

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

EMERGENCY RULE MAKING

Provision of the Health Benefit Plan for Active and Retired New York State Employees

I.D. No. CVS-41-11-00007-E

Filing No. 854

Filing Date: 2011-09-27

Effective Date: 2011-09-27

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

Action taken: Amendment of sections 73.3(b) and 73.12 of Title 4 NYCRR.

Statutory authority: Civil Service Law, sections 160(1), 161-a and 167(8)

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

Specific reasons underlying the finding of necessity: These amendments are adopted as an emergency measure because time is of the essence. The amendment conforms Sections 73.3(b) and 73.12 of Title 4 NYCRR with Chapter 491 of the Laws of 2011, which implements the terms of a collective bargaining agreement covering members of the Administrative Services Unit, the Institutional Services Unit, and Operational Services Unit, and the Division of Military and Naval Affairs Unit represented by the Civil Service Employees Association (CSEA). The Chapter also establishes terms and conditions of employment for employees designated as Management / Confidential (M/C) and other unrepresented employees. The Chapter provides that modified state cost of premium or subscription charges for health insurance coverage may be extended to M/C and other unrepresented employees and retirees. The Chapter also provides M/C and

other unrepresented employees with compensation increases, payments, and benefits comparable to negotiated increases and benefits for represented employees. This emergency rule ensures that upon approval by the Director of the Budget, the President implements these essential benefits and provisions in a timely fashion for M/C and other unrepresented employees and retirees in the manner required by Chapter and in accordance with the State's obligations. Accordingly, these amendments must be adopted as emergency rules in accordance with Section 202(6) of the State Administrative Procedure Act.

Subject: Provision of the health benefit plan for active and retired New York State employees.

Purpose: To conform 4 NYCRR 73.12 with Chapter 491 of the Laws of 2011.

Text of emergency rule: RESOLVED, That the first paragraph of subdivision (b) of section 73.3 of Title 4 NYCRR is hereby amended to read as follows:

73.3(b) Rate of contribution

The rate of contribution of New York State on account of the coverage of its employees, post retirees and their dependents shall be 100 percent of the charge on account of individual coverage and 75 percent of the charge on account of dependent coverage, except that for the [optional benefit plans] *Health Maintenance Organization options* the State's contribution shall not exceed the same dollar amount as is paid by the State under the basic benefit plan. *Effective October 1, 2011, for those employees employed in a title allocated or equated to salary grade 9 or below, the State's rate of contribution for such employees and their dependents enrolled in the Empire Plan or a Health Maintenance Organization shall be 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage; provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. For employees employed in a title allocated or equated to salary grade 10 or above, the State's rate of contribution for such employees and their dependents enrolled in the Empire Plan or a Health Maintenance Organization shall be 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. Effective October 1, 2011, the rate of contribution on account of the coverage of post retirees shall be as follows:*

(i) *for retirees who retired on or after January 1, 1983, and employees retiring prior to January 1, 2012, New York State shall contribute 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan;*

(ii) *for employees retiring on or after January 1, 2012, from a title allocated or equated to salary grade 9 or below, New York State shall contribute 88 percent of the charge on account of individual coverage and 73 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan;*

(iii) *for employees retiring on or after January 1, 2012, from a title allocated or equated to salary grade 10 or above, New York State shall contribute 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse*

coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan.

The rate of contribution of a participating employer on account of the coverage of its employees, post retirees and their dependents shall be not less than 50 percent of the charge on account of individual coverage and 35 percent of the charge on account of dependent coverage. A participating employer may elect to pay higher rates of contribution for the coverage of its employees, retired employees and their dependents; provided, however, that if a participating employer so elects to pay a higher or lower rate of contribution for its retired employees or their dependents, or both, than that paid by the State for its retired employees or their dependents, or both, amounts withheld from the retirement allowances of its retired employees for their share of premium or subscription charges, if any, shall, if the president so requires, be paid to such participating employer which shall pay into the health insurance fund the full cost of premium or subscription charges for the coverage of such retired employees and their dependents; and provided that notice of such election shall be furnished to the Department of Civil Service not less than 60 days prior to the date on which it is proposed to make such higher rate of contribution effective. The contributions payable by a prior retiree shall be equal to the contributions payable by active employees and post retirees having similar coverages; the employer's contributions shall be the difference between the contributions of the prior retiree and the total charges on account of coverage for such prior retiree. Notwithstanding the foregoing provisions:

FURTHER, Section 73.12 of Title 4 NYCRR is hereby amended to read as follows:

The provisions of this Chapter, insofar as they apply to employees in the negotiating units established pursuant to article 14 of the Civil Service Law and their dependents, shall be continued; provided, however, that during periods of time when there is in effect an agreement between the State and an employee organization reached pursuant to the provision of said article 14, the provisions of such agreement and the provisions of this Chapter shall both be applicable. In the event the provisions of the agreement are different from the provisions of this Chapter, the provisions of the agreement shall be controlling. The president may, upon [certification] approval by the Director of [Employee Relations] the Budget, provide for the [supplementation of benefits] extension of the negotiated provisions of such agreement, in whole or in part, [provided hereinabove for] to officers and employees not in a negotiating unit within the meaning of article 14 of the Civil Service Law and may extend provisions regarding the modified state cost of premium or subscription charges to such employees or retirees.

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 December 25, 2011.

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

Regulatory Impact Statement

1. Statutory authority: Section 160 (1) of the Civil Service Law authorizes the President of the State Civil Service Commission to establish regulations concerning the eligibility of active and retired employees to participate in the health benefit plan authorized by Article XI of the Civil Service Law. Section 161-a of the Civil Service Law authorizes the President of the State Civil Service Commission to implement those provisions of a collective bargaining agreement between the state and an employee organization which provide for health benefits in a manner consistent with the terms thereof, and to extend such benefits in whole or in part to employees not subject to the provisions of such agreement. Section 167(8) of the Civil Service Law provides that notwithstanding any inconsistent provision of law, where and to the extent that a collective bargaining agreement between the State and an employee organization provides that the cost of premium or subscription charges for eligible employees covered by such agreement may be modified pursuant to the terms of such agreement, the President of the State Civil Service Commission, upon approval of the Director of the Budget, may extend the modified State cost of premiums or subscription charges for employees not subject to a collective bargaining agreement and retirees and shall promulgate the necessary rules or regulations to implement this provision.

2. Legislative objectives: The President of the State Civil Service Commission has been granted broad authority to prescribe regulations concerning the administration of the health benefit plan authorized by Article XI of the Civil Service Law. Consistent with such authority, the President is amending the Rules and Regulations of the Department of Civil Service with respect to the extension of health plan benefits provided to active and retired employees not subject to collective bargaining.

3. Needs and benefits: Chapter 491 of the Laws of 2011 implements the

terms of a collective bargaining agreement covering members of the Administrative Services Unit, the Institutional Services Unit, and Operational Services Unit, and the Division of Military and Naval Affairs Unit represented by the Civil Service Employees Association (CSEA). The Chapter also establishes terms and conditions of employment for employees designated as Management/ Confidential (M/C) and other unrepresented employees. The Chapter provides that modified state cost of premium or subscription charges for health insurance coverage may be extended to M/C and other unrepresented employees and retirees. The Chapter also provides M/C and other unrepresented employees with compensation increases, payments, and benefits comparable to negotiated increases and benefits for represented employees. This emergency rule ensures that the President implements these essential benefits and provisions in a timely fashion for M/C and other unrepresented employees and retirees in the manner required by the Chapter and in accordance with the State's obligations.

4. Costs:

a. Cost to regulated parties for the implementation of and continuing compliance with the rule: This rule conforms the Regulations of the Department of Civil Service with Chapter 491 of the Laws of 2011 and relevant provisions of such law will be implemented through ministerial acts performed by the New York State Department of Civil Service as administrator of the New York State Health Insurance Program. There are no specific costs associated with implementation of and continuing compliance with this rule.

b. Costs to the agency, the State and local governments for the implementation and continuation of the rule: This rule conforms the Regulations of the Department of Civil Service with Chapter 491 of the Laws of 2011 and will be implemented through ministerial acts performed by the New York State Department of Civil Service as administrator of the New York State Health Insurance Program. There are no specific costs to New York State associated with implementation and continuation of this rule and, as the proposal applies only to certain State employees and retirees, it will not impose any costs upon local governments.

c. The information, including the source(s) of such information, and methodology upon which the cost analysis is based: Preliminary estimates regarding administrative costs associated with providing the subject benefits to M/C and other unrepresented employees and retirees have been evaluated by the Department of Civil Service.

5. Local government mandates: The proposal applies only to certain State Classified Service employees and retirees and will not impose any mandates upon local governments.

6. Paperwork: The proposal will not require any new or additional application or reporting forms.

7. Duplication: The proposal does not duplicate or conflict with any State or federal requirements.

8. Alternatives: This rule reflects the only appropriate method of implementing the provisions of Chapter 491 of the Laws of 2011 with respect to providing M/C and other unrepresented employees and retirees with the health plan benefits in the manner required by the Chapter timely and in accordance with the State's obligations.

9. Federal standards: This proposal does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Compliance will commence automatically upon the effective date of this proposal.

Regulatory Flexibility Analysis

Since this emergency rule serves only to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, it has no economic impact and places no reporting, recordkeeping or other compliance requirements upon small businesses, as defined by Section 102(8) of the State Administrative Procedure Act, or any local government. Therefore, a Regulatory Flexibility Analysis (RFA) is not required by Section 202-b of such Act.

Rural Area Flexibility Analysis

Since this emergency rule serves only to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, without regard to the geographic distribution of personal residences or work locations of such employees and retirees, this emergency rule will not impose any adverse economic impact or create reporting, recordkeeping or other compliance requirements for public and private entities in rural areas, as defined in Section 102(10) of State Administrative Procedure Act. Therefore, a Rural Area Flexibility Analysis (RAFA) is not required by Section 202-bb of such Act.

Job Impact Statement

By modifying Title 4 NYCRR to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, this emergency rule will positively impact jobs or employment opportunities for covered employees, as set forth in Section 201-a(2)(a) of the State

Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by Section 201-a of such Act.

Department of Economic Development

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Excelsior Jobs Program

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

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

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

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

Subject: Excelsior Jobs program.

Purpose: To create the process by which businesses may apply for and receive the tax credits provided by the Excelsior Jobs Program.

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

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

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

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

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

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and

development in this state. Per recent statutory changes to the Program, when determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

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

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

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

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

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research

and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

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

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

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

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

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

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

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

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

Revised rule compared with proposed rule: Substantial revisions were made in sections 191.1(b)(4), (d), 191.3(a)(11), 193.1(b)-(e), 190.2(t), (v), 191.2(h), 192.1(c), (e), 193.2(b) and 193.3.

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

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior

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

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

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

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

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

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

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

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

Changes made to the last published rulemaking do not require an updated regulatory flexibility analysis, rural area flexibility analysis and job impact statement.

Assessment of Public Comment

The Department of Economic Development (“DED”) received three letters commenting on the proposed regulations.

Below is a summary of the comments received along with DED’s response.

1. Investment zones

Comments:

The Excelsior real property tax credit favors 48 areas of the State designated as “investment zones” as compared to 37 areas designated as “development zones” and that if a project qualifies for participation in the Program it should qualify for all credits without prejudice.

Investment zones should be delineated based on boundaries designated under General Municipal Law § 958(a)(i) and (d) and not based on an area that “.... was wholly contained within up to four distinct and separate contiguous areas as those areas existed on June 29, 2010.” Contiguous areas that are not within the boundaries as designated under section 958(a)(i) and (d) do not need enhanced financial support and would lead to waste, inefficiency and the flouting of the clear purpose of section 958.

Response:

The “investment zones” are defined in the Excelsior Jobs Program Act and cannot be eliminated or changed via the proposed regulation. It should be noted that a business admitted into the Excelsior Jobs Program can be located anywhere in NYS and receive three of the four tax credit components. If a business also meets the criteria as a regionally significant project, it can receive the additional excelsior real property tax credit component that a business located in an “investment zone” can receive.

Investment zones are those areas designated pursuant to General Municipal Law Section 958(a)(i) and (d), which defines them as economically distressed areas, and section 957(d), which requires the zone be contained within up to four distinct and separate contiguous areas. The proposed regulation simply clarifies that, for purposes of the Excelsior Jobs Program, the “investment zones” are those areas that existed on June 29, 2010, the day before the Empire Zones Program expired. In other words, a snapshot of the former “investment zones” is taken and businesses located in those economically distressed areas and admitted into the Excelsior Jobs Program are eligible for the excelsior real property tax credit component.

2. Accountability

Comments:

A public hearing should be held before the Commissioner makes a finding of “extraordinary economic circumstances” allowing a business to receive tax credits without meeting its job or investment obligations. The hearing should be accompanied by a publicly

disclosed report and if a finding of extraordinary circumstances occurs, the finding should be submitted to the Comptroller for comment.

Response: The proposed regulation will be revised to indicate that the justification for the Commissioner’s finding will be in writing to the company. The justification would therefore be subject to public disclosure.

3. Eligibility criteria

Comments:

Include job quality language into the eligibility criteria, e.g. require a business to pay prevailing wages.

Remove from eligibility as a strategic industry “an industry with significant potential for private sector economic growth and development in the state” because it is undefined and would cause the program to lose its targeted sector based approach.

All businesses should have to meet a benefit-cost ratio of at least 10:1.

Response:

There is no prevailing wage requirement in the Excelsior Jobs Program Act. However, the formula in the statute for determining the excelsior jobs tax credit component is based on the value of wages, up to a maximum of \$5,000 per job. Higher wage jobs qualify for a higher per job credit.

An “industry with significant potential for private sector growth” is an eligible industry per the statute and cannot be removed by regulation from the list of eligible industries. However, the proposed regulation would further define the eligibility criteria to require that any business deemed eligible under this broad definition create at least 300 net new jobs and make capital investments of at least \$30 million.

The statute only requires a 10:1 benefit-cost standard be met with respect to projects that cannot meet the minimum job creation requirements but may involve significant job retention AND capital investment. The estimated return on investment that a project will provide to the State is one of several evaluation criteria [§ 191.3(7)] included in the proposed regulation.

4. Reporting

Comments:

The components of the performance report should be spelled out in the regulation to ensure standard and consistent reporting. It is recommended that the NYC Local law 48 reporting requirements be mirrored. The quarterly report by the Commissioner of Economic Development should also include participant information and the Commissioner should verify all self reported data.

Response:

The proposed regulation specifies that a participant submit a performance report demonstrating that it continues to satisfy the eligibility requirements. Such requirements are already defined in the statute and the proposed regulation. Further, the law and the proposed regulation require that an applicant agree to allow the Tax and Labor Department to share information with the Department of Economic Development and allow the Department of Economic Development access to its records to monitor compliance. The precise content of the performance report, the quarterly report and auditing procedures are best addressed administratively to provide sufficient flexibility to revise the report and procedures as needed.

5. Evaluation standards

Comments:

The evaluation standards should mandate that the Commissioner take into account whether: the application supports Smart Growth principles, the jobs created are quality jobs, the standards in the new national health care law are met, and the positions are full or part time.

Section 191.3(a)(10) of the proposed regulation should be deleted because it suggests that businesses should be able to hold taxpayers hostage by threatening to leave the State.

Response:

Evaluation standards in the proposed regulation cannot be mandated because the statute did not mandate them. There are mandated eligibility criteria in the statute and these standards were designed within the

broad authority provided to the Commissioner for promulgating regulations to further guide decision-making and complement the mandated eligibility criteria.

Section 191.3(a)(10) addresses whether incentives are needed to encourage a business to locate or expand in the State. Businesses are often looking at multiple sites in several competing states to locate expansion projects. In these instances, the incentives of the Excelsior Jobs Program can make NYS more competitive in site selection and is an important consideration when evaluating applicants.

6. Calculation of the tax credits

Comments:

The Excelsior Jobs Program tax credits should be revised to shift emphasis towards the creation of jobs that pay at or above the prevailing wage for that industry and towards jobs that are full time and include health benefits.

Managerial and non-managerial wage rates in reporting and in calculating the tax credits should be separated in order to get a more accurate assessment of jobs created and a more nuanced calculation of the tax credits.

Response:

The calculation of the Excelsior Jobs Program tax credits are determined in statute and cannot be changed through regulation. There is no prevailing wage requirement in the Excelsior Jobs Program Act, nor is there a requirement to provide health insurance benefits. However, the formula in the statute for determining the excelsior jobs tax credit component is based on the value of wages, including fringe benefits, up to a maximum of \$5,000 per job. Higher wage jobs providing health benefits qualify for a higher per job credit.

Section 191.2(b) of the proposed regulation indicates that evidence of job creation would include a business's NYS-45-MN Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns filed with the Department of Labor (DOL). These official reports already require a business to provide a breakdown of wages for each employee on its payroll and provide sufficient information to assess the type and wage rate for each new job created.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regents Diploma with Advanced Designation

I.D. No. EDU-41-11-00006-P

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

Proposed Action: Amendment of section 100.5(b)(7)(v) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204

Subject: Regents diploma with advanced designation.

Purpose: To revise the mathematics requirements for earning a Regents diploma with advanced designation.

Text of proposed rule: Subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective January 4, 2012, as follows:

(v) Earning a Regents diploma with advanced designation. To earn a Regents diploma with an advanced designation a student must complete, in addition to the requirements for a Regents diploma:

(a) additional Regents examinations in mathematics as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part.

[Students entering grade nine prior to September 2009 must pass two of the three commencement level Regents examinations in mathematics through one of the following combinations: Mathematics A and Mathematics B, or Mathematics A and Algebra 2 and Trigonometry. Students enter-

ing grade nine in September 2009 and thereafter] *Beginning with the 2011-12 school year and thereafter*, students must pass [all] *two or three* commencement level Regents examinations in mathematics [titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2 and Trigonometry] through one of the following combinations:

(i) *Two examination combination. A student must pass:*

- (a) *Mathematics A and Mathematics B, or*
- (b) *Mathematics A and Algebra 2/Trigonometry, or*
- (c) *Mathematics B and Integrated Algebra; or*

(ii) *Three examination combination. A student must pass:*

(a) *Mathematics A, Geometry and Algebra 2/Trigonometry,*

or

(b) *Integrated Algebra, Geometry and Mathematics B, or*

(c) *Integrated Algebra, Geometry and Algebra 2/Trigonometry*

(b) . . .

(c) . . .

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Kenneth Slentz, Deputy Comm. P-12 Education, State Education Department, Office of P-12 Education, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

NEEDS AND BENEFITS:

The proposed amendments to the regulations will provide for additional options for students to meet the Mathematics assessment requirements leading to a Regents Diploma with Advanced Designation. Commissioner's Regulation section 100.5(b)(7)(v)(a) currently provides that beginning with the cohort entering grade 9 in 2009, all students seeking a Regents Diploma with Advanced Designation had to pass a three exam

sequence in mathematics, as this was all that would be available to them. The sequence of exams available to students entering grade 9 in 2009 were the following:

- Mathematics A, Geometry, and Algebra 2/Trigonometry.
- Integrated Algebra, Geometry, and Algebra 2/Trigonometry.

Absent from these sequences in the regulatory language are the following two or three exam sequences that would also meet the mathematics requirements for the Advanced Designation Regents Diploma:

- Mathematics A, Mathematics B.
- Integrated Algebra and Mathematics B.
- Mathematics A, Algebra 2/Trigonometry.
- Integrated Algebra, Geometry and Mathematics B.

It has come to the attention of the Department that there are some students who have completed or wish to complete one of the sequences listed above in order to meet the requirements for an Advanced Regents. While Math A and Math B are no longer available, there are still students in the P-12 system that may have completed one or both of these exams in the past. In order to give students a continued opportunity to meet the Advanced Regents requirements and honor the work they have completed in the past, the above sequences would have to be made available to all students regardless of cohort assignment.

COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None
- (c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: This proposed amendment will require no additional costs to the State Education Department as regulating agency.

The proposed amendment will not impose any costs to the State, local government, private regulated parties or the State Education Department. The proposed amendment merely establishes additional exam sequences in Mathematics to ensure that any student (regardless of cohort) who completes an approved combination of Mathematics Regents Examinations will meet the Mathematics assessment requirements for a Regents Diploma with Advanced Designation.

LOCAL GOVERNMENT MANDATES:

The proposed amendment imposes no additional program, service, duty or responsibility upon local governments, but will ensure that all students have continued opportunities to earn a Regents Diploma with Advanced Designation.

PAPERWORK:

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

DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is in response to comments from various school districts across the State requesting that the list of acceptable exam sequences be expanded to account for students who transfer between districts, and/or completed the exams out of sequence.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

1. EFFECT OF AMMENDED RULE:

The proposed amendment applies to each school district within the State. The amended rule also applies to the approximately 10 registered (or registration pending) nonpublic high schools or junior-senior high schools in the State that are small businesses. In addition, there are presently 39 charter schools offering instruction in any or all of the grades 9-12.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any compliance requirements on small businesses or local governments but merely establishes additional exam sequences in Mathematics that will meet the Mathematics assessment requirements for a Regents Diploma with Advanced Designation. The proposed rule does not impose any specific recordkeeping, reporting or other paperwork requirements. School districts awarding Regents Diplomas with Advanced Designation will be given additional options for students to meet the Mathematics assessment requirements leading to that diploma

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts or registered nonpublic schools.

4. COMPLIANCE COSTS:

There are no costs associated with the proposed amendment. The

proposed amendment merely establishes additional exam sequences in Mathematics to ensure that any student (regardless of cohort) who completes an approved combination of Mathematics Regents Examinations will meet the Mathematics assessment requirements for a Regents Diploma with Advanced Designation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts or registered nonpublic schools. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents, and does not impose any additional compliance requirements or costs. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts. The proposed amendment provides additional flexibility to school districts and registered nonpublic schools to award Regents Diplomas with Advanced Designation to students who complete an expanded list of mathematics exams. The proposed amendment will have no adverse affect and will provide additional opportunities and flexibility for students to fulfill existing requirements.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The proposed amendment is in response to comments from various school districts across the State requesting that the list of acceptable exam sequences be expanded to account for students who transfer between districts, and/or completed the exams out of sequence.

The Board of Regents and the State Education Department received various inquiries from district administrators including the rural educational community. All expressed concerns that students within their districts had limited or no opportunity to obtain a Regents Diploma with advanced Designation because the series of exams they had available to them was not listed in the regulatory language due to their cohort assignment. The impacted students either failed the last examination administered, transferred to a district that transitioned to the new series earlier and/or completed the exam sequence out of order. Because the original language in the regulation listed specific exam sequences applicable to each grade 9 cohort, students who completed exam sequences not included in the language would be denied the opportunity to fulfill the Regents Diploma with Advanced Designation requirements. The new regulatory language allows additional sequences of examinations to meet the requirement, and addresses the needs of the small numbers of students who completed one of these sequences.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to nonpublic high schools or junior-senior high schools and charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas and local diplomas.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any compliance requirements on small businesses or local governments but merely establishes additional exam sequences in Mathematics that will meet the Mathematics assessment requirements for a Regents Diploma with Advanced Designation. The proposed rule does not impose any specific recordkeeping, reporting or other paperwork requirements. School districts, nonpublic schools and charter schools awarding Regents Diplomas with Advanced Designation will be given additional options for students to meet the Mathematics assessment requirements leading to that diploma. The proposed amendment imposes no additional professional service requirements on school districts in rural areas.

COSTS:

There are no costs associated with the proposed amendment. The proposed amendment merely establishes additional exam sequences in Mathematics to ensure that any student (regardless of cohort) who completes an approved combination of Mathematics Regents Examinations will meet the Mathematics assessment requirements for a Regents Diploma with Advanced Designation.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents, and does not impose any additional compliance requirements or costs. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy and imposes no additional burden on the school districts of the State. The Regents policy upon which the amended regulations are based applies to all school districts throughout the State and provides greater flexibility for all students to meet assessment requirements for an Advanced Regents

Diploma. Therefore, it was not possible to establish different requirements for school districts in rural areas, or exempt them from the provisions.

RURAL AREA PARTICIPATION:

The proposed amendment is in response to comments from various school districts across the State requesting that the list of acceptable exam sequences be expanded to account for students who transfer between districts, and/or completed the exams out of sequence.

The Board of Regents and the State Education Department received various inquiries from district administrators including the rural educational community. All expressed concerns that students within their districts had limited or no opportunity to obtain a Regents Diploma with advanced Designation because the series of exams they had available to them was not listed in the regulatory language due to their cohort assignment. The impacted students either failed the last examination administered, transferred to a district that transitioned to the new series earlier and/or completed the exam sequence out of order. Because the original language in the regulation listed specific exam sequences applicable to each grade 9 cohort, students who completed exam sequences not included in the language would be denied the opportunity to fulfill the Regents Diploma with Advanced Designation requirements. The new regulatory language allows additional sequences of examinations to meet the requirement, and addresses the needs of the small numbers of students who completed one of these sequences.

Job Impact Statement

The proposed rule establishes additional sequences of Mathematics Assessments that will meet the requirements for a Regents Diploma with Advanced Designation. The rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Recreational Fishing Season for Scup (Porgy)

I.D. No. ENV-41-11-00030-E

Filing No. 856

Filing Date: 2011-09-27

Effective Date: 2011-09-27

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

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

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

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

Specific reasons underlying the finding of necessity: The promulgation of this regulation on an emergency basis is necessary because the normal rulemaking process would not promulgate this rule in the time frame necessary for the rule to be in effect before the current recreational season for scup closes on September 27, 2011. This rule will delay the closing of the recreational scup fishing season until December 25, giving New York State anglers additional opportunities to fish for scup, and New York fishing industry businesses (party and charter boats, bait and tackle shops, marinas) opportunities for increased revenue. In addition, the increased time scup will be available to recreational anglers will redirect fishing effort off of less robust stocks and onto scup, a plentiful resource. It is in the best interests of New York State's recreational fishing industry to delay the closing of the scup recreational season by promulgating the regulation on an emergency basis as an extension would provide a significant economic boost to the recreational industry.

With the scup season set to close on September 27th, but plenty of scup still swimming in local waters, extending the season would allow fishing to continue until the fish depart in November. An extension to the season may result in more fishing trips, more party and charter trips, which means more bait and tackle sold, more fuel sales and other related spending. The

past few years of restrictive harvest measures have had a dampening effect on the recreational fishing industry. This action could help reverse some of that. We have heard from some in the industry pleading for an extension to the season.

The increased availability of scup would redirect some pressure off the depleted tautog fishery. Currently, October is closed to the recreational scup, fluke and black sea bass fisheries, with the exception of a brief period during which scup may be taken aboard for-hire vessels. The only fishery available to New York bottom fishers for most of October and until the sea bass fishery reopens in November is tautog, or blackfish. As of this writing, we are planning significant cutbacks in the recreational fishery for blackfish in order to help rebuild a seriously depleted resource. With an extension of the scup season, bottom fishers will have a robust scup fishery through the month of October without having to rely almost exclusively on a tautog resource which is in poor shape.

An extension of the season would present no threat to the stock or the 2011 landing limits. Coastwide scup fishery harvest overall will fall short of achieving optimum yield in 2011. This shortfall is occurring despite substantial State and federal management actions that have been and continue to be taken in an attempt to fill the 2011 commercial quota. Recreational landings this year are below 2010 levels and annual landings are projected to fall short of the target.

Given these projections, there is ample room to suspend the 2011 recreational closed season that would occur beginning September 27 in the states between Massachusetts and New York.

Connecticut, Rhode Island and coastal states to our south currently have or will have the season for scup open to the end of the year.

Subject: Recreational fishing season for scup (porgy).

Purpose: To delay the closing of the recreational scup season and thereby extend the season by 90 days.

Text of emergency rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows:

Species Striped bass through Winter flounder remain the same. Species Scup (porgy) licensed party/charter boat anglers**** through Scup (porgy) all other anglers are amended to read as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Scup (porgy) licensed party/charter boat anglers****	June 8 - Sept. 6	11'' TL	10
	Sept. 7 - Oct. 11 Oct. 12 - Dec 25	11'' TL 11'' TL	40 10
Scup (porgy) all other anglers	May 24 - [Sept. 26] Dec. 25	10.5'' TL	10

Species Black sea bass through Oyster toadfish remain the same.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 25, 2011.

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@gw.dec.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 13-0105 and 13-0340-e authorize the Department of Environmental Conservation (DEC or department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for scup.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary to maximize the economic benefit to New York State's recreational fishing industry through extended access to an abundant and underutilized natural resource. Coastwide harvest of scup is millions of pounds below optimum yield and the stock itself is approximately twice the size of the spawning stock biomass target. An exten-

sion of the season will allow recreation anglers to take advantage of the many scup in our local waters and may result in increased sales of fuel, bait, tackle, and party and charter boat fares. The recreational fishing industry, composed of party/charter boat operations, bait and tackle stores, dockside fuel merchants and marina operators should benefit economically. The recreational fishing industry generates hundreds of million dollars in total sales every year but the past few years of restrictive harvest measures combined with rising fuel costs have had a dampening effect on the industry's income. The industry has pleaded for an extension to the season and this is a stock that could easily absorb further harvest.

Specific amendments to the current regulations include the following:

Scup: Implement an open season for the scup recreational fishery for all anglers (private and party/charter) through to December 25, while maintaining current minimum size limits and possession limits.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

1. Scup "No Action" Alternative (no amendment to scup regulations) - The "no action" alternative would leave current scup regulations in place. Under existing regulations, the season would end on September 26 for most anglers and on October 11 for anglers fishing from party/charter vessels. The New York recreational fishing industry would lose the opportunity to benefit from the presence of an abundant natural resource while anglers and businesses in neighboring states (Connecticut and Rhode Island) benefit. Should New York not extend the scup recreational season, the perception among the recreational fishing industry and the regulated public may be that the department is insensitive to their needs and unwilling to take full advantage of available harvest.

9. Federal standards:

The amendments to Part 40 may result in the State of New York being found out of compliance by the Atlantic States Marine Fisheries Commission (ASMFC), but the State will not attain one of the ASMFC fishery management objectives, improving the yield from this abundant source, if we fail to act based upon our most recent data documenting significant under-harvest. The mission of the ASMFC includes the better utilization of marine fisheries; currently the coast-wide harvest of scup is projected to fall as much as 9.9 million pounds short of achieving optimum yield. Review of the most recent data shows that an extension of the season would present no threat to the stock or the 2011 landing limits. Coast-wide scup fishery harvest overall will fall short of achieving optimum yield in 2011. This shortfall is occurring despite substantial state and federal management actions that have been and continue to be taken in an attempt to fill the 2011 commercial quota. Recreational landings this year are below 2010 levels and annual landings are projected to fall short of the target. Given these projections, there is ample room to suspend the 2011 recreational closed season that would occur beginning September 27 in the states between Massachusetts and New York. There is little risk of exceeding the overall Total Allowable Landings (TAL) associated with extending the open season for anglers. The risk to overall stock status is even smaller given that the recommended 2012 TAL (34.43m lb Commercial, 10.85 m lb Recreational = 45.28 m lb) is a 73 percent increase over the 2011 TAL. Further, the stock has been above target biomass since 2004 - is currently at double the target - and fishing rates have been below the rate at Maximum Sustainable Yield since 2001.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The promulgation of this rule would amend the recreational season for

scup by delaying the closing of the season from September 27 until December 25, thereby extending the season 90 days. The consequences of this action, assuming that the scup landings limit will not be exceeded, are not expected to be significant. This is based upon a review of the most recent data which shows an extension of the season would present no threat to the stock or the 2011 landing limits. Coast-wide scup fishery harvest overall will fall short of achieving optimum yield in 2011. This shortfall is occurring despite substantial state and federal management actions that have been and continue to be taken in an attempt to fill the 2011 commercial quota. Recreational landings this year are below 2010 levels and annual landings are projected to fall short of the target.

Those most affected by the proposed rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. New York State Department of Environmental Conservation (department or DEC) consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on scup recreational management measures. The response indicates that there is a belief that a longer season will provide economic benefits to businesses because their customers will take advantage of the additional opportunities to go fishing for scup. The responses received by DEC suggest that a long season will result in more charter bookings, more party boat trips, and more bait and tackle sales. In addition, private individuals (mostly boating anglers) will have increased opportunities to fish for scup.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the proposed regulations may increase the income of party and charter businesses and marine bait and tackle shops because of the increase in the number of days available for recreational fishers to take scup.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this rule is necessary for DEC to maximize the economic benefit to New York State's recreational fishing industry through extended access to an abundant and underutilized natural resource.

The maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to amend the recreational scup season will deny State based anglers and recreational fishery businesses additional opportunities to benefit from an abundant and readily available resource. These regulations are being proposed in order to allow for harvest consistent with the capacity of the resource to sustain such effort, yet provide the appropriate level of protection for the resource.

7. Small business and local government participation:

DEC received recommendations from the MRAC, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The scup fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of

Environmental Conservation (DEC) to optimize yield from a rebuilt stock of marine fish and maximize recreational fishing opportunities available to New Yorkers. The proposed rule extends the scup recreational fishing season by 90 days, from 141 days in 2011 to 231 days. All other provisions of the rule remain the same.

Many currently licensed party and charter boat owners and operators, bait and tackle businesses and other small marine businesses, will be affected by these regulations. Due to the increase in the number of fishing days for scup, there may be a corresponding increase in the number of fishing trips and related expenditures during the remainder of the 2011 fishing season.

2. Categories and numbers affected:

In 2010, there were 502 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be 739,624 in 2010. This Job Impact Statement does not include them in this analysis, however, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

This rule making will result in an extension to the amount of time available for recreational fishing and therefore should not result in any adverse impacts.

4. Minimizing adverse impact:

There will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

Department of Health

EMERGENCY RULE MAKING

Distributions From the Health Care Initiatives Pool for Poison Control Center Operations

I.D. No. HLT-41-11-00004-E

Filing No. 850

Filing Date: 2011-09-27

Effective Date: 2011-09-27

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

Action taken: Amendment of section 68.6 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2500-d, 2807-j and 2807-l

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

Specific reasons underlying the finding of necessity: Section 40(e) of Part B of Chapter 109 of the Laws of 2010 authorizes the Commissioner to issue the proposed regulations on an emergency basis in order to meet the timeframes prescribed by the enacted 2010/11 New York State (NYS) Budget related to implementing a statewide consolidation of Regional Poison Control Center (RPCC) services. Section 13 of Part B of Chapter 109 of the Laws of 2010 (10th Extender Bill enacted June 7, 2010) decreased total Health Care Initiatives (HCI) Pool funding to the RPCCs and directed consolidation of PCC services down from five RPCCs statewide to two RPCCs. To implement consolidation, effective January 1, 2011, the Commissioner has removed the designation of three Centers, thereby eliminating their eligibility for HCI Pool grant funding, and designated two RPCCs (one upstate and one downstate) which remain eligible on an ongoing basis for HCI Pool grant monies. Consolidation down to two RPCCs statewide restructured the geographical service area that the surviving RPCCs are now responsible for and rendered the existing HCI Pool funding distribution methodology contained in section 68.6 of 10 NYCRR obsolete. The proposed amendment establishes a new distribution methodology that will allow for more equitable distribution of available HCI Pool funds to the remaining two RPCCs on an ongoing basis effective January 1, 2011.

Subject: Distributions from the Health Care Initiatives Pool for Poison Control Center Operations.

Purpose: Revises the methodology for distributing HCRA grant funding to Regional Poison Control Centers (RPCCs).

Text of emergency rule: Section 68.6 - Distributions from the Health Care Initiatives Pool for Poison Control Center Operations is REPEALED and a new Section 68.6 is added to read as follows:

Section 68.6 - Distributions from the Health Care Initiatives Pool for Poison Control Center Operations

(a) *The monies available for distribution from the Health Care Initiatives (HCI) Pool for poison control center operations shall be distributed on a semi-annual basis in accordance with the methodology below:*

(1) *Population density by county, as established by the latest available decennial census data for New York State (NYS) as determined by the U.S. Census Bureau, shall be the basis for allocating available HCI Pool monies for distribution to the regional poison control centers.*

(2) *Population density applicable to the total county geographic area served by each regional poison control center shall be determined and the center's percentage to total NYS population density shall be calculated.*

(3) *Available HCI Pool monies shall be distributed proportionally to each regional poison control center based on the center's percentage population density served to total NYS population density.*

(b) *The Commissioner shall consider only those applications for prospective revisions of the projected pool distributions which are in writing and are based on errors, whether mathematical or clerical, made by the department in the pool distribution calculation process. Applications made pursuant to this subdivision must be submitted within thirty days of receipt of notice of the projected pool distribution for the calendar year.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 25, 2011.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for the regulation is contained in sections 2500-d(7), 2807-j, and 2807-l(1)(c)(iv) of the Public Health Law (PHL), which authorizes the Commissioner to make distributions from the Health Care Initiatives (HCI) Pool to the Regional Poison Control Centers (RPCCs). This HCI Pool funding is intended to assist the Centers with meeting the operational costs of providing expert poison call response and poison consultation services on a 24/7 basis to health care professionals and the public statewide.

Legislative Objectives:

The enacted 2010/11 New York State (NYS) Budget (10th Extender Bill, Section 13 of Part B of Chapter 109 of the Laws of 2010) decreased total HCI Pool funding to the RPCCs and directed consolidation of PCC services down from five RPCCs statewide to two RPCCs (one upstate and one downstate). To implement consolidation, effective January 1, 2011, the Commissioner has removed the designation of three Centers, thereby eliminating their eligibility for HCI Pool grant funding, and designated two RPCCs, one located at SUNY Syracuse University Hospital as the upstate RPCC and another located at Bellevue Hospital as the downstate RPCC, which remain eligible on an ongoing basis for HCI Pool grant monies. Consolidation down to two RPCCs restructured the geographical service area the surviving RPCCs are now responsible for and rendered the HCI Pool funding distribution methodology contained in section 68.6 of 10 NYCRR obsolete. Under the current methodology a Center's award is fixed at an amount established based on pre-HCRA (1996) operating costs. The methodology is outdated and provides no sensitivity to reflect current RPCC operations, both from a cost and a programmatic standpoint.

Needs and Benefits:

Effective January 1, 1997, the New York Prospective Hospital Reimbursement Methodology (NYPHRM) system expired and was replaced by a new system established under the Health Care Reform

Act (HCRA) of 1996. HCRA substantially deregulated hospital reimbursement, allowing insurers, employers and other health care payers to freely negotiate rates of payment with hospitals, rather than base their payments as previously done on the Medicaid rates. For hospitals that sponsored PCCs, and for Emergency Room (ER) services in particular, the Medicaid ER rate included cost consideration for PCC operations. Under HCRA deregulation and effective January 1, 1997, forward, other payers were no longer obligated to recognize such PCC costs in their reimbursement rates to the sponsoring hospitals, placing financial support for this imperative public health service in jeopardy. To address this concern, enhanced funding for PCC operations was made available to the Centers through HCRA HCI Pool grant funding.

Effective January 1, 1997, forward, the HCI Pool grant amounts calculated for each PCC were determined based on each Center's ratio of projected revenue shortfall created by the expiration of the NYPHRM, plus allocated Medicare costs, to total projected revenue shortfall. PCC cost as reported on the affiliated hospital's 1996 Institutional Cost Report was utilized as the basis for this calculation, and once established the award amount was fixed for the given PCC at the 1996 determined grant dollar amount. This methodology, in place since the implementation of the HCRA, provides no flexibility to appropriately respond to changes in PCC operations over time or to recognizing the impact on operating costs of State mandated PCC restructuring, as provided for in the enacted 2010/11 State Budget.

The proposed amendment repeals the existing obsolete provisions and establishes a new distribution methodology that will allow for more equitable distribution of available HCI Pool funds, as appropriated annually by the legislative/budget process, to the remaining two RPCCs on an ongoing basis, effective January 1, 2011.

COSTS:

Costs to State Government:

There will be no additional costs to State government as a result of implementation of the regulation. To the extent that funds are appropriated annually by a given enacted State budget, the proposed amendment serves only to revise the methodology by which such appropriated Pool funds will be distributed to the RPCCs effective January 1, 2011, forward.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to Local Government:

There will be no additional costs to local governments as a result of these amendments. The funds are State grants with no local district share of costs (not Medicaid funds).

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates:

This regulation does not impose any program, service, duty or other responsibility on any county, city, town, village, school district, fire district or other special district.

Paperwork:

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

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

An alternative was evaluated prior to the selection of the proposed distribution methodology that considered the volume of human exposure calls by county as received by the RPCCs over time. Historically, the Centers have not consistently reported such data to the Department over the past decade, particularly as it relates to county specific call volume. The Department acknowledges that the American Association of Poison Control Centers (AAPCC) owns and manages a large database on poison information and human exposure calls. However, the reports they produce are generic in nature and do not offer the requisite state specific, by county, information that would be necessary to serve as a basis for Pool fund distributions. Though

customized reports are available for sale, it is unknown whether reporting to the database on all calls is a mandatory requirement of PCC nationwide or to what degree the AAPCC database is inclusive of all poison related calls/services for a given PCC/state (by county). Furthermore, any such special reports would come at a cost to the Department and may not appreciably improve decision making relative to distributing HCI Pool grant funding. Population density related to the geographic areas served by the two RPCCs, as determined by the US Census Bureau's latest decennial survey data, provides a common ground that should fairly reflect each Center's scope of obligation for poison call response (exposure calls), poison consultation services (poison information requests) and poison education responsibilities for their respective service areas.

Federal Standards:

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

Compliance Schedule:

The proposed amendment establishes a revised distribution methodology for HCI Pool grant funds. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required pursuant to Section 202-b(3)(a) of the State Administrative Procedures Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on small businesses or local governments, and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The proposed rule revises the methodology for determining Health Care Initiatives (HCI) Pool grant distributions to Regional Poison Control Centers (RPCCs). Effective January 1, 2011, poison control center operations statewide will be downsized from five RPCCs to two RPCCs, rendering the existing grant distribution methodology obsolete. The proposed regulation revises the methodology to reflect population density related to the restructured geographic area served by the surviving RPCCs, rather than continue their grant funding at the amounts that were established in 1997 based on poison control service revenue shortfall established for 1997. The HCI Pool grant funds are 100% State dollars, as appropriated for a given calendar year, and the proposed revised distribution methodology will have no impact on small businesses and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed rule that it does not impose any adverse economic impact on rural areas, and will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed rule revises the methodology for determining Health Care Initiatives (HCI) Pool grant distributions to Regional Poison Control Centers (RPCCs). Effective January 1, 2011, poison control center operations statewide will be downsized from five RPCCs to two RPCCs, rendering the existing grant distribution methodology obsolete. The proposed regulation revises the methodology to reflect population density related to the restructured geographic area served by the surviving RPCCs, rather than continue their grant funding at the amounts that were established in 1997 based on poison control service revenue shortfall established for 1997. The HCI Pool grant funds are 100% State dollars, as appropriated for a given calendar year, and the proposed revised distribution methodology will have no impact 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 of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The proposed regulation replaces an existing obsolete methodology for determining grant funding to Regional Poison Control Centers. The proposed regulation will have no implications for job opportunities.

**EMERGENCY
RULE MAKING**

October 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-41-11-00005-E

Filing No. 851

Filing Date: 2011-09-27

Effective Date: 2011-09-27

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

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

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

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

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

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

Subject: October 2011 Ambulatory Patient Groups (APGs) Payment Methodology.

Purpose: To refine the APG payment methodology.

Text of emergency rule: Section 86-8.2 subdivision (r) is hereby repealed:

[(r) Ambulatory surgery permissible procedures shall mean those surgical procedures designated by the Department as reimbursable as ambulatory surgery pursuant to this Subpart.]

Section 86-8.7 is hereby repealed effective October 1, 2011 and a new section 86-8.7 is added to read as follows:

(a) *The table of APG Weights, Procedure Based Weights and units, and APG Fee Schedule Fees and units for each effective period are published on the New York State Department of Health website at: http://www.health.state.ny.us/health_care/medicaid/rates/apg/docs/apg_payment_components.xls*

Subdivision (c) of section 86-8.9 is repealed and a new subdivision (c) is added, to read as follows:

[(c) The Department’s written billing and reporting instructions shall set forth a complete listing of all ambulatory surgery permissible procedures which are reimbursable pursuant to this Subpart. No visits may be billed as ambulatory surgery unless at least one procedure designated as ambulatory surgery permissible appears on the claim for the date of service for the visit.]

(c) *Drugs purchased under the 340B drug benefit program and billed under the APG reimbursement methodology shall be reimbursed at a reduced rate comparable to the reduced cost of drugs purchased through the 340B drug benefit program.*

Subdivision (d) of section 86-8.9 is amended to add the following APG and to read as follows:

451 *SMOKING CESSATION TREATMENT*

Subdivision (h) of section 86-8.10 is amended to add the following APG and to read as follows:

465 *CLASS XIII COMBINED CHEMOTHERAPY AND PHARMACOTHERAPY*

Subdivision (i) of section 86-8.10 is amended to add the following APG and to read as follows:

490 *INCIDENTAL TO MEDICAL, SIGNIFICANT PROCEDURE OR THERAPY VISIT*

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 December 25, 2011.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

This amendment replaces the actual APG weights, APG procedure based weights, and the APG fee schedule amounts listed in section 86-8.7 with a link to the New York State Department of Health website where all of the APG weights, APG procedure based weights, and the APG fee schedule amounts are posted for all periods. Removing this specificity from the regulation text obviates the need for quarterly amendments to the APG regulation.

COSTS

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

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

Costs to Local Governments:

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

Costs to State Governments:

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

Costs to the Department of Health:

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

Local Government Mandates:

There are no local government mandates.

Paperwork:

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

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses

were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers' submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

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

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

Compliance Costs:
No initial capital costs will be imposed as a result of this rule, nor is there 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 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.

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

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

Rural Area Flexibility Analysis

Effect on Rural Areas:
Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

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

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

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

Minimizing Adverse Impact:
The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery

centers. The Department of Health considered approaches specified in section 202-bb(2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

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

Job Impact Statement

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

Department of Labor

NOTICE OF ADOPTION

Restrictions on the Consecutive Hours of Work for Nurses As Enacted in Section 167 of the Labor Law

I.D. No. LAB-43-10-00003-A

Filing No. 855

Filing Date: 2011-09-27

Effective Date: 2011-10-12

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

Action taken: Addition of Part 177 to Title 12 NYCRR.

Statutory authority: Labor Law, section 21

Subject: Restrictions on the consecutive hours of work for nurses as enacted in Section 167 of the Labor Law.

Purpose: To clarify the emergency circumstances under which an employer may require overtime for nurses.

Text or summary was published in the October 27, 2010 issue of the Register, I.D. No. LAB-43-10-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: Joan Connell, Esq., New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: teresa.stoklosa@labor.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

EMERGENCY RULE MAKING

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-32-11-00004-E

Filing No. 852

Filing Date: 2011-09-27

Effective Date: 2011-09-27

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

Action taken: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Specific reasons underlying the finding of necessity: The rulemaking serves to amend two separate provisions within 14 NYCRR Part 578. The first amendment provides consistency with the enacted State budget by

freezing the rate of payments received by residential treatment facilities (RTF), effective July 1, 2011. The second amendment provides for a change in the reimbursement methodology for eligible pharmaceutical costs for RTFs that would be effective on or after January 1, 2011, and upon receipt of federal approval. Due to the implementation dates of these provisions and the need for RTF providers to be aware of these amendments, it was determined that this rule warrants emergency filing.

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: Amend reimbursement methodology for eligible pharmaceutical costs for RTFs and freeze the rates of payments effective 7/1/11.

Text of emergency rule: 1. Subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(a) The rate of payment shall consist of an operating cost per diem and a capital cost per diem, computed from allowable costs and subject to cost category standards. The rate year shall be the 12-month period from July 1st through June 30th. The rate of payment effective July 1, 1995 through June 30, 1996 shall be a continuance of the rate of payment effective July 1, 1994 through June 30, 1995. *The rate of payment effective July 1, 2011 through June 30, 2012 shall be a continuance of the rate of payment in effect on June 30, 2011, except to the extent necessary to adjust such payments pursuant to the provisions of subdivision (o) of Section 578.14 of this Part.*

2. Subdivision (o) of Section 578.14 of Title 14 NYCRR is amended to read as follows:

(o) Effective on or after January 1, 2011, and contingent upon federal approval, allowable operating costs shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary, *except for such costs incurred during the first 90 days after admission to the residential treatment facility or until Medicaid eligibility is established for the recipient, whichever comes first.* [Such costs] *Pharmaceuticals for which the cost is so excluded* may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. OMH-32-11-00004-P, Issue of August 10, 2011. The emergency rule will expire November 25, 2011.

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

1. **Statutory Authority:** Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by the Office of Mental Health (Office).

2. **Legislative Objectives:** Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. Allowable operating costs are subject to the review and approval of the Office, including eligible pharmaceutical costs. The rule provides for a change in the reimbursement methodology for eligible pharmaceutical costs for Residential Treatment Facilities (RTF) for children and youth. In addition, this rule provides consistency with the enacted State budget by freezing the rate of payments received by RTF providers for the year July 1, 2011 through June 30, 2012.

3. **Needs and Benefits:** This rulemaking addresses two separate provisions within 14 NYCRR Part 578. The first amendment reflects a freeze of the rates paid to RTF providers for the year July 1, 2011 through June 30, 2012. This continuation of current rates is consistent with the 2011-2012 enacted State budget and is the result of the serious fiscal condition of the State.

The other amendment concerns costs of pharmaceuticals for residents of an RTF. On February 2, 2011, the Office adopted as final amendments to this Part which specified that, on or after January 1,

2011, and contingent upon federal approval, allowable operating costs for RTFs for children and youth licensed by the Office shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary. The regulation further stated that, "Such costs may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program." After this rule was promulgated, it was determined that a change is necessary due to the fact that when children are admitted to an RTF, there may be a significant lag of up to 90 days before they are deemed to be Medicaid eligible. In order to ensure that children receive their necessary medications, the Office is amending this regulation to provide that allowable operating costs for the RTFs will include pharmaceutical costs incurred during the first 90 days after a child's admission to an RTF or until Medicaid eligibility is established for the individual, whichever comes first. It is important to note that this provision is effective upon federal approval.

4. Costs:

(a) **cost to State government:** These regulatory amendments will not result in any additional costs to State government. It is anticipated that the rate freeze will result in a full annual savings to State government in the amount of \$1,169,951, and that the pharmaceutical carve out will result in a full annual savings to State government in the amount of \$375,000.

(b) **cost to local government:** These regulatory amendments will not result in any additional costs to local government.

(c) **cost to regulated parties:** The gross estimated reimbursable costs to providers for the lag in Medicaid eligibility could be as much as \$1,000,000. Providers will be reimbursed for all but approximately \$350,000 of this increase through adjustments to their reimbursement rates.

5. **Local Government Mandates:** These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. **Paperwork:** This rule should not substantially increase the paperwork requirements of affected providers.

7. **Duplication:** These regulatory amendments do not duplicate existing State or federal requirements.

8. **Alternatives:** As noted above, this rulemaking serves two purposes. The first amendment serves to freeze the rates paid to providers for the period July 1, 2011 through June 30, 2012. This amendment is consistent with the enacted State budget and is a reflection of the serious fiscal condition of the State. The second amendment provides, upon federal approval, for an exception to the exclusion of the costs of pharmaceuticals from the allowable operating costs of providers for 90 days after an individual's admission to an RTF or until Medicaid eligibility is established, whichever occurs first. This amendment will serve to ensure that children who have been admitted to an RTF will continue to have a means for having their medications reimbursed while their Medicaid eligibility is being established. While providers will initially incur the costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. Currently, it is anticipated that four providers may exceed these amounts, thereby resulting in the \$350,000 amount in the "cost to regulated parties" section above. No other alternative was considered.

9. **Federal Standards:** The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. **Compliance Schedule:** The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rule provides consistency with the 2011-2012 enacted State budget by freezing the rate of payments received by residential treatment facilities for children and youth, effective July 1, 2011. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs as-

sociated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As no adverse economic impact upon small businesses or local governments is anticipated, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The purpose of this rulemaking is twofold. The rule freezes the rate of payments received by residential treatment facilities for children and youth, effective July 1, 2011. This amendment is consistent with the 2011-2012 enacted State budget and reflects the serious fiscal condition of the State. The rule also amends the reimbursement methodology for eligible pharmaceutical costs by permitting an exemption to the exclusion of the costs of pharmaceuticals from the allowable operating costs of RTF providers for 90 days after an individual's admission to an RTF, or until Medicaid eligibility is established, whichever comes first. While providers will initially incur costs associated with these medications, those costs will be reimbursed by a subsequent adjustment in their rate of payment over the following two years, assuming the providers' overall administration maintenance and support costs do not surpass allowable amounts. It is expected that the majority of RTF providers will not exceed allowable amounts; therefore, it is anticipated that the majority of providers will be reimbursed for the pharmaceutical costs by a rate adjustment over the subsequent two years. As there is not expected to be an adverse economic impact upon rural areas, a rural area flexibility analysis is not included in this rulemaking.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter of the rulemaking that there will be no impact upon jobs and employment opportunities. The rule serves two purposes. First, it provides consistency with the enacted State budget by freezing rates of payments to providers of residential treatment facilities (RTF) for children and youth, effective July 1, 2011. Secondly, it amends the reimbursement methodology for eligible pharmaceutical costs for RTFS, effective on or after January 1, 2011 and pending federal approval.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING HEARING(S) SCHEDULED

HCBS Waiver Monthly Community Habilitation Services

I.D. No. PDD-41-11-00031-P

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

Proposed Action: Amendment of sections 635-10.4, 635-10.5 and Subpart 635-12 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

Subject: HCBS Waiver Monthly Community Habilitation Services.

Purpose: To establish Monthly Community Habilitation as a new HCBS waiver service.

Public hearing(s) will be held at: 10:30 a.m., Nov. 29 and 30, 2011 at Counsel's Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, 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.

Text of proposed rule: Paragraph 635-10.4(b)(3) is amended as follows:

(3) *Hourly community [Community] habilitation services (CH)* are

similar in scope to residential habilitation services and day habilitation services, however, the focus of these services is directed towards service delivery occurring largely in community (non-certified) settings to facilitate and promote independence and community integration. (See subdivision 635-10.5(ab) for further requirements related to CH services.)

Note: the rest of the paragraph is unchanged.

A new paragraph 635-10.4(b)(4) is added as follows:

(4) *Monthly community habilitation services (MCH) are similar in scope to residential habilitation services and day habilitation services. Individuals who receive MCH must be residents of supervised Individual Residential Alternatives or supervised Community Residences who are not receiving residential habilitation or day habilitation services. (See subdivision 635-10.5(ac) for further requirements related to MCH services.)*

(i) *Monthly community habilitation services include all of the types of services specified in paragraphs (1) and (2) of this subdivision.*

(ii) *Allowable activities include all of the allowable activities specified in subparagraphs (1)(i)-(xv) and (2)(i)-(xv) of this subdivision.*

Subdivision 635-10.5(ab) is amended as follows:

(ab) *Hourly community [Community] habilitation (CH) services. The following shall apply to CH services (see section 635-10.4(b)(3) of this Subpart).*

Note: the rest of the subdivision is unchanged, except for paragraph (3).

(3) *Reimbursement shall be contingent on documentation that those receiving CH services have received the services in accordance with the person's individualized service plan (ISP) and hourly community habilitation plan (CH plan).*

A new subdivision (ac) is added to section 635-10.5 as follows:

(ac) *Monthly community habilitation (MCH) services. The following shall apply to MCH services (see section 635-10.4(b)(4) of this Subpart).*

(1) *Standards for the reimbursement of MCH. In order for the provider to receive reimbursement for the delivery of MCH the following standards must be met:*

(i) *OPWDD shall approve the person's need for MCH services prior to the receipt of services. OPWDD shall approve persons for MCH services based on the compatibility of the individual with available MCH services and the potential economy and efficiency of the delivery of MCH compared to residential habilitation and day habilitation services.*

(ii) *The individual must reside in a supervised IRA or supervised CR.*

(2) *Payment Standards:*

(i) *The unit of service is one month. Providers may bill for a full month or for a half month.*

(ii) *For a full month, the provider must document the delivery of:*
(a) *at least one individualized face-to-face service in accordance with the individual's ISP and MCH Plan on 22 separate days of the calendar month; and*

(b) *an additional 22 face-to-face services in accordance with the individual's ISP and MCH Plan that may be delivered anytime during the calendar month (including the same day that a service described in clause (a) of this subparagraph is delivered).*

(iii) *For a half month, the provider must document the delivery of:*
(a) *at least one individualized face-to-face service in accordance with the individual's ISP and MCH Plan on 11 separate days of either the first half or the second half of the calendar month; and*

(b) *an additional 11 face-to-face services in accordance with the individual's ISP and MCH Plan that may be delivered anytime during the same half of the calendar month in which the services described in clause (a) are delivered (including the same day that a service described in clause (a) of this subparagraph is delivered).*

(iv) *MCH services delivered when an individual is admitted to a hospital, nursing home, intermediate care facility for persons with developmental disabilities (ICF/DD) or other certified, licensed or government funded residential setting may not be used to meet the minimum requirements for service delivery established in subparagraphs (ii) or (iii) of this paragraph. MCH services delivered on the day of admission or on the day of discharge may be used to meet the minimum standards if the MCH services are delivered prior to admission or after discharge and the services are not delivered in those settings.*

(v) *During the month or half month that the individual is receiving MCH, no provider will be reimbursed for the delivery of any of the following services to the individual: residential habilitation, group day habilitation, individual day habilitation, prevocational services, supported employment services, blended services (which are a combination of day habilitation, prevocational services and/or supported employment services), comprehensive services (which are a combination of IRA residential habilitation services and day habilitation), and Consolidated Supports and Services.*

(4) *A provider is authorized to provide MCH if it:*

(i) *operates at least one facility certified by OPWDD which is designated as a supervised IRA or supervised CR; and*

(ii) is authorized to provide group day habilitation.

(5) MCH which is self-directed or family-directed. The following requirements apply to MCH services which are self-directed or family-directed.

(i) The management of self-directed or family-directed services is described in a co-management agreement between the individual, the MCH provider and, if one exists, an identified adult as that term is used in subparagraph (ii) of this paragraph.

(ii) MCH services which are self-directed are available when all parties to the co-management agreement concur that the individual receiving the MCH services:

(a) is an adult who is capable and willing to make informed choices and manage the self-directed services; or

(b) is an adult who:

(1) is capable and willing to make informed choices; and

(2) has selected an identified adult who is a family member or other adult, and the identified adult is willing to assist in making informed choices and co-managing the self-directed services; or

(c) is a minor and there is an identified adult who is either:

(1) a parent or legal guardian who is available and willing to make informed choices and co-manage the self-directed services; or

(2) a family member or other adult who is available and willing to make informed choices and co-manage the self-directed services.

(iii) MCH services which are family-directed are available when all parties to the co-management agreement concur that an adult receiving the MCH services does not qualify for self-direction and there is an identified adult who is willing and able to make informed choices and co-manage the family-directed services for the benefit of the person.

(iv) Eligible individuals and identified adults (if they exist) assume the responsibilities as mutually agreed to by the provider, individual, and identified adult in the co-management agreement. The co-management agreement shall specify the responsibilities of the provider, the individual, and any identified adult who will be managing or assisting in the management of the self-directed or family-directed services. The co-management agreement shall be documented in the individual's record.

(v) The following responsibilities (except as noted in subparagraph (vi) of this paragraph) shall be the individual's and/or the identified adult's:

(a) recruiting staff;

(b) making recommendations for staff selection and discharge of staff;

(c) managing the staff schedule; and

(d) identifying when and on what schedule the habilitation activities identified in the individual's MCH plan will be carried out.

(vi) The provider may agree to assist with one or more of the responsibilities specified in subparagraph (v) of this paragraph. The provider's agreement to assist with those responsibilities shall be documented in the individual's record.

(vii) The provider's responsibilities shall include:

(a) monitoring that services are delivered in accordance with all applicable requirements;

(b) monitoring that services are properly documented, and collecting and maintaining all necessary service documentation;

(c) submitting requests for reimbursement;

(d) providing payroll services, and managing any employee benefits or other compensation for staff;

(e) complying with and monitoring staff compliance with the applicable requirements of Parts 624, 633 of this Title, and this Part (e.g., requesting criminal history record checks, training staff, and supervising staff);

(f) determining whether any staff training is necessary beyond the training required by Part 633 of this Title and providing the necessary training; and

(g) monitoring the individual's continuing ability and willingness to fulfill those responsibilities agreed to and specified in his or her record and/or the identified adult's continuing availability and willingness to fulfill those responsibilities agreed to and specified in the individual's record.

(viii) The individual receiving the MCH service, any identified adults, and the provider shall review their respective management responsibilities to evaluate whether self-direction or family direction continues to be appropriate at least once every two years.

(ix) All agencies authorized by OPWDD to provide MCH are authorized to provide self-direction and family direction as an option under MCH.

(6) Price setting:

(i) On the effective date of this amendment, for each agency which is authorized to provide monthly community habilitation (see paragraph 635-10.5(c)(4)), OPWDD shall establish an individual MCH price that represents an amalgamation of the provider's IRA price and its group day habilitation price. It shall be calculated as follows:

(a) The individual monthly price from the IRA price sheet in effect on the day preceding the effective date of this amendment shall be utilized and the split between non-room and board, and room and board, shall be maintained. The individual monthly price shall include all operating cost categories, efficiency adjustments, offsets, miscellaneous items itemized separately in the price, and property. The price shall be expressed in terms of a full month's reimbursement per individual served.

(b) Total approved costs in the group day habilitation price sheet in effect on the day preceding the effective date of this amendment shall be utilized. Total approved costs shall include all operating cost categories, efficiency adjustments, offsets, miscellaneous items itemized separately in the price, and property. To determine an individual monthly price, total approved annual costs shall be divided by capacity and divided by 12. The capacity shall be established as the authorized units reflected on the price sheet on the day preceding the effective date of this amendment divided by 215. The result shall be multiplied by a statewide average group day habilitation occupancy factor. The individual monthly price shall be expressed in terms of a full month's reimbursement per individual.

(c) The non-room and board component of the individual MCH price shall be the sum of:

(1) the non-room and board component of the individual monthly price derived from the IRA price sheet as described in clause (a) of this subparagraph; and

(2) the individual monthly price derived from the group day habilitation price sheet as described in clause (b) of this subparagraph.

(d) The room and board component of the MCH price shall be the room and board component of the individual monthly price from the IRA price sheet in effect on the day preceding the effective date of this amendment.

(e) The non-room and board component and the room and board component summed together yield the individual MCH price.

(f) For a half month reimbursement, the individual MCH price shall be halved.

(ii) Subsequent prices. In the event that either the IRA price or the group day habilitation price used to calculate the individual MCH price is revised, the MCH price shall be revised accordingly.

(iii) The prices determined in accordance with this paragraph shall not be considered final unless approved by the director of the Division of the Budget.

(iv) The individual MCH price determined through the application of this paragraph may be corrected or appealed pursuant to either section 681.13(h) or (i) of this Title, except that the determination following a first level appeal process shall be the commissioner's final decision.

A new subparagraph 635-12.1(h)(1)(iv) is added as follows:

(iv) residential habilitation and/or group day habilitation which is received by an individual who formerly received monthly community habilitation in the following circumstances:

(a) The individual received residential habilitation and/or group day habilitation prior to the receipt of monthly community habilitation and the services were Preexisting Services, and

(b) After the individual stopped receiving monthly community habilitation he or she resumed receipt of the residential habilitation and/or day habilitation services which were formerly provided, and

(c) The residential habilitation and/or day habilitation services would have been Preexisting Services except for the intervening receipt of monthly community habilitation.

Paragraph 635-12.1(h)(2) is amended as follows:

(2) For Medicaid service coordination; day treatment services; the following HCBS waiver services: at home residential habilitation services, hourly community habilitation services, prevocational services, supported employment services, respite services; and blended services and comprehensive services, preexisting services means:

Note: rest of the paragraph remains the same except for subparagraph (iv).

Subparagraph 635-12.1(h)(2)(iv) is amended as follows:

(iv) hourly community habilitation services which converted on November 1, 2010 from at home residential habilitation services if:

Note: Clause (a) remains the same.

(b) the hourly community habilitation services are delivered by the same provider.

Subdivision 635-12.1(j) is amended as follows:

(j) Services means ICF/DD services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681 of this Title), Medicaid service coordination, day treatment services, and the following HCBS waiver services: residential habilitation services (community [in a community residence], IRA, family care, and at home), hourly community habilitation services, day habilitation services, prevocational services, supported employment services, [and] respite services, and monthly community habilitation services. Blended services, which are a combination of day habilitation, prevocational services and/or supported employment ser-

ices, and comprehensive services, which are a combination of IRA residential habilitation services and day habilitation, are also considered services. A limited exception to the applicability of certain sections of this Subpart has been made in the case of some individuals who are applying for or receiving supported employment services or respite services (see section 635-12.12 of this Subpart).

A new subdivision 635-12.3(g) is added as follows:

(g) *Monthly community habilitation services are "other than Preexisting Services."*

Subdivision 635-12.9(n) is amended as follows:

(n) For *hourly* community habilitation services, the fee shall equal the Medicaid fee OPWDD established for the *hourly* community habilitation services for the dates [of] the services were provided.

A new subdivision 635-12.9(o) is added as follows:

(o) *For monthly community habilitation services, the price shall equal the Medicaid fee OPWDD established for monthly community habilitation services for the dates the services were provided.*

Text of proposed rule and any required statements and analyses may be obtained from: Barara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office For People With Developmental Disabilities' (OPWDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OPWDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OPWDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates and fees for services in facilities licensed or operated by OPWDD.

2. Legislative Objectives: These proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 43.02 of the Mental Hygiene Law by making revisions to the regulations governing Home and Community-Based (HCBS) Waiver services. The proposed amendments will establish standards for provision and funding under the HCBS Waiver of Monthly Community Habilitation (MCH) services.

3. Needs and Benefits: HCBS Waiver Monthly Community Habilitation offers another option to individuals who wish to have their habilitation services focus on a variety of everyday community settings. The service, which was approved by the Federal Centers for Medicare and Medicaid Services (CMS) in the HCBS Waiver renewal effective 10/1/09, is designed to promote independence and community integration. An earlier phase of Community Habilitation offered skills training and supports which could take place only in non-certified settings. Maintaining the same focus on meaningful community inclusion, OPWDD is expanding eligibility for this type of service to individuals who reside in supervised residential habilitation settings certified by OPWDD and who are enrolled in the HCBS waiver. Individuals who live in these supervised residential settings typically receive group day habilitation services. Individuals who elect to participate in MCH will continue to reside in their residential settings but will receive MCH rather than residential habilitation and day habilitation services. The program is not designed to be compatible with Supported Employment, Prevocational services, blended services, comprehensive services or Consolidated Supports and Services.

MCH promises enhanced flexibility and a more individualized approach than was possible under the parameters of existing services. It is anticipated that these changes will offer participants increased flexibility in service design, will encourage increased community interaction, and will promote cost effective community integration.

Finally, to promote individual choice and greater flexibility, these regulations include a self-directed and family-directed option within MCH for those individuals who want to choose and manage MCH staff (either personally or through a parent, guardian, family member or other adult).

4. Costs:

a. Costs to the agency and to the State and its local governments: The amendments will have no fiscal effect on the overall costs of service pro-

vision, either for the State or for the Medicaid program. With the introduction of MCH, individuals who elect to take advantage of the greater flexibility will transition from residential habilitation and day habilitation to MCH. The price methodology for MCH is designed to be cost-neutral such that the reimbursements for MCH will be offset by the decrease in reimbursements for residential habilitation and day habilitation. There will be no new costs to local governments as a result of the proposed amendments.

b. Costs to private regulated parties: There are no initial capital investment costs. Overall reimbursement received by providers of MCH will be approximately the same as the reimbursement that would have been received for residential habilitation and day habilitation. A particular provider may see a modest decrease in reimbursement for services to a particular individual, but the provider's administrative costs should decrease because of administrative efficiencies such as reduced documentation requirements and streamlined billing.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The documentation requirements for MCH are less than the total of the documentation requirements for residential habilitation delivered in a supervised IRA or supervised CR and the documentation requirements for day habilitation received 5 days a week (which is the typical level of day habilitation services received by residents of supervised IRAs and supervised CRs). Therefore, since individuals will no longer be receiving residential habilitation or day habilitation the overall paperwork required for documentation is reduced. Not only are the documentation requirements reduced, the documentation could be collapsed into one format. Furthermore, one program-one step billing will replace two programs-two step billing.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD considered not including an option for self-direction or family-direction in MCH. While OPWDD recognized the logistical challenges of incorporating self-direction and family-direction, OPWDD is committed to offering individuals and families choices and the opportunity to exercise responsibility and therefore decided to include this option.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments effective January 1, 2012. Initially, agencies will need to familiarize themselves with service delivery, documentation and billing requirements. Because they are similar in nature to residential habilitation and day habilitation requirements, OPWDD expects the learning process to be minimal. Ultimately, providers should realize a decrease in administrative tasks associated with MCH as compared to the combination of residential habilitation and day habilitation.

OPWDD will provide all necessary information, training, and guidance to providers regarding the new requirements before they become effective.

Further, individuals may transition to MCH anytime after the effective date so that providers and individuals can choose to delay transition until they are ready.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide Home and Community-Based (HCBS) Waiver Monthly Community Habilitation (MCH) services to persons with developmental disabilities. Most MCH services are expected to be delivered by voluntary provider agencies which employ more than 100 people overall and would therefore not be classified as small businesses. Some smaller agencies do, however, employ fewer than 100 employees overall and would, therefore, be considered to be small businesses. Currently, there are 255 agencies which operate supervised IRAs and supervised CRs. Nearly all of them also provide group day habilitation services and would therefore be eligible to provide MCH. The provision of MCH is an option for providers that operate supervised IRAs and/or supervised CRs and group day habilitation services. OPWDD is unable to estimate the portion of these providers that will actually provide MCH and the portion that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that these amendments will not have any negative effects on these small business providers of HCBS Waiver MCH services, and that they will continue to provide appropriate funding for the delivery of such services.

The amendments are not expected to have any overall fiscal implications but rather they will produce a shift in the program source of revenues. As an individual transitions from residential and day habilitation to MCH,

the revenue received for service provision to that individual may increase or decrease. However, any change in reimbursement will be slight, so the revenue to the provider should be about the same. Further, providers should be able to realize some savings due to reduced documentation requirements and more streamlined billing and these savings should offset any revenue decreases. Finally, there is no requirement that an eligible individual transition to MCH from residential habilitation and day habilitation.

MCH will have no effect on local governments.

2. Compliance requirements: Initially, providers will have to familiarize themselves with the service delivery, documentation and billing requirements. Because they are very similar but somewhat simplified as compared to those existing for residential and group day habilitation, providers should be able to adjust fairly effortlessly to the requirements of the new program. As noted, the requirements for documentation are reduced in MCH compared to the residential habilitation and day habilitation that would otherwise be received by the individual and the billing is streamlined.

OPWDD has carefully considered the desirability of a small business regulation guide to assist provider agencies with these regulations, as provided for by section 102-a of the State Administrative Procedure Act. However, OPWDD has already developed and maintains guidance documents addressing the provision of various HCBS Waiver services. OPWDD plans to issue an Administrative Memorandum to further explain MCH services and the requirements contained in the proposed regulations.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: As with any new program, there may be minor compliance costs to small business regulated parties associated with the transition of individuals to MCH as the providers learn the new requirements. As noted, providers can expect to receive approximately the same amount for each individual who transitions to MCH, and will realize some savings associated with reduced documentation requirements and streamlined billing. Savings may also be realized in some situations associated with service delivery such as reduced transportation costs.

5. Economic and technological feasibility: The proposed amendments are concerned with a new service which promises greater flexibility for individuals and administrative efficiency for providers. The amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments establish a new service and are not expected to produce any adverse economic impacts. While a particular provider might experience a reduction in revenue from services to a particular individual, the reduction should be slight and may be offset by the modest savings providers are expected to realize from administrative efficiencies.

7. Small business and local government participation: The provider community, with representatives from providers, provider associations, and other stakeholders including self-advocates and families, collaborated with OPWDD's waiver renewal planning committees. The waiver renewal planning committees were established in 2008 to plan for the 2009 OPWDD HCBS Waiver Renewal. To ensure full stakeholder representation, the committees included representatives from OPWDD's Central Office, regional Developmental Disabilities Service Offices, service providers, individuals receiving services, self-advocates, advocates, and family members of people receiving services. They were charged with reviewing existing programs and identifying areas requiring additional supports. During this process, the need for more flexible community integration options was identified and the basic structure of the Community Habilitation service was designed as a result.

More recently, in anticipation of the numerous efficiency adjustments enacted on July 1, 2011, a consortium of stakeholders including provider associations convened to consider ways for providers to improve efficiency and absorb the reimbursement reductions without disrupting or compromising services. They were identified as the Fiscal Sustainability Team and assembled on numerous occasions. They conducted a survey that elicited almost 300 responses and then collated the data to rank suggestions for cost-saving measures according to theme and popularity. As a result of their outreach and brainstorming deliberations, the Team recommended MCH to OPWDD. They saw it as improving choice, variety and flexibility for individuals and as reducing the administrative burdens for providers in terms of documentation and billing practices. NYSACRA was part of the Fiscal Sustainability Team. Some of the members of NYSACRA have fewer than 100 employees. Finally, OPWDD will be mailing these proposed amendments to all providers, including providers that are small businesses.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or

significant reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments. This is based on the fact that the amendments are concerned with establishing Monthly Community Habilitation (MCH) as a new type of Home and Community-Based (HCBS) Waiver service. If agencies provide MCH for an individual instead of residential habilitation and day habilitation, the providers are expected to receive about the same overall reimbursement. Further, providers may realize modest cost savings because of reduced documentation requirements and streamlined billing. Should an agency determine that for any reason it is preferable to provide residential habilitation and group day habilitation for a particular individual, the provider may offer and the individual may choose to receive those services instead of MCH as MCH is optional.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with establishing Monthly Community Habilitation (MCH) as a new type of Home and Community-Based (HCBS) Waiver service. At the discretion of the provider and individual, MCH would be provided to residents of supervised IRAs and supervised CRs instead of residential habilitation and day habilitation services. The overall level of services received would be approximately the same. While the amendments will enable providers to realize efficiencies because of reduced documentation requirements and streamlined billing, OPWDD does not expect that this would result in a loss of jobs. OPWDD expects that any staff time that became available would be redirected toward administrative functions or improving services to individuals. Therefore, OPWDD does not expect that the proposed regulations will have any impact on jobs and/or employment opportunities.

Power Authority of the State of New York

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-41-11-00029-P

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

Proposed Action: Increase the Fixed Costs component of the production rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To recover the Authority's costs.

Public hearing(s) will be held at: 11:00 a.m., Nov. 17, 2011 at Power Authority of the State of New York, New York, 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: The Power Authority of the State of New York (the "Authority") proposes to increase the Fixed Costs component of the production rates for New York City Governmental Customers ("Customers"). Under the proposal, the Authority will increase the Fixed Costs component of the production rate in 2012 by \$3.4 million or 2.1% when compared to 2011. This increase is based on the Preliminary 2012 Cost of Service and is necessary to ensure the recovery of all Fixed Costs associated with serving this Customer group. The new production rates will become effective with the January 2012 billing period. The proposal also includes technical corrections to the production minimum billing provision of the Customers' tariff to become effective January 2012.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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, 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.

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

Rates for the Sale of Power and Energy

I.D. No. PAS-41-11-00026-P

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

Proposed Action: Revision in rates for Village of Marathon.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system’s fiscal integrity; this increase in rates is not the result of a Authority rate increase to the Village.

Text of proposed rule:

VILLAGE OF MARATHON
Proposed Monthly Rates

Residential S.C.1	Proposed ¹ Rates
Customer Charge	\$6.00
	Non-Winter (May-October)
Energy Charge, per kWh	\$.05896
	Winter (November-April)
Energy Charge, per kWh	
First 1,000 Kwh	\$.05896
Over 1,000 kWh only	\$.07648
Commercial S.C.2	
Customer Charge	\$8.00
	Non-Winter (May-October)
Energy Charge, per kWh	\$.05228
	Winter (November-April)
Energy Charge, per kWh	\$.07763

¹ Purchased Power Adjustment reflected in proposed rates.

VILLAGE OF MARATHON
Proposed Monthly Rates

L. Commercial S.C.3	Proposed ¹ Rates
Demand Charge, per kW	\$6.50
Energy Charge, per kWh	\$.03156
Security Lighting S.C.4	
Facilities Charge, per Lamp	\$5.87
Energy Charge, kWh	\$.01648
Street Lights – Village S.C.5	
Facilities Charge, per Lamp	\$6.84
Energy Charge, per kWh	\$.00049

¹ Purchased Power Adjustment reflected in proposed rates.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 15M, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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, 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.

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

Rates for the Sale of Power and Energy

I.D. No. PAS-41-11-00028-P

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

Proposed Action: Decrease production rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the sale of power and energy.

Purpose: To align rates and costs.

Substance of proposed rule: The Power Authority of the State of New York (the “Authority”) proposes to increase the Fixed Costs component of the production rates for New York City Governmental Customers (“Customers”). Under the proposal, the Authority will increase the Fixed Costs component of the production rate in 2012 by \$3.4 million or 2.1% when compared to 2011. This increase is based on the Preliminary 2012 Cost of Service and is necessary to ensure the recovery of all Fixed Costs associated with serving this Customer group. The new production rates will become effective with the January 2012 billing period. The proposal also includes technical corrections to the production minimum billing provision of the Customers’ tariff to become effective January 2012.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 15M, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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, 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.

Public Service Commission

**EMERGENCY
RULE MAKING**

Approval for National Grid’s Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

I.D. No. PSC-41-11-00002-EA

Filing Date: 2011-09-23

Effective Date: 2011-09-23

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

Action taken: The PSC adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

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

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

Specific reasons underlying the finding of necessity: This action is taken

on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(6). The Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

Subject: Approval for National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Purpose: To approve National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Text of emergency rule: The Public Service adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee.

The agency adopted The provisions of this emergency rule as a permanent rule, pursuant to SAPA section 202(6)(c), because the purposes of the emergency measure would be frustrated if subsequent notice procedures were required.

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

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 rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-E-0050EA8)

NOTICE OF ADOPTION

Petition to Submeter Electricity at 28 East 10th Street, New York, New York

I.D. No. PSC-16-09-00009-A

Filing Date: 2011-09-22

Effective Date: 2011-09-22

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

Action taken: On 9/15/11, the PSC adopted an order approving the Petition of Bay City Metering Company, Inc. to submeter electricity at 28 East 10th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition to submeter electricity at 28 East 10th Street, New York, New York.

Purpose: To approve the petition to submeter electricity at 28 East 10th Street, New York, New York.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving the Petition of Bay City Metering Company, Inc. to submeter electricity at 28 East 10th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0017SA1)

NOTICE OF ADOPTION

Waiver of Gas Tariff Provisions

I.D. No. PSC-43-10-00015-A

Filing Date: 2011-09-21

Effective Date: 2011-09-21

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

Action taken: On 9/15/11, the PSC adopted an order approving the petition of E. Tetz and Sons, Inc. for a limited waiver of certain provisions of the Orange and Rockland Utilities, Inc. interruptible gas tariff.

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

Subject: Waiver of gas tariff provisions.

Purpose: To approve a waiver of gas tariff provisions.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving the petition of E. Tetz and Sons, Inc. for a limited waiver of certain provisions of the Orange and Rockland Utilities, Inc. interruptible gas tariff, 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-0482SA1)

NOTICE OF ADOPTION

Petition to Submeter Electricity at 425 West 53rd Street, New York, New York

I.D. No. PSC-23-11-00009-A

Filing Date: 2011-09-22

Effective Date: 2011-09-22

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

Action taken: On 9/15/11, the PSC adopted an order approving the petition of 405 West 53rd Development Group LLC to submeter electricity at 425 West 53rd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition to submeter electricity at 425 West 53rd Street, New York, New York.

Purpose: To approve the petition to submeter electricity at 425 West 53rd Street, New York, New York.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving the petition of 405 West 53rd Development Group LLC to submeter electricity at 425 West 53rd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0110SA2)

NOTICE OF ADOPTION

Petition to Submeter Electricity at 230 West 78th Street, New York, New York**I.D. No.** PSC-23-11-00011-A**Filing Date:** 2011-09-22**Effective Date:** 2011-09-22

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

Action taken: On 9/15/11, the PSC adopted an order approving the petition of Amsterdam 78 LLC to submeter electricity at 230 West 78th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition to submeter electricity at 230 West 78th Street, New York, New York.

Purpose: To approve the petition to submeter electricity at 230 West 78th Street, New York, New York.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving the petition of Amsterdam 78 LLC to submeter electricity at 230 West 78th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0247SA1)

NOTICE OF ADOPTION

Wind Generation Facility Ownership Transfer and Restructuring Transactions**I.D. No.** PSC-25-11-00010-A**Filing Date:** 2011-09-21**Effective Date:** 2011-09-21

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

Action taken: On 9/15/11, the PSC adopted an order approving wind generation facility ownership transfer and restructuring transactions among First Wind Holdings LLC, Northeast Wind Holdings LLC and their affiliates.

Statutory authority: Public Service Law, sections 2(11), 5(1)(b) and 70

Subject: Wind generation facility ownership transfer and restructuring transactions.

Purpose: To approve wind generation facility ownership transfer and restructuring transactions.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving First Wind Holdings LLC (First Wind), First Wind Northeast Company LLC, Northeast Wind Partners LLC (NE Partners), CSSW Holdings LLC, CSSW LLC, CSSW Cohocton Holdings LLC, New York Wind LLC, Canandaigua Power Partners LLC (CPP I), Canandaigua Power Partners II LLC (CPP II) and Northeast Wind Holdings LLC (NEW Holdings) for the transfer transaction; CPP I and II, the respective owners of the adjacent Cohocton and Dutch Hill wind generation facilities located in the Town of Cohocton, New York, totaling 125 MW in size, will be merged into new companies. NEW Holdings will acquire from First Wind a 49% indirect interest in CPP I and II and their wind generation assets. First Wind will retain the remaining 51% indirect ownership interest. The complex transfer transactions will be subject to reporting requirements and 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.

(11-E-0253SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Voluntary Time-of-Use Program****I.D. No.** PSC-41-11-00008-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 tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate a Voluntary Time-of-Use Program in compliance with Commission Order issued June 21, 2011 in Case 10-E-0050.

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

Subject: Voluntary Time-of-Use Program.

Purpose: To effectuate a Voluntary Time-of-Use Program for S.C. No. 2 Non-Demand customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a filing by Niagara Mohawk Power Corporation (NMPC) d/b/a National Grid to effectuate a Voluntary Time-of-Use Program for S.C. No. 2 Non-Demand customers in compliance with Commission Order issued June 21, 2011 in Case 10-E-0050. The proposed tariff amendments have an effective date of June 1, 2012. The Commission may adopt in whole or in part, modify or reject NMPC's proposal, and may apply its decision to other utilities.

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

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

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

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

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

(10-E-0050SP6)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****NYPA Preservation Power****I.D. No.** PSC-41-11-00009-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to revise SC No. 4 - Untransformed Service to Certain Customers Taking Power from Projects of the New York Power Authority (NYPA).

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

Subject: NYPA Preservation Power.

Purpose: To allow for delivery of NYPA Preservation Power.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a filing by Niagara Mohawk Power Corporation (NMPC) d/b/a National Grid to revise SC No. 4 -

Untransformed Service to Certain Customers Taking Power from Projects of the New York Power Authority (NYPA) to allow for the delivery of NYPA Preservation Power (PP). PP is a new form of NYPA power that is limited to new customer load. The proposed tariff amendments have an effective date of January 1, 2012. The Commission may adopt in whole or in part, modify or reject NMPC's proposal, and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0520SP1)

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

Voluntary Hourly Pricing Program

I.D. No. PSC-41-11-00010-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate a Voluntary Hourly Pricing Program in compliance with Commission Order issued June 21, 2011 in Case 10-E-0050.

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

Subject: Voluntary Hourly Pricing Program.

Purpose: To effectuate a Voluntary Hourly Pricing Program for S.C. No. 2 Demand and S.C. No. 3 customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a filing by Niagara Mohawk Power Corporation (NMPC) d/b/a National Grid to effectuate a Voluntary Hourly Pricing Program for S.C. No. 2 Demand customers and S.C. No. 3 customers with demand below 250 kW in compliance with Commission Order issued June 21, 2011 in Case 10-E-0050. The proposed tariff amendments have an effective date of January 1, 2012. The Commission may adopt in whole or in part, modify or reject NMPC's proposal, and may apply its decision to other utilities.

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

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

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

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

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

(10-E-0050SP7)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00011-P

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

Proposed Action: The Commission is considering a tariff filing by Orange and Rockland Utilities, Inc. to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0450.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Orange and Rockland Utilities, Inc. (O&R) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0450. The Commission may adopt in whole or in part, modify or reject O&R's proposal and may apply its decision to other utilities.

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

Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(11-E-0450SP1)

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

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-41-11-00012-P

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

Proposed Action: The Commission is considering whether to approve, modify, or reject, in whole or in part, the filings made by various local gas distribution companies (LDCs) and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

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

Subject: Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Purpose: The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, the filings made by 16 local distribution companies and two municipalities reconciling purchased gas costs and gas cost adjustment recoveries for the 12-month period ended August 31, 2011.

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

Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

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

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

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

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

(11-G-0426SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00013-P

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

Proposed Action: The Commission is considering a tariff filing by Central Hudson Gas & Electric Corporation to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0454.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Central Hudson Gas & Electric Corporation (Central Hudson) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0454. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0454SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00014-P

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

Proposed Action: The Commission is considering a tariff filing by Consolidated Edison Company of New York, Inc. to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0452.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Consolidated Edison Company of New York, Inc. (Con Edison) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0452. The Commission may adopt in whole or in part, modify or reject Con Edison's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0452SP1)

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

Clarify Existing Net Metering and Revise Billing Provisions

I.D. No. PSC-41-11-00015-P

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

Proposed Action: The Commission is considering a tariff filing by Central Hudson Gas & Electric Corporation to consolidate existing net metering provisions into a general information section and revise billing provisions applicable to demand metered customers.

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

Subject: Clarify existing net metering and revise billing provisions.

Purpose: To consolidate existing net metering provisions and revise billing provisions applicable to demand metered customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a filing by Central Hudson Gas & Electric Corporation to consolidate existing net metering tariff provisions into a general information section and revise billing provisions applicable to demand metered customers. The proposed tariff amendments have an effective date of January 1, 2012. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal, and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0524SP1)

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

Approval of a Financing

I.D. No. PSC-41-11-00016-P

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

Proposed Action: The Commission is considering a petition from Inergy Pipeline East LLC requesting approval of a financing in the amount of an up to \$3.0 billion credit agreement.

Statutory authority: Public Service Law, section 69

Subject: Approval of a financing.

Purpose: Consideration of approval of a financing.

Substance of proposed rule: The Public Service Commission is considering a petition from Inergy Pipeline East LLC (Inergy) requesting approval of a financing in the amount of an up to \$3.0 billion credit agreement. The debt would be secured in part by recourse to gas transportation and storage

plant located in New York that Inergy owns. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(11-G-0510SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00017-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0456.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0456. The Commission may adopt in whole or in part, modify or reject Niagara Mohawk's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0456SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00018-P

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

Proposed Action: The Commission is considering a tariff filing by Rochester Gas and Electric Corporation to effectuate On-Bill Efficiency Loan

Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0458.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m
Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Rochester Gas and Electric Corporation (RG&E) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0458. The Commission may adopt in whole or in part, modify or reject RG&E's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0458SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00019-P

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

Proposed Action: The Commission is considering a tariff filing by New York State Electric & Gas Corporation to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-E-0460.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by New York State Electric and Gas Corporation (NYSEG) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-E-0460. The Commission may adopt in whole or in part, modify or reject NYSEG's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-E-0460SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00020-P

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

Proposed Action: The Commission is considering a tariff filing by Consolidated Edison Company of New York, Inc. to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0453.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Consolidated Edison Company of New York, Inc. (Con Edison) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0453. The Commission may adopt in whole or in part, modify or reject Con Edison's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0453SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00021-P

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

Proposed Action: The Commission is considering a tariff filing by Central Hudson Gas & Electric Corporation to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0455.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Central Hudson Gas & Electric Corporation (Central Hudson) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0455. The Commission may adopt in whole or in part, modify or reject Central Hudson's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0455SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00022-P

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

Proposed Action: The Commission is considering a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0457.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0457. The Commission may adopt in whole or in part, modify or reject Niagara Mohawk's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0457SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00023-P

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

Proposed Action: The Commission is considering a tariff filing by Rochester Gas and Electric Corporation to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0459.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regard-

ing a filing by Rochester Gas and Electric Corporation (RG&E) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0459. The Commission may adopt in whole or in part, modify or reject RG&E's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0459SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00024-P

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

Proposed Action: The Commission is considering a tariff filing by New York State Electric & Gas Corporation to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0461.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by New York State Electric and Gas Corporation (NYSEG) to effectuate an On-Bill Loan Recovery Mechanism in compliance with Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0461. The Commission may adopt in whole or in part, modify or reject NYSEG's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0461SP1)

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

On-Bill Recovery Mechanism

I.D. No. PSC-41-11-00025-P

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

Proposed Action: The Commission is considering a tariff filing by Orange and Rockland Utilities, Inc. to effectuate On-Bill Efficiency Loan Recovery in compliance with a Commission Notice issued August 26, 2011 in Case 11-G-0451.

Statutory authority: Public Service Law, sections 42(3), 65(6) and 66-m

Subject: On-Bill Recovery Mechanism.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing by Orange and Rockland Utilities, Inc. (O&R) to effectuate an On-Bill Loan Recovery Mechanism in compliance with the Commission Notice Establishing Filing Requirements issued August 26, 2011 in Case 11-G-0451. The Commission may adopt in whole or in part, modify or reject O&R's proposal and may apply its decision to other utilities.

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

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

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

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

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

(11-G-0451SP1)

Department of State

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

Appraisal Standards

I.D. No. DOS-41-11-00001-P

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

Proposed Action: This is a consensus rule making to amend section 1106.1 of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d(1)(d)

Subject: Appraisal standards.

Purpose: To adopt the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice.

Text of proposed rule: § 1106.1 Appraisal Standards

(a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2010-2011] 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) [Competency rule] *Recordkeeping rule*;
- (5) [Scope of work rule] *Competency rule*;
- (6) [Jurisdictional exception rule] *Scope of work rule*;
- (7) [Standard 1-Real Property Appraisal, Development] *Jurisdictional exception rule*;
- (8) [Standard 2-Real Property Appraisal, Reporting] *Standard 1-Real Property Appraisal, Development*;
- (9) [Standard 3-Appraisal Review, Development and Reporting] *Standard 2-Real Property Appraisal, Reporting*;
- (10) [Standard 4-Real Property Appraisal Consulting, Development] *Standard 3-Appraisal Review, Development and Reporting*;

- (11) [Standard 5-Real Property Appraisal Consulting, Reporting] *Standard 4-Real Property Appraisal Consulting, Development;*
- (12) [Standard 6-Mass Appraisal, Development and Reporting.] *Standard 5-Real Property Appraisal Consulting, Reporting;*
- (13) [Standard 7-Personal Property Appraisal, Development] *Standard 6-Mass Appraisal, Development and Reporting;*
- (14) [Standard 8-Personal Property Appraisal, Reporting] *Standard 7-Personal Property Appraisal, Development;*
- (15) [Standard 9-Business Appraisal, Development; and] *Standard 8-Personal Property Appraisal, Reporting;*
- (16) [Standard 10-Business Appraisal, Reporting.] *Standard 9-Business Appraisal, Development; and*
- (17) *Standard 10-Business Appraisal, Reporting.*

(b) The [2010-2011] 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from:

The Appraisal Foundation
 1029 Vermont Avenue, NW, Suite 900
 Washington, DC 20005
 tel: 202-347-7722
 www.appraisalfoundation.org

The [2010-2011] 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org>.

Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services
 N.Y.S. Department of State
 Alfred E. Smith State Office Building
 80 South Swan St., 10th Fl.
 Albany, NY 12210
 tel: 518-473-2728

Division of Licensing Services
 N.Y.S. Department of State
 65 Court Street
 Buffalo, NY 14202
 tel: 716-847-7110

Division of Licensing Services
 N.Y.S. Department of State
 123 William Street
 New York, NY 10038
 tel: 212-417-5747

Division of Licensing Services
 N.Y.S. Department of State
 250 Veterans Memorial Highway
 Hauppauge, NY 11788
 tel: 631-952-6579

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Division of Licensing Services, Alfred E Smith Office Building, 80 South Swan Street, Albany, NY 12231, (518) 473-2728, email: whitney.clark@dos.state.ny.us
Data, views or arguments may be submitted to: Same as above.

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, i.e., the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the

New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any person is likely to object to the adoption of the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2005, 2006, 2007, 2008-2009, 2010-2011 editions of the Uniform Standards of Professional Appraisal Practice.

Job Impact Statement

Licensed and certified real estate appraisers are currently subject to the 2010-2011 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2012-2013 edition. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.

State University of New York

NOTICE OF ADOPTION

Amendment to Rules and Regulations for Purchasing and Contracting Regarding External Agency Contract and Purchase Order Approval

I.D. No. SUN-25-11-00001-A

Filing No. 847

Filing Date: 2011-09-21

Effective Date: 2011-10-12

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

Action taken: Amendment of section 316.4(e) of Title 8 NYCRR.

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

Subject: Amendment to Rules and Regulations for Purchasing and Contracting regarding external agency contract and purchase order approval.

Purpose: To repeal subdivision (e) of section 316.4 of Title 8 NYCRR to conform to the provisions of Chapter 58 of the Laws of 2011.

Text or summary was published in the June 22, 2011 issue of the Register, I.D. No. SUN-25-11-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, University Plaza, S-325, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State University of New York Tuition and Fees Schedule

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

Filing No. 846

Filing Date: 2011-09-21

Effective Date: 2011-10-12

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

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

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

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

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

Text or summary was published in the July 27, 2011 issue of the Register, I.D. No. SUN-30-11-00004-P.

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

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

Assessment of Public Comment

The agency received no public comment.

2009. The new City of Yonkers withholding tax tables also reflect amendments to the Code of the City of Yonkers enacted by Local Law No. 3-2011 pursuant to Tax Law section 1321 that increased the City of Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax, effective January 1, 2011. Specifically, the amendments to City of Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Chapter 255 of the Laws of 2011 extended the authority contained in Section 1321 to taxable years beginning before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013.

The rule also amends the New York State and City of Yonkers provisions regarding withholding on supplemental wages to reflect the new rates of withholding.

This rule applies to wages and other compensation subject to withholding paid on or after January 1, 2012.

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

Reasoned Justification for Modification of the Rule

The Department of Taxation and Finance submitted for publication in the Rule Review section of the January 6, 2010, issue of the State Register summaries of rules that were adopted by the Commissioner of Taxation and Finance in 2000 and 2005, as notice of the department's intent to review such rules pursuant to section 207 of the State Administrative Procedure Act. On December 31, 2009, this information was also posted on the department's website (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>). The public was invited to submit comments concerning the continuation or modification of these rules by February 22, 2010.

No public comments were received by the department concerning the 2005 amendments to 20 NYCRR Sections 171.4(b)(1) (Supplemental wages), 251.1(b) (Supplemental wages, City of Yonkers), and 291.1(b) (Supplemental wages, City of New York); and Appendixes 10, 10-A, and 10-C. The 2005 rule provided revised New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006. The 2005 rule also reflected a decrease in the New York State and City of New York supplemental withholding rates applied to supplemental payments and an increase in that rate for the City of Yonkers. The amendments were adopted by the commissioner on November 22, 2005 and published in the State Register on December 7, 2005, (TAF-40-05-00024-A).

Subsequent changes in the underlying provisions of the Tax Law, Code of the City of Yonkers, and Administrative Code of the City of New York have resulted in several changes to the withholding tables and other methods.

Section 5 of Part Z-1 of Chapter 57 of the Laws of 2009 required the Commissioner to adopt rules to implement changes in the withholding tax tables and other methods relating to the New York State income tax rate changes made by Part Z-1. The 2009 amendments to Appendixes 10 and 10-A relating to the exact calculation method (Method II) for New York State income tax withholding purposes and for City of Yonkers income tax surcharge purposes revised the withholding tables and methods as required by Chapter 57. Amendments to Sections 171.4(b)(1) and 251.1(b) regarding withholding on supplemental wages were also included in the adopted rules to reflect the new rate of withholding. Because Chapter 57 required that the withholding rates for the remainder of tax year 2009 reflect the full amount of tax liability for 2009 as accurately as possible, it was necessary to propose and adopt the amendments for tax year 2009 as an emergency rule on April 15, 2009, and adopt them as a permanent rule on June 23, 2009. On November 18, 2009, the commissioner adopted

Department of Taxation and Finance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-41-11-00003-P

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

Proposed Action: Repeal of Appendixes 10, 10-A; addition of new Appendixes 10, 10-A; and amendment of sections 171.4 and 251.1(b) of Title 20 NYCRR. This rule is proposed pursuant to [SAPA § 207(3)], 5-Year Review of Existing Rules.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a) and 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; City of Yonkers Local Laws No. 3-2011 and No. 9-2011; L. 2009, ch. 57, part Z-1, section 5; and L. 2011, ch. 255

Subject: New York State and City of Yonkers withholding tables and other methods.

Purpose: To provide current New York State and City of Yonkers withholding tables and other methods.

Substance of proposed rule (Full text is posted at the following State website: www.tax.ny.gov): Sections 671(a)(1) and section 1329(a) of the Tax Law, and section 15-105 of the Code of the City of Yonkers require that employers withhold from employee wages amounts that are substantially equivalent to the amount of New York State personal income tax and City of Yonkers income tax surcharge reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendixes 10 and 10-A of Title 20 NYCRR and adds new Appendixes 10 and 10-A to provide new New York State and City of Yonkers withholding tables and other methods. The new tables and other methods amendments implement changes necessitated by Chapter 57 of the Laws of 2009 for tax years beginning after 2011, reflecting the return to the highest personal income tax rate of 6.85 percent in effect for tax years beginning before 2009. Specifically, the amendments reflect the expiration of the revised tax tables and the tax table benefits recapture provided for in Chapter 57 of the Laws of

amendments to Appendixes 10 and 10-A providing the withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2010.

Appendix 10-A was subsequently repealed and new Appendix 10-A was added to provide new City of Yonkers withholding tables and other methods adopted by an emergency rule on March 28, 2011, and permanently adopted on June 1, 2011. The new tables and other methods reflected amendments to the Code of the City of Yonkers enacted by Local Law No. 3-2011 that increased the rate of the city income tax surcharge effective January 1, 2011. Section 251.1 was also amended to reflect the new City of Yonkers supplemental withholding tax rate. The Yonkers withholding tax tables and other methods apply to wages and other compensation subject to withholding paid on or after May 1, 2011 and reflect the full amount of liability for 2011 applied to an 8-month period.

The current rule repeals Appendixes 10 and 10-A and adds new Appendixes 10 and 10-A to provide New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012. This rule sets forth amendments reflecting the revision of New York State personal income tax rates contained in Chapter 57 of the Laws of 2009, and the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of Yonkers Local Law 3-2011. Part Z-1 of Chapter 57 directed the return to the highest New York State personal income tax rate of 6.85 per cent in effect for tax years beginning before 2009 for tax years beginning on or after January 1, 2012. The authority contained in Tax Law section 1321 allowing the City of Yonkers to impose its income tax surcharge set to expire December 31, 2011, was extended by Chapter 255 of the Laws of 2011. Subsequently, City of Yonkers Local Law No. 9-2011 amended the Code of the City of Yonkers to extend the City of Yonkers resident income tax surcharge and non-resident earnings tax to taxable years ending on or before December 31, 2013.

Section 4 of Part EE of Chapter 57 of the Laws of 2010 required the Commissioner to adopt rules to implement changes in the New York City withholding tax tables and other methods relating to the income tax rate changes made by Part EE, effective January 1, 2010. The amendments to Appendix 10-C related to the exact calculation method (Method II) for New York City personal income tax on residents for withholding purposes, revising the withholding tables and methods as required by Chapter 57 of the Laws of 2010. Amendments to Section 291.1(b) regarding withholding on New York City supplemental wages were also included in the adopted rules to reflect the new rate of withholding. Because Chapter 57 required that the withholding rates for the remainder of tax year 2010 reflect the full amount of tax liability for 2010 as accurately as possible, as it was necessary to propose and adopt the amendments for tax year 2010 as an emergency rule on August 17, 2010, and adopt them as a permanent rule on October 22, 2010. On November 18, 2010, the commissioner adopted amendments to Appendix 10-C providing the New York City withholding tables and methods applicable to wages and other compensation paid on or after January 1, 2011.

In light of the various statutory changes since 2005, the 2005 rule that revised New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006 has been revised several times. As a result of the current rule amending the State and City of Yonkers rules, all of these rules concerning the withholding tables and other methods will be current as applied to taxable years beginning on or after January 1, 2012. The 2005 amendments relating to the State and City of Yonkers withholding tables will be completely replaced by this rule so that these provisions of the 2005 rule will no longer be subject to review. The remaining provisions of the 2005 rule relating to New York City will be subject to review, along with the amendments made in 2010, in 2015.

Regulatory Impact Statement

1. Statutory authority: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of

determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required for State income tax; section 1332(a) of the Tax Law and section 15-108(a) of the Code of the City of Yonkers provide that the income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law. Section 1321 authorizes the City of Yonkers to adopt and amend local laws imposing a city income tax surcharge to be administered, collected and distributed by the Commissioner. Section 5 of Part Z-1 of Chapter 57 of the Laws of 2009 requires the Commissioner to adopt rules to implement changes in the withholding tax tables and methods relating to the income tax rate changes made by Part Z-1. City of Yonkers Local Law No. 3-1011 amended section 15-111 of the Code of the City of Yonkers to increase the city income tax surcharge from 10 to 15 percent of net state income tax. Chapter 255 of the Laws of 2011 extended the authority contained in Section 1321 to taxable years beginning before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013.

2. Legislative objective: New Appendixes 10 and 10-A of Title 20 NYCRR contain the revised New York State and City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2012. The amendments implement changes necessitated by Chapter 57 of the Laws of 2009 for tax years beginning after 2011, reflecting the return to the highest personal income tax rate of 6.85 per cent in effect for tax years beginning before 2009. Specifically, the amendments reflect the expiration of the revised tax tables and the tax table benefits recapture provided for in Chapter 57 of the Laws of 2009. Because the income tax rate changes effected by Chapter 57 related to taxpayers with incomes over certain amounts, the wage bracket method (Method I) tables were not affected, and remain unchanged by the amendments. New Appendix 10-A also reflects the increase in the City of Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax, pursuant to amendments to section 15-111 of the Code of the City of Yonkers made by Local Law No. 3-2011 of the City of Yonkers, which was enacted under the authority of Section 1321 of the Tax Law. Specifically, the amendments to City of Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011. Amendments to provisions regarding withholding on supplemental wages are also made to reflect the new rates of withholding. The amendments also reflect minor technical corrections and cosmetic changes to Appendixes 10 and 10-A.

3. Needs and benefits: This rule sets forth amendments to the New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012, reflecting the revision of New York State personal income tax rates contained in Chapter 57 of the Laws of 2009, and implementing the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of Yonkers Local Law 3-2011 over a twelve-month period, rather than over the shorter period required for tax year 2011. This rule benefits taxpayers by providing New York State and City of Yonkers withholding rates that more accurately reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some over-withholding for some taxpayers.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Code of the City of Yonkers already mandate withholding in amounts that are substantially equivalent to the amounts of New York State and City of Yonkers personal income tax on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendixes 10 and 10-A of Title 20 NYCRR to the rates of the New York State income tax and the City of Yonkers income tax

surcharge on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to make amendments to the New York State Personal Income Tax Regulations under Article 22 of the Tax Law, the City of Yonkers Income Tax Surcharge on Residents Regulations, and to Appendixes 10 and 10-A, arises due to the statutory change in the rates of the New York State personal income tax for wages and other compensation paid on or after January 1, 2012, and due to the statutory change in the City of Yonkers income tax surcharge rate applied over a twelve-month period, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the changed tables and other methods and directed to the Department's Web site for the new tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since sections 671(a) and 1329(a) of the Tax Law, section 15-105 of the Code of the City of Yonkers and Chapter 57 of the Laws of 2009 require that withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: The required information will be made available to affected employers in sufficient time to implement the revised New York and City of Yonkers withholding tables and other methods for wages and other compensation paid on or after January 1, 2012.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the New York State and City of Yonkers withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the New York State and City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised New York State and City of Yonkers withholding tables and other methods. The promulgation of this rule will not require small businesses or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the New York State and City of Yonkers withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional

burdens on small businesses and local governments. See, also section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local governments with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and the New York Association of Convenience Stores; the Tax section of the New York State Bar Association; the Association of the Bar of the City of New York; the National Tax Committee for the National Conference of CPA Practitioners; the New York State Society of CPAs; and the Business Council of New York State. In addition, the City of Yonkers was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer, including any public or private employer located in a rural area as defined in section 102(10) of the State Administrative Procedure Act, that is currently subject to the New York State and City of Yonkers withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the New York and City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information forms or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State and City of Yonkers withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these New York State and City of Yonkers changes should place no additional burdens on employers located in rural areas. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that the New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same

manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude employers located in rural areas from the withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Division of Local Government Services of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax section of the New York State Bar Association; the Association of the Bar of the City of New York; the National Tax Committee for the National Conference of CPA Practitioners; the New York State Society of CPAs; and the Business Council of New York State.

Job Impact Statement

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities. The purpose of the rule is to provide New York State and City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after January 1, 2012. This rule sets forth amendments reflecting the revision of New York State personal income tax rates contained in Chapter 57 of the Laws of 2009, and the new City of Yonkers income tax surcharge rate pursuant to section 15-111 of the Code of the City of Yonkers as amended by City of Yonkers Local Law 3-2011. Chapter 255 of the Laws of 2011 extended the authority contained in Section 1321 to taxable years ending before 2014. City of Yonkers Local Law No. 9-2011 extended the City of Yonkers resident income tax surcharge and its non-resident earnings tax to taxable years ending on or before December 31, 2013.

The amendments necessitated by the Chapter 57 of the Laws of 2009 for tax years beginning after 2011 reflect the return to the highest personal income tax rate of 6.85 per cent in effect for tax years beginning before 2009. Specifically, the amendments reflect the revision of the tax tables and the tax table benefits recapture contained in Chapter 57. Because the income changes made by Chapter 57 relate to taxpayers with incomes over certain amounts, the wage bracket method (Method I) tables are not affected. The new Appendix 10-A also reflects the increase in the City of Yonkers income tax surcharge rate from 10 to 15 percent of net state income tax pursuant to section 15-111 of the Code of the City of Yonkers. Specifically, the amendments to the Yonkers withholding tax tables reflect the implementation of the 15 percent surcharge rate over a twelve-month period, rather than the shorter implementation period required for tax year 2011.

The amendments to the New York State and Yonkers provisions regarding withholding on supplemental wages are also made to reflect the new rates of withholding.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Public Assistance

I.D. No. TDA-41-10-00005-A

Filing No. 853

Filing Date: 2011-09-27

Effective Date: 2011-10-12

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

Action taken: Repeal of section 351.24; amendment of sections

351.1(b)(2)(iv), 352.17(d), 352.19(b)(3), 366.3 and 366.4(g); and addition of section 366.11 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 131-t, 131-z(9) and 355(3)

Subject: Public Assistance.

Purpose: Quarterly reporting is being eliminated as a district optional requirement for the majority of public assistance recipients, but it remains a mandatory requirement for child assistance program participants.

Text of final rule:

Subparagraph (iv) of paragraph (2) of subdivision (b) of section 351.1 is amended to read as follows:

(iv) make a timely report to the district of any changes in his or her needs and resources. A report will be considered timely if made within 10 days of the changes except as provided in section [352.30(d)(4)] 351.2(k)(4) of this Title. A report to a social services district concerning changes in income *must be made timely*. Such a report will be considered timely if made within the time frames specified in section [351.24(d)] 352.19(b) of this [Part] Title;

Section 351.24 is repealed and reserved.

Subdivision (d) of section 352.17 is amended to read as follows:

(d) Average monthly earned income is applied against need to determine the grant amount for each calendar month of [a payment quarter] *an authorization period*. The amount of average earned income applied must be recalculated at recertification [and when a quarterly report is received by the agency]. No other adjustments will be made, except as provided in section 352.31(c) of this Part, unless one of the following occurs:

Paragraph (3) of subdivision (b) of section 352.19 is amended to read as follows:

(3) failed without good cause to make a timely report of new or increased income. *A report of income is considered timely if a recipient reports the receipt of new or increased income no later than 10 days after the receipt of the income. A report of such income made more than 10 days after receipt is not timely, but a report made more than 10 days prior to the end of the month is timely with respect to the next month and any succeeding month.*

Section 366.3 is amended to read as follows:

(a) The following general provisions apply:

[(a)] (1) Families eligible for benefits under CAP are not eligible to receive assistance through Refugee Cash Assistance (RCA), FA, or SNA, unless otherwise specified in this Part.

[(b)] (2) Within the same household, family members must either all receive CAP or all receive non-CAP public assistance (RCA, FA, or SNA).

[(c)] (3) Non-CAP public assistance recipients can only be transferred from the non-CAP PA program to CAP on the first day of a month.

[(d)] (4) CAP participants will be eligible for medical assistance under Part 360 of this Title only to the extent that the participants meet the financial and categorical requirements for medical assistance.

[(e)] (5) When used in this Part, the phrase "poverty level" will refer to the poverty guidelines issued by the United States Bureau of the Census.

(b) The following definitions are used in this Part:

(1) "Authorization period" means the twelve-month period for which CAP benefits are authorized following a recertification pursuant to section 366.4(f) of this Part. Each authorization period is divided into four payment quarters.

(2) "Payment quarter" means the three-month period after the process month.

(3) "Process month" means the month in which information contained in a quarterly report or obtained during a recertification is reviewed. With respect to information obtained from a quarterly report, process months are the third, sixth and ninth month of an authorization period. With respect to information obtained at recertification, the process month is the last month of the authorization period.

(4) "Quarterly report" means a form upon which a participant reports income and household circumstances for that three-month period.

(5) "Quarterly reporting" refers to a procedure for obtaining information concerning the incomes and circumstances of certain CAP participants through annual recertifications and mailed reports sent in the second, fifth and eighth month of a CAP participant's authorization period. Quarterly reporting is a modified system of monthly reporting in which written reports are made at three-month intervals between annual recertification interviews and CAP grants are calculated prospectively.

(6) "Report quarter" means the three-month period covered by a quarterly report.

(7) "Timely Report" means a report made no later than 10 days after a change affecting eligibility occurs.

Subdivision (g) of section 366.4 is amended to read as follows:

(g) The quarterly reporting requirements of section [351.24] 366.11 of this [Title] Part will apply to CAP participants [, except that each family participating in CAP will receive and be required to complete three quarterly reports between each annual recertification].

A new section 366.11 is added to read as follows:

§ 366.11 *Quarterly Reporting.*

(a) *All CAP households must submit a quarterly report form to the social services district in the three process months of an authorization period.*

(b) *The quarterly report form must contain the following information:*

(1) *periodic income and dates received, household composition and other circumstances relevant in determining the amount of assistance; and*

(2) *any changes in income, household composition or other relevant circumstances affecting eligibility for or the amount of benefits which the household expects to occur in the current or future months.*

(c) *The quarterly reporting process does not relieve participants of their responsibility to report changes that impact eligibility in a timely manner. Participants must submit timely reports of all changes affecting eligibility, with the exception of changes in income, no later than 10 days after each change occurs. Participants will not be required to report changes in income more frequently than quarterly.*

(d)(1) *Quarterly report forms must be provided to participants in sufficient time for participants to return completed reports to the social services districts by the tenth day of the process month.*

(2) *A quarterly report is considered complete when the participant has:*

(i) *answered all questions;*

(ii) *provided verification of all reported income; and*

(iii) *signed and dated the report on or after, but not before, the last day of the report quarter.*

(e) *Failure to submit a completed report. If a participant fails, without good cause, to return a completed quarterly report by the tenth day of the process month, the social services district must send a timely and adequate notice of discontinuance along with a copy of any quarterly report which was returned incomplete or along with a second quarterly report if no report has been returned.*

(f) *If the participant responds to the discontinuance notice and submits a completed report before the effective date of the discontinuance, the social services district must accept the completed quarterly report and void the notice of discontinuance.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 351.1(b)(2)(iv).

Text of rule and any required statements and analyses may be obtained from: Kathryn Mazzeo, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 473-3271, email: Kathryn.Mazzeo@OTDA.state.ny.us

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

The nonsubstantive revision made to section 351.1(b)(2)(iv) was merely a technical change updating a cross reference. This change does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

During the public comment period on the proposed rule to eliminate quarterly reporting as a district optional requirement for the majority of public assistance (PA) recipients, the Office of Temporary and Disability Assistance (OTDA) received one comment.

Comment: The commenter recommended amending the PA timely reporting of income rule that is being moved from 18 NYCRR § 351.24(e) and added as § 352.19(b)(3) to allow additional time for PA recipients to report new and increased earnings. The commenter noted that allowing PA recipients to report a change in earned income no later than 10 days after the month in which the change in income occurred would reduce confusion by making PA reporting rules consistent with Food Stamps policy, enhance administrative simplicity and consistency, and not result in a loss of federal funding.

Response: The OTDA disagrees with this comment. The commenter's concern regarding consistency and simplicity is noted. However, the recommended change would delay the budgeting of earned and unearned income and the corresponding reduction in PA grants, making it likely that new and increased income would not be budgeted against the PA grant for an additional month. This would result in PA funds being provided to ineligible individuals and increased government expenditures. For these reasons, we do not agree with this suggestion and have not incorporated this comment.