.5 precursor emissions and PM-2.5 precursors can be offset by reductions in direct PM-2.5 emissions.

Existing Subpart 231-7 will be revised to reference Table 8 of 231-13 in 231-7.4(f)(6) for SO₂ variances.

Existing Subpart 231-8 will be revised to provide an example that shows only the same class of regulated NSR contaminant can be used for netting and reference Table 8 of 231-13 in 231-8.5(f)(6) for SO₂ variances.

Existing Subpart 231-9 will be revised to clarify language and allow CEMS to use performance specifications in 40 CFR 75.

Existing Subpart 231-10 will be revised to state that emission reduction credits (ERCs) must be the same type of regulated NSR contaminant for the purposes of netting. Subdivisions are added to allow interpollutant trading and to state that if a contaminant is regulated as a precursor under multiple programs only one set of offsets is required. The section titled mobile source and demand side management ERCs will be renamed to ERCs for emission sources not subject to Part 201.

Existing Subpart 231-11 will be revised to clarify sections in the 231-11.2 reasonable possibility provisions.

Existing Subpart 231-12 will be revised to include PSD increments for PM-2.5, significant impact levels for PM-2.5, significant monitoring concentration for PM-2.5, and reordering paragraphs 231-12.2(c)(2) and (3).

Existing Subpart 231-13, table 4, will be revised to include significant project thresholds, significant net emission increase thresholds, and offset ratios for PM-2.5 precursors. Table 5 of Subpart 231-13 will be revised to add greenhouse gases to the major facility thresholds for attainment and unclassified areas, and table 6 will be revised to add significant project thresholds and significant net emission increase thresholds for attainment and unclassified areas. The source category list will be removed and in its place will be a table listing global warming potential values.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Stanton, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: 231nsr@gw.dec.state.ny.us

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

Public comment will be received until: June 10, 2011.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file. This rule must be approved by the Environmental Board.

Summary of Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing to revise 6 NYCRR Parts 200, General Provisions, 201, Permits and Registrations and 231, New Source Review (NSR) for New and Modified Facilities. First, this proposed rule will incorporate the Environmental Protection Agency's (EPA's) May 16, 2008 NSR final rule for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5). The Department incorporated some of EPA's final PM-2.5 requirements in its February 19, 2009 revisions to its PSD and nonattainment NSR programs (6 NYCRR Part 231). This proposed rulemaking will incorporate the remaining provisions of the federal PM-2.5 final rule which were not previously included in the 2009 revision to Part 231. Second, this proposed rule will incorporate conforming provisions to EPA's June 3, 2010 NSR final rule for the regulation of Greenhouse Gases (GHGs) under its PSD and Title V programs, referred to as the Greenhouse Gas Tailoring Rule (GHG Tailoring Rule). The proposed rule will clarify the regulation of GHGs by establishing major source applicability threshold levels for GHG emissions and other conforming changes under the State's PSD and Title V programs. Third, this proposed rule will incorporate EPA's October 20, 2010 final rule which establishes the PM-2.5 increments, significant impact levels, and significant monitoring concentration. This proposed rulemaking is not a mandate on local governments. It applies to any entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of this regulation.

1. STATUTORY AUTHORITY

The statutory authority for these regulations is found in the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105, and in Sections 160-169 and 171-193 of the Federal Clean Air Act (42 USC Sections 7470-7479; 7501-7515) (Act or CAA).

2. LEGISLATIVE OBJECTIVES

The Act requires states to have a preconstruction program for new and modified major stationary sources, and an operating permit program for all major sources. This rulemaking is being undertaken to satisfy New York's obligations under the Act and also to meet the environmental quality objectives of the State. This Section discusses the legislative objectives of the rulemaking, including overview of relevant federal and State statutes and regulations.

Articles 1 and 3, of the ECL, set out the overall State policy goal of reducing air pollution and providing clean air for the citizens of New York and provide general authority to adopt and enforce measures to do so. In addition to the general powers and duties of the Department and Commissioner to prevent and control air pollution found in Articles 1 and 3, Article 19 of the ECL was specifically adopted for the purpose of safeguarding the air "quality" of New York from pollution.

In 1970, Congress amended the Act "to provide for a more effective program to improve the quality of the Nation's air." The statute directed EPA to adopt National Ambient Air Quality Standards (NAAQS) and required states to develop implementation plans known as State Implementation Plans (SIPs) which prescribed the measures needed to attain the NAAQS.

On May 16, 2008, EPA published a final rule regarding the regulation of PM-2.5 in attainment and nonattainment areas ('see' 73 Fed Reg 28321 [2008 federal NSR rule]). The May 16, 2008 federal NSR rule included the following key provisions: PM-2.5 precursors, offset trading ratios, and a SIP submission requirement.

On October 20, 2010, EPA published a final rule regarding PM-2.5 increments, significant impact levels, and significant monitoring concentration ('see' 75 Fed Reg 64864 [October 20, 2010 federal NSR rule]). The October 20, 2010 federal NSR rule included the following key provisions: PM-2.5 increments, PM-2.5 significant impact levels, PM-2.5 significant monitoring concentration, and a SIP submission requirement.

On June 3, 2010, EPA published a final NSR rule tailoring the applicability criteria that determines which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and Title V operating permit (Title V) programs of the CAA ('see' 75 Fed Reg 31514 [GHG Tailoring Rule]). The GHG Tailoring Rule included key provisions regarding the list of GHGs regulated, the permitting metric used, and the permitting applicability thresholds. In response to the U.S. Supreme Court's decision in Massachusetts v. EPA, 549 U.S. 497 (2007), EPA has taken several actions that, taken together, will result in GHGs being "subject to regulation"

under the Act as of January 2, 2011. This will occur regardless of the GHG Tailoring Rule or this rulemaking. The GHG component of this rulemaking is necessary because of a number of actions taken by EPA regarding the regulation of GHGs under the CAA. This rulemaking will clarify the applicability thresholds for GHGs under the State's PSD and Title V permitting programs, in order to conform such thresholds to those set forth in the federal GHG Tailoring Rule.

3. NEEDS AND BENEFITS

The Department is undertaking this rulemaking to comply with the May 16, 2008, the June 3, 2010, and the October 20, 2010 federal NSR rules promulgated by EPA, for the regulation of PM-2.5 and GHGs. The May 16, 2008 federal NSR rule modified both the nonattainment NSR and PSD regulations with respect to PM-2.5 at 40 CFR 51.165 and 52.21, respectively, and requires states with SIP approved NSR programs to revise their regulations in accordance with the May 16, 2008 federal NSR rule and submit the revisions to EPA for approval into the SIP. The GHG Tailoring Rule modified the PSD regulations with respect to GHGs at 51.166 and 52.21; the Title V regulations at 70.2, 70.12, 71.2 and 71.13; and requires states with SIP approved NSR programs to revise their regulations in accordance with the GHG Tailoring Rule and submit the revisions to EPA for approval into the SIP. The October 20, 2010 federal NSR rule modified both the nonattainment NSR and PSD regulations with respect to PM-2.5 at 40 CFR 51.165 and 52.21, respectively, and requires states with SIP approved NSR programs to revise their regulations in accordance with the October 20, 2010 federal NSR rule and submit the revisions to EPA for approval into the SIP.

On December 15, 2009, EPA published its Endangerment Finding stating that GHGs contribute to climate change and are a threat to public health and the welfare of current and future generations. 'See', 74 Fed. Reg. 66,496. According to EPA, the combination of six well-mixed GHGs found in the Earth's atmosphere - carbon dioxide (CO₂); methane (CH₄); nitrous oxide (N₂O); hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulfur hexafluoride (SF₆) - form the "air pollutant" that may be subject to regulation under the CAA. 'Id'.

Following the Endangerment Finding, EPA finalized a rule establishing emission standards for GHGs from passenger cars and light-duty trucks, starting with model year 2012 vehicles. 'See' 75 Fed. Reg. 25,324 (May 7, 2010) ("Tailpipe Rule"). EPA also issued an interpretation that a pollutant is "subject to regulation" if it is subject to a CAA requirement establishing "actual control of emissions." 75 Fed. Reg. 17,004, 17,006 (April 2, 2010) ("Trigger Rule"). Taken together, the Endangerment Finding, Tailpipe Rule, and Trigger Rule will result in GHGs being "subject to regulation" under the CAA as of January 2, 2011. On that date, because of EPA's actions, GHGs will need to be addressed as part of the CAA's PSD and Title V permitting programs, regardless of this rulemaking.

Since many states, including New York, have incorporated identical or federally-conforming provisions into their state PSD and Title V programs, GHGs will also need to be addressed as a matter of State law. However, without this rulemaking, the literal application of the current thresholds under the State's PSD and Title V provisions will have the same adverse impact on State stationary sources and the State's permitting programs as described in the federal GHG Tailoring Rule. This means that, without this rulemaking to clarify and tailor the existing applicability thresholds in a similar manner as the federal GHG Tailoring Rule, a vast number of newly regulated facilities within the State would be required to comply with the State's existing PSD and Title V program requirements as of January 2, 2011.

Once GHGs become subject to regulation under the CAA, necessitating the review and processing of possibly thousands of new permits under the State's PSD or Title V permitting programs, the Department's ability to maintain these programs under the existing thresholds applicable to GHGs will be significantly impaired. This proposed rule incorporates and otherwise conforms to the key provisions of the federal GHG Tailoring Rule, including provisions to "tailor" the existing applicability thresholds under the PSD and Title V permitting programs, in order to reduce the anticipated burdens on newly regulated facilities in the state and to alleviate the projected impairment of the state's PSD and Title V programs.

The Part 200 amendments will revise the definitions of potential to emit and PM-2.5 as well as add definitions for GHG and CO₂ equivalent (CO₂e). The definition of potential to emit will be changed to specify that secondary emissions are not included in a facility's potential to emit. The definitions of PM-10 and PM-2.5 will now state that condensable emissions are included.

The definition of major stationary source or major source or major facility in Part 201 will be modified for GHGs to clearly establish its threshold at 100,000 tpy CO₂e in addition to maintaining the current mass based emission thresholds.

The Part 231 amendments will include the remaining provisions from EPA's May 16, 2008 PM-2.5 rule and include provisions for regulating

GHGs under PSD. Precursors of PM-2.5, SO₂ and NO_x, have been added as nonattainment contaminants in the PM-2.5 nonattainment area. New York State has determined that emissions of VOCs and ammonia should not be included as PM-2.5 precursors. Interpollutant trading ratios have been added for PM-2.5 precursors by which direct emissions of PM-2.5 can be offset by reductions of SO₂ and/or NO_x. For GHGs the major facility threshold and significant project/significant net emission increase threshold have been clearly established as 100,000 tpy CO₂e and 75,000 tpy CO₂e, respectively, while maintaining the current mass based thresholds. A table has been added to 231-13 that lists the global warming potential (GWP) of the six individual gases that comprise GHGs and references the table in the federal GHG Mandatory Reporting Rule. For PSD and Title V applicability, a source's GHG emissions must equal or exceed both the mass based and CO₂e based emission thresholds. In accordance with the October 20, 2010 federal NSR rule PM-2.5 increments, SILs, and SMC have been added to their respective tables in Part 231.

These amendments will also correct existing typographical errors identified after the previous rulemaking (February 19, 2009) was completed and clarify sections of existing Parts 200, 201, and 231.

4. COSTS

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 related to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to 1 while the ratio is 1 to 1 from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tpy instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHG's "subject to regulation" as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule, which will result in GHGs becoming subject to regulation under the CAA on January 2, 2011. One of the primary purposes of the GHG component of this rulemaking is to alleviate any such new costs by conforming State regulations to the federal GHG Tailoring Rule.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately 6 million facilities will avoid Title V permitting and over 80,000

facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal. As stated previously, the costs associated with complying with PSD and Title V permitting requirements for GHGs are not directly attributable to these proposed amendments. Instead, any such costs are attributable to EPA's actions to regulate GHGs under the CAA.

5. PAPERWORK

The proposed amendments to Part 231 are not expected to entail any significant additional paperwork for the Department, industry, or State and local governments beyond that which is already required to comply with the Department's existing permitting program under Part 201-6 and existing NSR regulations under Part 231.

6. STATE AND LOCAL GOVERNMENT MANDATES

The adoption of the proposed amendments to Part 231 are not expected to result in any additional burdens on industry, State, or local governments beyond those currently incurred to comply with the requirements of the existing NSR process under Part 201-6, and Part 231. The proposed amendments do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of Part 231.

7. DUPLICATION

This proposal is not intended to duplicate any other Federal or State regulations or statutes. The proposed amendments to Part 231 will ultimately conform the regulation to the CAA.

8. ALTERNATIVES

1. Take No Action.

The State would be in violation of federal law if no action is undertaken. New York State is required to have a SIP approved permitting program for PM-2.5 for NNSR by May 16, 2011. As for GHGs, absent the relief provided for GHG emission sources and state permitting authorities under the federal GHG Tailoring Rule, the permitting thresholds for GHGs would be set at 100 tpy and 250 tpy under the PSD program and 100 tpy under the Title V program. Under these thresholds, it is anticipated that a massive number of smaller sources, including farms, schools, and apartment buildings, would be required to comply with state PSD and Title V program requirements. Many of these sources have never had to address these types of requirements since most of these sources are too small to meet the applicability thresholds for the traditional pollutants, such as SO_x and NO_x, or have been considered exempted activities under current law. Also, as EPA recognized in its GHG Tailoring Rule, these newly subject sources of GHG emissions would undoubtedly inundate and overwhelm state permitting authorities and likely result in significant processing delays, as well as a substantial burden on the state's permitting system in general. While the existing Part 231 provisions allow for the regulation of GHGs consistent with the federal GHG Tailoring Rule, the proposed rulemaking will clarify the new Part 231 GHG requirements for the regulated community and conform Part 231 to the federal GHG Tailoring Rule in order to reduce the anticipated burden on newly subjected sources and the State's PSD and Title V permitting programs.

9. FEDERAL STANDARDS

The proposed amendments to Part 231 are consistent with federal NSR standards.

10. COMPLIANCE SCHEDULE

The proposed amendments do not involve the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register, anticipated to be in May 2011. Current permit renewal schedules for regulated industries will continue and provisions of this regulation will be incorporated at the time of permit renewal. Permits for new facilities and permit modifications for existing facilities will continue to be addressed upon submittal of a permit application by the facility, and subsequent review of such application by the Department.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Regulatory Flexibility Analysis

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

Small businesses are those that are independently owned, located within New York State, and that employ 100 or fewer persons.

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking will apply statewide. The proposed Part 231 greenhouse gas (GHG) applicability thresholds for facilities in New York State are high enough so that it is unlikely that any small business or local

government that owns or operates a facility would be newly subject to the requirements of Part 231. The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule (75 Fed Reg 31514 [GHG Tailoring Rule]) modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. All of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to small businesses or local governments. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State and under 40 CFR 51.165, 40 CFR 52.21, and 40 CFR 70. Accordingly, these requirements are not anticipated to place any undue burden of compliance on small businesses and local governments. This proposed rulemaking is not a mandate on local governments. It applies to any entity that owns or operates a source that proposes a project with emissions greater than the applicability thresholds of this regulation.

PROFESSIONAL SERVICES:

The professional services for any small business or local government that is subject to Part 231 are not anticipated to significantly change from the type of services which are currently required to comply with NSR requirements. The need for consulting engineers to address NSR applicability and permitting requirements for any new major facility or major modification proposed by a small business or local government will continue to exist.

COMPLIANCE COSTS:

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 relating to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to one while the ratio is one to one from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only

required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tons per year (tpy) instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHGs "subject to regulation" under the Clean Air Act as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule ('See', Regulatory Impact Statement). One of the primary purposes of the proposed revisions to Part 231 regarding GHGs is to reduce the anticipated costs that would otherwise have been borne by facilities in New York when GHG emissions become regulated under federal law. This is accomplished by conforming State regulations to the federal GHG Tailoring Rule, and raising the applicability thresholds for GHGs under the federal PSD and Title V permitting programs. By tailoring the applicability thresholds for GHGs, and conforming such thresholds to those set forth in EPA's GHG Tailoring Rule, the proposed rule will ensure that only the largest sources of GHG emissions will be required to comply with new PSD and Title V permitting requirements.

It should be noted that this proposal does not provide for a six-month phase-in schedule for GHG-only sources as provided under the federal GHG Tailoring Rule. Although the proposed revisions are stricter than the federal GHG Tailoring Rule, the Department does not anticipate a need for a phase-in period. The Department anticipates that any proposed projects that exceed the GHG thresholds, in the first six months of rule applicability, will be subject to PSD permitting anyway as a result of emissions of non-GHG pollutants. Therefore, any cost burdens on newly subjected sources during the first six months, if any, are anticipated to be minimal.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA¹, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately 6 million facilities will avoid Title V permitting and over 80,000 facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal.

NSR requirements flow from the State's obligations under the CAA. Therefore, the proposed revisions to the NSR requirements of Part 231 do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates an emission source that proposes a project with emissions greater than the applicability thresholds of this regulation. No specific additional costs will be incurred by state and local governments.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on any small business or local government. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller facilities with respect to GHGs as a result of the increased permitting thresholds and it is not anticipated that many facilities will be newly subject to Title V and PSD as a result of the regulation of GHGs.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department plans on holding a stakeholder meeting in December 2010 to present the proposed changes to the public and regulated community. The Department will also hold public hearings during the

public comment period at several locations throughout the State. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed revisions do not substantially alter the requirements for subject facilities as compared to those requirements that currently exist. The revisions leave intact the major NSR requirements for application of LAER or BACT as appropriate, modeling, and emission offsets. Therefore, the Department believes there are no additional economic or technological feasibility issues to be addressed by any small business or local government that may be subject to the proposed rulemaking.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:

Rural areas are defined as rural counties in New York State that have populations less than 200,000 people, towns in non-rural counties where the population densities are less than 150 people per square mile and villages within those towns.

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking will apply statewide and all rural areas of New York State will be affected.

The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. All of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases (GHGs) will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in this rulemaking which apply exclusively to rural areas of the State. As described above, the revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State and under 40 CFR 51.165, 40 CFR 52.21, and 40 CFR 70. As such, the professional services that will be needed by any facility located in a rural area are not anticipated to significantly change from the type of services which are currently required to comply with NSR requirements.

COSTS:

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR. NSR reviews are done on a case-by-case basis so the cost of compliance is facility specific. For existing facilities already regulated under Part 231, no new permits, records, or reports will be required by the Department for continued compliance with the proposed revisions. Newly subject facilities will be required to conduct the same case-by-case analysis required in the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will

cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

The proposed amendments to Part 231 relating to PM-2.5 will result in some new requirements and costs for newly subject facilities. Additional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER. There are no new costs for emission offsets of direct emissions of PM-2.5. Any additional costs from the regulation of NO_x as a precursor will be minimal. NO_x is already subject to nonattainment review, as an ozone precursor, for the entire PM-2.5 nonattainment area in New York State and requires an offset ratio of at least 1.15 to one while the ratio is one to one from the PM-2.5 rule. In the situation where a pollutant is required to obtain offsets for multiple programs (e.g. NO_x for ozone and PM-2.5) offsets are only required for the program with the higher ratio which is ozone in all of New York's PM-2.5 nonattainment area. Additional costs for NO_x would include the application of LAER at 40 tons per year (tpy) instead of 100 tpy for facilities located in upper Orange County. Other costs include those associated with interpollutant offset trading. The current availability of PM-2.5 offsets may require facilities to use reductions of SO₂ or NO_x to offset increases in PM-2.5 emissions. The offset trading ratios developed by EPA and included in the proposed revisions to Part 231 may increase costs to facilities versus obtaining direct PM-2.5 offsets.

As a result of EPA's actions making GHGs "subject to regulation" under the Clean Air Act as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule ("See", Regulatory Impact Statement). One of the primary purposes of the proposed revisions to Part 231 regarding GHGs is to reduce the anticipated costs that would otherwise have been borne by facilities in New York when GHG emissions become regulated under federal law. This is accomplished by conforming State regulations to the federal GHG Tailoring Rule, and raising the applicability thresholds for GHGs under the federal PSD and Title V permitting programs. By tailoring the applicability thresholds for GHGs, and conforming such thresholds to those set forth in EPA's GHG Tailoring Rule, the proposed rule will ensure that only the largest sources of GHG emissions will be required to comply with new PSD and Title V permitting requirements.

It should be noted that this proposal does not provide for a six-month phase-in schedule for GHG-only sources as provided under the federal GHG Tailoring Rule. Although the proposed revisions are stricter than the federal GHG Tailoring Rule, the Department does not anticipate a need for a phase-in period. The Department anticipates that any proposed projects that exceed the GHG thresholds, in the first six months of rule applicability, will be subject to PSD permitting anyway as a result of emissions of non-GHG pollutants. Therefore, any cost burdens on newly subjected sources during the first six months, if any, are anticipated to be minimal.

As with NSR program requirements in general, the costs associated with the regulation of GHGs are project specific and are determined on a case-by-case basis. With multiple gases being regulated as GHGs, the costs will vary by facility depending on which GHGs are being emitted and which gas or gases is of concern. Based on information collected by EPA¹, the average permitting costs for an industrial facility due to the regulation of GHGs will be \$46,400 for Title V and \$84,500 for PSD. The Department believes that the cost for State sources to comply with PSD and Title V requirements under the existing applicability thresholds would be consistent with EPA estimates. However, the applicability thresholds at which GHGs will be regulated under the proposed tailoring approach is high enough so that it is not anticipated that many facilities will be newly affected by Title V or PSD program requirements. The proposed amendments to Part 231 will provide regulatory and cost relief for numerous smaller facilities which would otherwise be subject to Title V or PSD under the current thresholds. Nationwide, EPA estimates that approximately six million facilities will avoid Title V permitting and over 80,000 facilities will avoid PSD permitting using the proposed tailored thresholds. For larger facilities that will be subject to PSD and Title V permitting program requirements on or after January 2, 2011, meaning that they will have emission of GHGs in quantities greater than the tailored thresholds, any additional costs imposed on those facilities as a result of EPA's actions to regulate GHGs under the Act, if any, is anticipated to be minimal.

NSR requirements flow from the State's obligations under the CAA. Therefore, the proposed revisions to the NSR requirements of Part 231 do not constitute a mandate on state and local governments. NSR requirements apply equally to every entity that owns or operates an emission source that proposes a project with emissions greater than the applicability thresholds of this regulation. No specific additional costs will be incurred by rural areas of the State.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on rural areas. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller facilities with respect to GHGs as a result of the increased permitting thresholds. It is not anticipated that many facilities will be newly subject to Title V or PSD as a result of the regulation of GHGs.

RURAL AREA PARTICIPATION:

The Department plans on holding a stakeholder meeting in December 2010 to present the proposed changes to the public and regulated community. The Department will also hold public hearings during the public comment period at several locations throughout the State. Residents of rural areas of the State will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule, 75 Fed Reg 31514-31608

Job Impact Statement

NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking revisions will apply statewide. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State.

The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. Both of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

The revisions to Part 231 do not substantially alter the requirements for the permitting of new and modified major stationary sources which are currently in effect in New York State. The revisions leave intact the major NSR requirements for application of Lowest Achievable Emission Rate (LAER) or Best Available Control Technology (BACT) as appropriate, modeling, and emission offsets. As a result of this rulemaking, particulate matter or particles with an aerodynamic diameter less than or equal to 2.5 micrometers (PM-2.5) precursors (SO₂ and NO_x) will be regulated as nonattainment contaminants in the PM-2.5 nonattainment area, PM-2.5 significant impact levels will be added, and greenhouse gases (GHGs) will be regulated statewide under Title V and PSD. GHG permitting thresholds will be added at increased levels from the current limits resulting in only a small number of facilities newly subject to Title V and/or PSD. Many of the significant requirements are not changing: new or modified major facilities will still have to undertake applicability reviews and in appropriate cases submit permit applications and undertake control technology reviews. These revisions will also correct existing typographical errors identified after the previous Part 231 rulemaking was completed, and clarify specific sections of existing Parts 200, 201 and 231. The Department does not anticipate that any of the proposed rule revisions would adversely affect jobs or employment opportunities in the State.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

Due to the nature of the proposed amendments to Part 231, as discussed above, no measurable negative effect on the number of jobs or employment opportunities in any specific job category is anticipated. There may be some job opportunities for persons providing consulting services and/or manufacturers of pollution control technology in relation to the new requirements.

REGIONS OF ADVERSE IMPACT:

There are no regions of the State where the proposed revisions would have a disproportionate adverse impact on jobs or employment opportunities. The existing NSR requirements are not being substantially changed from those that currently exist.

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on existing jobs or promote the development of any significant new employment opportunities. The

proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors, increments, significant impact levels, significant monitoring concentration, and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller sources with respect to GHGs. The current statutory emission thresholds (mass based) for Title V applicability of 100 tons per year (tpy), and PSD applicability of 100 tpy and 250 tpy are "tailored" for GHG emissions under this rulemaking. For purposes of Title V applicability, in addition to the current mass based threshold, this rulemaking establishes a GHG carbon dioxide equivalent (CO₂e) threshold of 100,000 tpy. For purposes of PSD applicability, in addition to the current mass based thresholds, this rulemaking establishes a GHG CO₂e major facility threshold of 100,000 tpy and a CO₂e major modification threshold for existing major facilities of 75,000 tpy. As a result of the increased thresholds proposed in this rulemaking, it is not anticipated that many facilities will be newly subject to Title V and PSD program requirements as a result of EPA's actions to regulate GHGs under the Clean Air Act.

SELF-EMPLOYMENT OPPORTUNITIES:

The types of facilities affected by these regulatory changes are larger operations than what would typically be found in a self-employment situation. There may be an opportunity for self-employed consultants to advise facilities on how best to comply with the revised requirements. The proposed revisions are not expected to have any measurable negative impact on opportunities for self-employment.

Department of Health

EMERGENCY RULE MAKING

Mt. Sinai-Queens Merged Rates

I.D. No. HLT-12-11-00001-E

Filing No. 228

Filing Date: 2011-03-02

Effective Date: 2011-03-02

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

Action taken: Amendment of section 86-1.31 of Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Paragraph (b) of subdivision 35 of section 2807-c of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority, effective for periods on and after December 1, 2009, to issue emergency regulations in order to compute hospital inpatient rates as authorized in accordance with the provisions of such subdivision 35.

Subject: Mt. Sinai-Queens Merged Rates.

Purpose: No longer require that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon.

Text of emergency rule: Paragraph (1) of subdivision (b) of section 86-1.31 is amended to read as follows:

(1) The commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for hospitals subject to mergers, acquisitions or consolidations [occurring on or after the year the rate is based upon,] provided such hospitals demonstrate through submission of a written proposal that the merger, acquisition or consolidation will result in an improvement to:

- (i) cost effectiveness of service delivery;
- (ii) quality of care; and
- (iii) factors deemed appropriate by the commissioner.

Such written proposal shall be submitted to the department 60 days prior to the requested effective date of the temporary rate adjustment. The temporary rate adjustment shall consist of the various *operating* rate components of [the surviving entity] *that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the commissioner.* At the end of the specified timeframe, the hospital will be reimbursed in accordance with the statewide methodology set forth in this Subpart. *The commissioner may establish, as a condition of receiving such a temporary rate*

adjustment, benchmarks and goals to be achieved as a result of the ongoing consolidation efforts and may also require that the hospital submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

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 May 30, 2011.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-c (35)(b) of the Public Health Law (PHL) which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for general hospital inpatient services. Such inpatient rate regulations are set forth in Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, Paragraph (1) of subdivision (b) of section 1.31 will be amended to eliminate the requirement that the merger, acquisition or consolidation needs to occur on or after the year the rate is based upon. The current base year for hospital inpatient rate purposes is 2005, as required pursuant to PHL § 2807-c(35)(a). Thus, the proposed amendment will permit temporary rate adjustments in connection regard to mergers, acquisitions and/or consolidations that occurred prior to 2005, provided that the hospital is engaged in an ongoing process of consolidation and/ restructuring related to such merger, acquisition and/or consolidation. The temporary rate adjustment will also be revised to consist of the operating rate components of that portion of the facility originally associated with the surviving provider number and shall be in effect for a specified period of time as approved by the Commissioner. This regulation is necessary in order to provide needed relief to providers who meet the criteria.

The existing section 86-1.31(b) requires hospitals seeking temporary rate adjustments to submit a written proposal demonstrating how the temporary additional reimbursement will be utilized to enhance the facility's long-term efficiency and quality of care. The proposed amendments permits the Commissioner to establish benchmarks and goals concerning the facility's implementation of its proposal as a condition for receipt of the temporary rate adjustment. Such hospitals may also be required to submit such periodic reports concerning the achieving of such benchmarks and goals as the Commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the Commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, hospitals with two campuses resulting from the recent closures of hospitals in their catchment area have recognized the need for change. This change can be the elimination of underutilized services or the consolidation of others. Hospitals can identify the persistent inefficiencies and resource limitations within their system so that scarce health care dollars are not at risk. Teaching programs can be integrated to better serve patients. The combination of two or more hospitals licensed under Article 28, where such a combination is consistent with the public need, would create a new, more economical entity and may result in the potential reduction of excess beds and/or improved service delivery. The additional reimbursement provided by this adjustment will support the resulting hospital in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. Hospitals are currently required to file annual certified cost reports and submit claim forms for Medicaid reimbursement. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

The estimated net aggregate increase in gross Medicaid expenditures attributable to this proposed initiative for State fiscal year 2010/2011 is \$2.6 million, which on a full annual basis would increase to \$7.9 million.

This estimate is based on current cost projections concerning existing mergers, acquisitions and/or consolidations which may qualify for a temporary rate adjustment in accordance with the specified criteria.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

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

Paperwork:

Since meeting benchmarks and goals is required in order to receive this temporary rate adjustment, a hospital is required to submit periodic reports, as determined by the Commissioner, concerning the achievement of such benchmarks and goals.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. Any potential hospital projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not go forward or would have to be attempted with existing facility resources.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for hospitals subject to mergers, acquisitions or consolidations for inpatient payment rates for rate periods on and after December 2, 2010.

Regulatory Flexibility Analysis

Effect of Rule:

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

No health care providers subject to this regulation will see a decrease in average per discharge Medicaid funding as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Hospitals that receive the temporary rate adjustment under this regulation will be required to submit periodic reports demonstrating their progress against benchmarks and goals established by the Commissioner.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State plan amendment. The Notice further invited the public to review and comment on the related proposed State plan amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted which demonstrate the achievement of benchmarks and goals set by the Commissioner.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

Rural Area Participation:

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

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation eliminates the requirement that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon in such cases where a hospital receives a temporary adjustment to rates as a result of a merger, acquisition or consolidation. The proposed regulation has no implications for job opportunities.

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

Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-12-11-00003-P

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

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

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

Subject: Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

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

86-8.1 - Scope

The proposed amendments to section 86-8.1 of Title 10 (Health) NYCRR add a new subdivision (a) paragraph (6) to establish new rates of payment for ambulatory care services for hospital-based alcoholism and drug abuse outpatient rehabilitation.

86-8.7 - APGs and relative weights

The proposed revision to section 86-8.7 of Title 10 (Health) NYCRR repeals all of section 86-8.7 effective January 1, 2011 and replaces it with a new section 86-8.7 that includes revised APG weights and procedure-based weights, and adds fee schedule payments for specific procedure codes based on predetermined fees and unit limits.

86-8.10 Exclusions from payment

The proposed revision to section 86-8.10 of Title 10 (Health) NYCRR amends subdivision (h) to remove APG 442 Class VII Combined Chemotherapy & Pharmacotherapy, APG 450 Observation, 492 Direct Admission for observation indicator, APG 500 Direct Admission for observation-obstetrical, and APG 501 Direct admission for observation-other diagnoses from the never pay APG list and adds APG 443 Class VII Chemotherapy Drugs to the never pay APG list. The proposed revision to section 86-8.10 of Title 10 (Health) NYCRR also amends subdivision (i) to remove APG 118 Nutrition therapy and adds APG 444 Class VII pharmacotherapy, 460 Class VIII combined chemotherapy and pharmacotherapy, 461 Class IX combined chemotherapy and pharmacotherapy, 462 Class X combined chemotherapy and pharmacotherapy, 463 Class XI combined chemotherapy and pharmacotherapy, and 464 Class XII combined chemotherapy and pharmacotherapy to the if stand alone do not pay list.

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

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

This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. It also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treatment Centers). By linking payments to the specific array of services

rendered, APGs will make Medicaid reimbursement more transparent. APGs provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

These amendments include updated APG and/or procedure-based weights which will provide greater procedure level reimbursement precision and specificity, in addition to establishing an APG fee schedule for specific procedure codes. A deleted APG and three observation APGs were removed from the Never Pay APG list and a new chemotherapy drug APG was added to the Never pay list; the nutrition therapy APG was removed from the If Stand Alone Do not Pay list and new drug APGs (e.g., APG 444 Class VII pharmacotherapy, 460 Class VIII combined chemotherapy and pharmacotherapy, 461 Class IX combined chemotherapy and pharmacotherapy, 462 Class X combined chemotherapy and pharmacotherapy, 463 Class XI combined chemotherapy and pharmacotherapy, and 464 Class XII combined chemotherapy and pharmacotherapy) were added to the If Stand Alone do Not Pay list.

COSTS

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

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

Costs to Local Governments:

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

Costs to State Governments:

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

Costs to the Department of Health:

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

Local Government Mandates:

There are no local government mandates.

Paperwork:

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

Duplication:

This regulation does not duplicate other state or Federal regulations.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon publication of the Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

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

Compliance Requirements:

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

Professional Services:

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

Economic and Technological Feasibility:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in

section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of the proposal by the Department's issuance in the State Register of federal public notices on December 29, 2010.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

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

Opportunity for Rural Area Participation:

Rural areas were given notice of the proposal by the Department's issuance in the State Register of Federal public notices on December 29, 2010.

Job Impact Statement

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

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION

Certification of Rehabilitation Work for Compliance with Historic Preservation Standards to Obtain Tax Credits

I.D. No. PKR-01-11-00009-A

Filing No. 233

Filing Date: 2011-03-04

Effective Date: 2011-03-23

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

Action taken: Addition of Part 425 to Title 9 of NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8), 13.15(6) and 14.01(2)

Subject: Certification of rehabilitation work for compliance with historic preservation standards to obtain tax credits.

Purpose: To establish fees for processing, reviewing, approving and certifying historic rehabilitation work for tax credits.

Text or summary was published in the January 5, 2011 issue of the Register, I.D. No. PKR-01-11-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, OPRHP, ESP, Agency Building 1, Albany, NY 12238, (518) 486-2921, email: rulemaking@oprhp.state.ny.us

Assessment of Public Comment

Cannon Heyman & Weiss, LLP (CHW) and Port City Preservation submitted comments to the Office of Parks, Recreation and Historic Preservation (Office) that support the Office's proposed new fee schedule for certifying rehabilitation of historic properties (9 NYCRR Part 425). CHW stated the Office's "approach makes sense and the amounts appear to be fair and reasonable. . ."

Port City Preservation, however, objected to the fee exemption for the owner of a historic home with an adjusted gross income (AGI) of \$60,000 or less, and asked how and when the Office will determine the homeowner's AGI, and what documents will be required for proof of AGI to avoid fraud.

To qualify for the fee exemption homeowners will be required to self-certify on Part 1 of the application that their AGI will be \$60,000 or less in the year they intend to claim the credit. If the Office suspects fraud it will work with the NYS Department of Taxation & Finance to ensure compliance with the fee requirement.

To qualify for the credit, the rehabilitation expense for a historic home in these targeted lower income neighborhoods must be a minimum of \$5,000 or more. And, the tax credit is 20% of that rehabilitation expense. For a taxpayer with an AGI of \$60,000 or less, if the credit exceeds the tax due then any excess of \$50,000 will be treated by Tax & Finance as overpayment of tax and credited or refunded. Given the high minimum amount (\$5,000) established for the rehabilitation expense, the Office does not anticipate receiving many applications from homeowners with AGIs of \$60,000 or less, and has made a policy determination that it is reasonable to use that AGI threshold as the cutoff point for waiving the fee.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation of a Gas Pipeline

I.D. No. PSC-25-10-00014-A

Filing Date: 2011-03-04

Effective Date: 2011-03-04

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

Action taken: On 2/17/11, the PSC adopted an order approving the petition of Inergy Pipeline East, LLC for lightened regulation of a gas pipeline it intends to purchase from New York State Electric & Gas Corporation.

Statutory authority: Public Service Law, sections 2(10), (11), 5(1)(b), 64, 65, 66, (13), 67, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Lightened regulation of a gas pipeline.

Purpose: To approve lightened regulation of a gas pipeline.

Substance of final rule: The Commission, on February 17, 2011, adopted an order approving the petition of Inergy Pipeline East, LLC for lightened regulation of a gas pipeline it intends to purchase from New York State Electric & Gas Corporation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-G-0146SA1)

NOTICE OF ADOPTION

Approval of the Transfer of Ownership of the Seneca Lake Gas Storage Facility and Related Equipment

I.D. No. PSC-25-10-00016-A

Filing Date: 2011-03-04

Effective Date: 2011-03-04

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

Action taken: On 2/17/11, the PSC adopted an order approving the transfer of the Seneca Lake Gas Storage Facility, West Lateral and East Pipeline facilities from New York State Electric & Gas Corporation to the Inergy Midstream LLC.

Statutory authority: Public Service Law, section 70

Subject: Approval of the transfer of ownership of the Seneca Lake Gas Storage Facility and related equipment.

Purpose: To approve the transfer of ownership of the Seneca Lake Gas Storage Facility and related equipment.

Substance of final rule: The Commission, on February 17, 2011, adopted an order approving the transfer of the Seneca Lake Gas Storage Facility, West Lateral and East Pipeline facilities, related gas pipelines and appurtenant equipment from New York State Electric & Gas Corporation to the Inergy Midstream LLC., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-M-0143SA1)

NOTICE OF ADOPTION

Water Rates, Charges, Rules and Regulations

I.D. No. PSC-32-10-00013-A

Filing Date: 2011-03-02

Effective Date: 2011-03-02

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

Action taken: On 2/17/11, the PSC adopted an order denying the complaint of Greentree Vacation Homes Homeowners Association as the actions of Greentree Water Company, Inc. comply with applicable Commission regulations and tariff provisions.

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

Subject: Water rates, charges, rules and regulations.

Purpose: To deny the complaint of Greentree Vacation Homes Homeowners Association.

Substance of final rule: The Commission, on February 17, 2011 adopted an order denying the complaint of Greentree Vacation Homes Homeowners Association, as the actions of Greentree Water Company, Inc. comply with applicable Commission regulations and tariff provisions.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (10-W-0346SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposal to Require Con Edison to Include in Its Gas Tariff Information About Categories of Interruptible Base Rates

I.D. No. PSC-12-11-00005-P

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

Proposed Action: The Commission is considering whether to require Con Edison Company of New York, Inc. (Con Edison) to amend its gas tariff for interruptible customers to include the applicable categories of base rates and the eligibility requirements for them.

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

Subject: Proposal to require Con Edison to include in its gas tariff information about categories of interruptible base rates.

Purpose: To ensure that categories of interruptible base rates are defined in the tariff.

Substance of proposed rule: The Commission is considering requiring Consolidated Edison Company of New York, Inc. to amend the provisions of its gas interruptible Service Classification No. 12 (and as needed Service Classification No. 9) regarding interruptible Rate 1 customers, to:

(1) identify in the tariff each current category of interruptible base rates and the criteria (or eligibility requirements) for placing customers in each category;

(2) eliminate provisions permitting the utility, in its sole discretion, to define or alter categories of interruptible base rates and/or eligibility requirements for such categories, solely in statements of the base rates; and

(3) make any other changes needed to effectuate the preceding requirements.

The Commission may adopt, reject, or modify, in whole or in part, the amended provisions.

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-0054SP1)

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

New York State Electric & Gas Corporation's Procedures, Terms and Conditions for an Economic Development Plan

I.D. No. PSC-12-11-00006-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 from Binghamton University for a waiver or modification to the eligibility criteria for Economic Development programs implemented by New York State Electric & Gas Corporation.

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

Subject: New York State Electric & Gas Corporation's procedures, terms and conditions for an economic development plan.

Purpose: Consideration of New York State Electric & Gas Corporation's procedures, terms and conditions for an economic development plan.

Substance of proposed rule: The Commission is considering a filing dated February 8, 2011 from Binghamton University requesting modification of the eligibility requirements for participation in the New York State Electric & Gas Corporation's economic development program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillinger, 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-M-0060SP1)

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

Transfer of Water Supply Assets

I.D. No. PSC-12-11-00007-P

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

Proposed Action: The Commission is considering a joint petition filed on February 22, 2011 by National Aqueous Corporation and White Knight Management requesting approval to transfer the water supply assets of National Aqueous Corporation to White Knight Management.

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

Subject: Transfer of water supply assets.

Purpose: To transfer the water plant assets of National Aqueous Corporation to White Knight Management.

Substance of proposed rule: On February 22, 2011, National Aqueous Corporation and White Knight Management filed a joint petition requesting approval to transfer the water supply assets of National Aqueous Corporation to White Knight Management. National Aqueous currently provides unmetered water service to approximately 63 customers, located in the Melody Lakes Estates Development in the Town of Thompson, Sullivan County. The Commission may approve or reject, in whole or in part, or modify the petition.

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

New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillinger, 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-W-0081SP1)

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

Allow NYWC to Defer and Amortize, for Future Rate Recognition, Pension Settlement Payout Losses Incurred in 2010

I.D. No. PSC-12-11-00008-P

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

Proposed Action: The Commission is considering a petition filed by New York Water Service Corporation (NYWC) requesting deferral accounting and amortization of pension settlement losses.

Statutory authority: Public Service Law, section 89-c(1)

Subject: Allow NYWC to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2010.

Purpose: Consideration of NYWC's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2010.

Substance of proposed rule: The Commission is considering a filing by New York Water Service Corporation to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2010. The Commission may adopt, reject, or modify, in whole or in part, the proposal.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillinger, 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-W-0070SP1)

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

Water Rates and Charges

I.D. No. PSC-12-11-00009-P

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

Proposed Action: The Public Service Commission is considering a request from Devon Farm Water Works, Inc. to increase its annual revenue by about \$31,000 or 80.9% and implement a surcharge of \$46.06 per customer per quarter to become effective June 1, 2011.

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

Subject: Water rates and charges.

Purpose: For approval to increase Devon Farm Water Works, Inc. annual revenue by \$31,000 or about 80.9%, and establish a surcharge.

Substance of proposed rule: On March 02, 2011, Devon Water Works

Inc. (Devon or the Company) filed tariff amendments (Rate Leaf No.12 revision 1) and Surcharge Statement No.1 to its tariff PSC No. 2- Water to become effective June 1, 2011. The company requests to be allowed to increase the quarterly service charge from \$120 to \$245, and increase the usage charge from \$3.90 per 1,000 gallons to \$5.15 per 1,000 gallons. If approved the annual base revenues would increase by approximately \$31,000 or 80.9%. The company also filed a quarterly customer surcharge statement that reflects the amount of \$49.06; the surcharge will be used to repay a loan for capital improvements over a period of five years.

Devon provides metered water service to 55 residential customers located in a real estate development in the town of East Fishkill, Dutchess County. No fire service is provided.

The company's tariff and the pending rate increase request will be available online on the Commission's web site on the World Wide Web (www.dps.state.ny.us) located under Commission (Documents-Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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, NY 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-W-0086SP1)

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

Water Rates and Charges

I.D. No. PSC-12-11-00010-P

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

Proposed Action: The Public Service Commission is considering Hopewell Service Corporation's March 2, 2011 filing requesting approval to increase its annual revenues by \$10,500 or 24% and implement a surcharge to repay a loan for system improvements.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by \$10,500 or 24% and implement a surcharge to repay the loan.

Substance of proposed rule: On March 2, 2011, Hopewell Service Corporation (Hopewell or the company) filed Leaf No. 12 Revision 1 and Surcharge Statement No. 1 as amendments to its Electronic Tariff, P.S.C No. 2- Water to become effective on June 1, 2011. The company's filing proposes to increase its current annual revenue by \$10,500 or 24%. Hopewell's filing also includes a request to implement a quarterly customer surcharge of \$31.68 per customer to repay a loan for system improvements. The company's current rate has been in effect since February 10, 1994. The company provides flat-rate water service to 139 residential customers located in a real estate development known as Worley Homes in Hopewell Junction, Town of East Fishkill, Dutchess County.

Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Access to Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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, NY 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-W-0087SP1)