

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.

Banking Department

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Banking Department publishes new notices of proposed rule making in the *NYS Register*.

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No.	Proposed	Expiration Date
BNK-37-10-00001-P	September 15, 2010	September 15, 2011

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No.	Proposed	Expiration Date
BNK-37-10-00002-P	September 15, 2010	September 15, 2011

Office of Children and Family Services

NOTICE OF ADOPTION

Child Care Subsidy Fraud Prevention

I.D. No. CFS-18-11-00010-A

Filing No. 824

Filing Date: 2011-09-16

Effective Date: 2011-10-05

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

Action taken: Amendment of Parts 414, 415, 416, 417 and Subparts 418-1 and 418-2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d), (3)(e)(ii), 410(1) and title 5-C

Subject: Child Care Subsidy Fraud Prevention.

Purpose: To clarify when child day care providers may be disqualified from receiving payments for child care subsidies due to fraud.

Text or summary was published in the May 4, 2011 issue of the Register, I.D. No. CFS-18-11-00010-P.

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

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

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received three sets of comments on the proposed child care regulations, one from the commissioner of a local social services district (LSSD), one from a staff attorney for a non-profit legal services agency (LSA), and a combined comment from two New York State Assembly Members and committee chair persons (Assembly Members).

The LSSD and Assembly Members both support OCFS' efforts to enhance the tools of LSSDs to detect and prevent against child care subsidy fraud. In undertaking this effort, OCFS recognized the need to balance providing adequate due process to child care providers with the need to prevent limited child care subsidy dollars from being spent inappropriately. OCFS believes these regulations strike the necessary balance between providing due process to child care providers and providing the LSSDs with the flexibility needed to administer child care subsidy dollars.

LSSD Comments

The LSSD recommended the following changes to the proposed regulations: 1) require applicants for child care subsidies to provide their social security numbers; 2) change the claiming methodology for subsidies for families in transition from Public Assistance; 3) establish time limits for the submission of subsidy claims; 4) require subsidy recipients to report changes in eligibility to LSSDs within 10 days, instead of the current standard of "immediately"; 5) disallow payment for a child care subsidy where a registration/license has expired or lapsed; 6) enact enforcement provisions to penalize provid-

ers who fail to cooperate with LSSDs by not permitting the inspection of their program and records; 7) allow LSSDs to disallow payments when the required attendance records are not maintained and require providers to maintain all attendance records for a five year minimum; 8) require the administrative review be done at the State level because the administrative review is an unfunded mandate, not required by law or regulation. (The LSA also recommend the administrative review be done at the State level); 9) require a re-enrolled or re-registered/licensed provider to serve a probationary period and be subject to more frequent audits and inspections; 10) allow LSSDs to share information on disqualified providers with other units within the LSSD; 11) explicitly state that a failure to operate in compliance with OCFS' regulations may result in a disallowance of subsidy payments; and 12) establish timeframes for legally-exempt caregiver enrollment agencies to terminate the enrollment of caregivers for noncompliance.

OCFS' response to the LSSD comments: 1) The federal Department of Health and Human Services (DHHS) prohibits states from requiring applicants for child day care subsidies submit social security numbers. 2) This is outside of the scope of the proposed regulations. 3) LSSDs are free to establish reasonable time limits. 4) LSSDs can make this a local policy and/or make it a condition of a contract. 5) The State Administrative Procedure Act provides that, where an application for renewal has been submitted to the licensing agency within the required timeframe, the license remains in effect until it is renewed, or until it has been denied and all possible challenges to the denial have been exhausted. 6) OCFS believes the proposed regulations and existing day care regulations already provide adequate sanctions. These include the deferral or disallowance of payment and the revocation of a provider's registration/license. 7) OCFS believes the authority exists inherently in the proposed regulation to defer or disallow payments when there are no records provided to the LSSD. In addition, LSSDs have discretion to set the length of time providers maintain attendance records in the provider contract. 8) OCFS disagrees with the LSSD's analysis of the due process requirements and costs as an unfunded mandate to LSSDs. The proposed regulations do not require LSSDs to follow the process described in Section 415.4(h)(2)(ii). The regulation in question sets forth what OCFS expects of a LSSD should it "audit" and seek recovery of subsidy funds from a child day care provider. LSSDs are not required to implement these regulations unless they are seeking to disallow/defer child day care payments to child day care providers for alleged false claims. 9) OCFS does not believe probationary periods are necessary. LSSDs are free to audit whom they wish. 10) LSSDs may share whatever disqualification information they have on providers with other units within the LSSDs. 11) OCFS believes the LSSD has misread the intent of the regulations. OCFS does not intend that LSSDs be able to disallow subsidy payments for minor regulatory violations. OCFS is seeking to clarify its ability to revoke/deny renewal of the registrations/licenses of providers who file false child care subsidy claims with LSSDs. 12) The maximum timeframe allowed for an enrolled legally-exempt child care provider to address non-compliance is established as 30 days. This timeframe is referenced in the Guide to the Home Inspection Report (June 2007) and at both the Legally-Exempt Enrollment Training and Non-compliance Training, which all enrollment staff are required to attend.

Based on a review of the LSSD's comments and OCFS' responses, OCFS will not make any changes to the draft regulations.

LSA Comments

The LSA recommended the following changes to the proposed regulations: 1) a maximum time limit for deferrals; 2) define "false claim", add a requirement that intent is an element of filing a false claim, and clarify that disqualification for non-compliance with repayment agreements executed with LSSDs will only apply to repayment agreements for false claims or fraud; 3) create the forms and notices to be used by LSSDs; 4) recommend required notices and reports be sent out by regular and certified mail; 5) give providers 30 days, as opposed to 20 days, to respond to both notices; 6) mandate providers who are non-English speaking, or who have limited English proficiency, receive the notices in their native language and have access to an interpreter for any meetings; 7) prescribe the content of the notices sent to providers concerning the preliminary review report; 8) require

sanctions run until full restitution is made or five years, whichever is longer; 9) develop a range of penalties based upon the severity of the offense; 10) clarify that legally-exempt child care is covered by the regulations, and that Section 415.12 be revised to provide for when a legally-exempt provider's enrollment may be terminated; 11) require LSSDs to provide mandatory orientation to providers before the providers accept subsidy payments; 12) requested more frequent inspections of providers and pre-enrollment inspections of all legally-exempt providers; and 13) revise the regulations to have child day care providers who participate in the subsidy program be paid for child care "slots" as opposed to actual attendance.

OCFS' response to the LSA's comments: 1) OCFS will encourage LSSDs to set such limits, but OCFS does not feel such time limits need to be included in the proposed regulations. 2) OCFS does not believe it is necessary to define "false claim" and to add "intent" as an element. 3) The administrative review process is a LSSDs process, which requires LSSDs to develop their forms and notices. 4) There is nothing in the proposed regulations to prohibit LSSDs from using both forms of mailing, but OCFS does not feel it necessary to mandate LSSDs use both forms of mailing. 5) OCFS believes 20 days is sufficient time for the provider to respond. 6) LSSDs may provide this at their own discretion but, OCFS does not feel it necessary to mandate LSSDs make such forms or services available. 7) OCFS does not believe form language needs to be included in regulation. Rather, OCFS believes such language should be addressed in a Local Commissioners Memorandum. 8) All restitution must be made before a provider may return to the subsidy program. 9) OCFS believes five years is an appropriate time period. OCFS believes a mandatory period of disqualification is required to emphasize the seriousness of subsidy fraud. However, LSSDs will have discretion as to what providers they seek to sanction. 10) All legally-exempt care is covered by the draft regulations. 11) LSSDs may do so if they wish; but OCFS does not feel it necessary to mandate LSSDs take such actions. It is the obligation of the provider to acquaint him/herself with the requirements of the subsidy system. 12) This is outside the scope of the proposed regulations. 13) Federal regulations allow reimbursement of subsidy payments for care received, not for designated slots.

Based on a review of the LSA's comments and OCFS' responses, OCFS will not make any changes to the draft regulations.

Assembly Members Comments

The Assembly Members recommended the following changes to the proposed regulations: 1) amend the required five-year period of disqualification from participation in the subsidy program to be an "up to five year" period; 2) add a timeframe for LSSDs to conduct a formal review, if requested by a provider, after the issuance of the final review report; 3) clarify the ability of a provider to request an adjournment of a review, to have reviews held during non-traditional hours, to be accompanied by a representative during reviews and to have an impartial reviewing officer; 4) address the timing for instituting a disqualification from the subsidy program and require notification to the parents/guardians of the children enrolled in the disqualified programs; and 5) address the possible conflict(s) between proposed Section 415.12(a)(4) and Section 415.6(e)(2) of Title 18 of the NYCRR.

OCFS' response to the Assembly Members' comments: 1) OCFS believes five years is an appropriate time period. OCFS believes a mandatory period of disqualification is required to emphasize the seriousness of subsidy fraud. However, LSSDs will have discretion as to what providers they seek to sanction. 2) OCFS will encourage LSSDs to set such timeframes but, OCFS does not feel it necessary to mandate such timeframes. 3) LSSDs may accommodate any of the above suggestions but, OCFS does not feel it necessary to mandate LSSDs make such accommodations. 4) The regulations establish prerequisites for disqualifications. OCFS believes this establishes the requested timeframe. In addition, LSSDs already have procedures in place to assist parents when a child care provider becomes an ineligible provider. These procedures will be used in subsidy disqualification cases as well. 5) 18 NYCRR § 415.12(a)(4) states, a provider cannot charge more for subsidized care than non-subsidized care. 18 NYCRR § 415.6(e)(2) states, payments by a LDSS for child care of eligible families cannot exceed the amount charged to the general

public for equal care in the facility or home. OCFS sees no conflict between these two provisions.

Based on a review of the Assembly Members' comments and OCFS' responses, OCFS will not make any changes to the draft regulations.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mount McGregor Correctional Facility

I.D. No. CCS-40-11-00002-P

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

Proposed Action: This is a consensus rule making to amend section 100.70 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Mount McGregor Correctional Facility.

Purpose: To remove reference to a correctional facility and an inmate program that is no longer in operation.

Text of proposed rule: The Department of Corrections and Community Supervision is amending section 100.70 of 7 NYCRR as indicated below:

§ 100.70. Mt. McGregor Correctional Facility.

(a) There shall be in the department a facility to be known as Mt. McGregor Correctional Facility, which shall be located at Wilton in Saratoga County, New York, and which shall consist of the property under the jurisdiction of the department at that location. [other than that property consisting of buildings 40 and 41, and dormitories E, F, G and J, and known as Camp Mt. McGregor.]

(b) Mt. McGregor Correctional Facility shall be a correctional facility for males 21 years of age or older.

(c) Mt. McGregor Correctional Facility shall be classified as a medium security facility, to be used as a *general confinement facility*. [for the following functions:]

[(1) work release facility; and]

[(2) general confinement facility.]

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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.

Consensus Rule Making Determination

The Department of Corrections and Community Supervision has determined that no person is likely to object to the proposed action. The amendment of this section removes the reference to a correctional facility and an inmate program that is no longer in operation. Since the facility and program is no longer in operation, the reference to them in the regulations is no longer applicable to any person. See SAPA section 102(11)(a).

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to a correctional facility that was closed in accordance with the law, and it is also removing the reference to an inmate program that is no longer in operation at the remaining facility. The removal of the reference to the closed facility and non-existent program has no adverse impact on jobs or employment opportunities.

Division of Criminal Justice Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles

I.D. No. CJS-40-11-00003-EP

Filing No. 827

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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

Proposed Action: Amendment of sections 349.1, 349.3, 349.5, 349.6 and 349.7 of Title 9 NYCRR.

Statutory authority: Family Court Act, section 176; Criminal Procedure Law, section 410.80(1); and Executive Law, section 243(1); L. 2010, ch. 56; L. 2011, ch. 97

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

Specific reasons underlying the finding of necessity: Pursuant to Chapter 97 of the Laws of 2011 and DCJS's authority to promulgate regulations with respect to certain aspects of this chapter law, it is being issued on an emergency basis to safeguard the public, and guarantee timely implementation of Family Court Act Section 176 which now requires complete intrastate transfer of probation supervision and court jurisdiction with respect to family court probationers who reside or request to reside in another jurisdiction and receive appropriate judicial approval. Regulatory amendments in this area will safeguard the public and promote greater accountability of transferred probationers who reside elsewhere in the state by giving the receiving court and receiving probation department full authority as to case handling. These regulatory changes are sought to further promote the general welfare by ensuring that the law's intent is not hindered by lack of procedures and that probationers and probation departments are not adversely burdened as a result. Due to the law taking effect on June 24, 2011, it is imperative that these regulations which establish the framework for accomplishing complete family court transfers of probation of applicable cases be adopted immediately to avoid disruption of family court probation transfer services in this area, guarantee prompt implementation, and facilitate compliance among the family court judiciary and the field of probation.

Subject: Interstate and Intrastate Transfer of Probation Supervision for Adults and Juveniles.

Purpose: To implement legal requirements of Chapter 97 of the Laws of 2011 and conform with other statutory changes.

Text of emergency/proposed rule: Subdivisions (a), (b), and (c) of Section 349.1 shall read as follows:

(a) The term "interstate compact for [parole and probation] *adult offender supervision*" and the "interstate compact for juveniles" means legally binding agreements and administrative arrangements under which the states in an interstate transfer serve as each other's agents in the supervision of certain parolees, probationers, juvenile delinquents, *persons in need of supervision*, and youthful offenders.

(b) The term "interstate transfer" means a process by which the supervision of [adult and child] probationers is transferred to and from jurisdictions outside the State of New York.

(c) The term "intrastate transfer" means a process by which[, in the case of an adult probationer, a sentencing court or a court by virtue of a previous transfer has assumed the powers and duties of the sentencing court and has sole jurisdiction in the case, or in the case of a child probationer, a family court designates any other probation department within the State to perform the duties of probation] supervision [of the probationer] *and jurisdiction of a probationer is transferred within the State of New York and includes inter-county probation pursuant to section 176 of the family court act.*

Subdivisions (a) and (b) of Section 349.3 shall read as follows:

(a) All interstate transfers of probation supervision shall be in accordance with the provisions of the interstate compact for [the supervision of

parolees and probationers] *adult offender supervision*, the *interstate* [juvenile] compact for juveniles, any other governing compact, and applicable rules, regulations and procedures as adopted by the State compact administrator for such compacts with reference to the transfers of probation supervision. Any sending probation department shall take all necessary steps to ensure the following are completed prior to transfer:

- (1) fingerprinting of any convicted [adult] probationer, youthful offender, [juvenile offender/youthful offender,] and juvenile delinquent adjudicated of a fingerprintable offense;
- (2) DNA testing, where applicable; and
- (3) Sex Offender Registration, where applicable.

A sending department shall indicate what actions it has taken with regard to these aforementioned requirements.

(b) All intrastate transfers of probation supervision [of child probationers] shall be in accordance with the *applicable* provisions of the Family Court Act or *Criminal Procedure Law*.

Subdivision (c) of section 349.3 is repealed and subdivisions (d) and (e) are renumbered (c) and (d).

Subdivision (d) of section 349.3 shall read as follows:

(d) Each probation director shall designate an experienced officer or officers to be responsible for transfers of probation supervision. Any such officer shall act as a liaison to the [State Division] *New York State Division of Criminal Justice Services office* of [Probation and Correctional Alternatives] *probation and correctional alternatives*. The name and title of such designee shall be filed with the [State Director] *director of the office of* [Probation and Correctional Alternatives] *probation and correctional alternatives*.

The opening paragraph of subdivision (e) of section 349.4 shall read as follows:

(e) The sending probation department shall take all necessary steps to ensure fingerprinting, DNA testing, and sex offender registration, where applicable, are completed prior to transfer and shall indicate what actions it has taken with regard to these requirements. The sending probation department, within 10 [calendar] *business* days of receipt of a court order of transfer, shall transmit to the receiving probation department designee the following information:

Paragraph (1) of subdivision (e) of section 349.4 shall read as follows:

(1) A completed form [DPCA] *DCJS 16*, [DPCA] *DCJS-16a* or [DPCA] *DCJS-16b*, whichever is applicable *or such other form and/or manner as may be prescribed by DCJS*;

The closing paragraph of subdivision (e) of section 349.4 shall read as follows:

Where any convicted [adult] *individual*, youthful offender, [juvenile offender/youthful offender,] or juvenile delinquent adjudicated of a fingerprintable offense, is under probation supervision [a copy of the DPCA -200 or through an equivalent process which indicates] the sending probation [department's] *department shall electronically transmit, utilizing the State's integrated probation registrant system, the ORI number and the probationer's registration number associated with the underlying offense for which such [individual] person is under supervision [shall be transferred to the DPCA via DCJS with a copy to the receiving probation department].*

Subdivision (f) of section 349.4 shall read as follows:

(f) If it is determined that the probationer: resides at the specified address in the order of transfer; has absconded; does not reside; or will not be residing at the specified address in the order of transfer; the receiving probation department shall immediately upon knowledge, but no later than 60 calendar days after the date the initial court transfer order is received, notify the sending probation department of its finding with respect to residency or non-residency. If the address in the order of transfer is inaccurate, the correct address shall be provided. Any verbal notification shall be immediately confirmed in writing. The sending probation department shall notify the sending court of the finding. The sending probation department shall retain the duty of supervision for the probationer and the sending court shall retain jurisdiction over the case prior to verification of residence or upon notification of probationer non-residence within the time period. If no notification of residency or non-residency occurs within 60 calendar days of the date the court transfer order is received, the transfer shall be effective and the receiving court shall assume those powers and duties as otherwise specified in the court order and the receiving probation department shall assume the duty of supervision. Upon knowledge of residency or non-residency, the receiving probation department shall complete the acknowledgment section contained in the appropriate [DPCA] *DCJS* transfer form and return two duly executed copies to the sending probation department. Upon acceptance, the receiving probation department shall *electronically* transmit [to DPCA via DCJS a DPCA-200 or through an equivalent process which updates] *updated transfer information to DCJS, utilizing the State's integrated probation registrant system* [and shall provide a copy to the sending probation department]. After 60 calendar days of the court order being received, if

the receiving department has not already done so, the sending department shall *electronically* transmit to [DPCA via] *DCJS* [a DPCA-200 or an equivalent electronic process which updates information and provide a copy or notification to the receiving department of its action] *updated transfer information with respect to completion of transfer, utilizing the State's integrated probation registrant system*. Where non-residency is determined, the receiving probation department shall return all appropriate transfer material to the sending probation department within 10 calendar days of such a determination.

Subdivision (h) of section 349.4 shall read as follows:

A subsequent intrastate transfer of the supervision of a probationer shall originate from [a] *the appropriate* court which possesses the jurisdiction to re-transfer. [If the court transferring supervision retained jurisdiction, copies of all reports and records shall be sent to the probation department which originated the first transfer in order that a second transfer may be made by such court and the probation department servicing such court shall comply with the previous provisions of this Part. If the court transferring supervision did not retain jurisdiction, a second transfer shall be made by the court to which supervision was transferred and the probation department serving such court shall comply.]

The section heading and subdivision (a) of section 349.5 shall read as follows:

349.5 Requirements for the Temporary Transfer of Supervision of [Adult and Child] Probationers. (a) Temporary transfer of [an adult or child] *a* probationer may be approved by a sending probation department upon verification of temporary residency by the receiving probation department.

Paragraph (1) of subdivision (h) of section 349.5 shall read as follows:

(1) A completed form [DPCA] *DCJS-16b*, *or such other form and/or manner as may be prescribed by DCJS*;

Section 349.6 shall read as follows:

(a) Whenever there is a dispute as to acceptance of an intrastate or temporary transfer case between local probation departments, either or both departments may appeal to the [State Director of Probation and Correctional Alternatives] *director of the office of probation and correctional alternatives*.

(b) The departments shall provide the [Division of Probation and Correctional Alternatives] *office of probation and correctional alternatives* with information as to their respective position and specific details as to the nature of the dispute and such other information as may be requested by the [State] director. The [division] *office* shall attempt to mediate the matter and if necessary, the [State director] *commissioner of the division of criminal justice services, upon consultation with the director of the office of probation and correctional alternatives*, shall promptly render a final determination binding upon both departments.

Section 349.7 shall read as follows:

The receiving probation department shall be responsible for the collection of any restitution payment and designated surcharge imposed as a condition of a probation sentence or disposition and disbursement to the proper beneficiary. The receiving department shall be entitled to receive and keep any designated surcharge imposed. [In] *However, in* no event shall the receiving probation department be responsible for the collection and disbursement of any *restitution and/or* other financial obligations which it does not routinely collect.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 14, 2011.

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, NYS Division of Criminal Justice Services, 4 Tower Place, 3rd Floor, Albany, NY 12203-3764, (518) 457-8413, email: linda.valenti@dcs.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority:

Pursuant to Chapter 56 of the Laws of 2010, the former Division of Probation and Correctional Alternatives (DPCA) was merged within the Division of Criminal Justice Services (DCJS) and is now the Office of Probation and Correctional Alternatives (OPCA). Section 8 of Part A of this Chapter specifically transferred all rules and regulations of DPCA to DCJS and established that such shall continue in full force and effect until duly modified or abrogated by the Commissioner of DCJS. Additionally, section 17 of Part A of this Chapter amended Executive Law Section 243(1) to make conforming changes and establish in pertinent part that the Commissioner of DCJS has authority to adopt "general rules which shall regulate methods and procedure in the administration of probation services... so as to secure the most effective application of the probation system and the most effective enforcement of the probation laws through-

out the state.” Such rules are binding with the force and effect of law. Further, Criminal Procedure Law (CPL) 410.80 establishes that intrastate transfer of supervision of probationers shall be in accordance with such state agency rules. Consistent with the aforementioned statutory language, there exists a rule governing Interstate and Intrastate Transfer of Probation Supervision, specifically 9 N.Y.C.R.R. Part 349. Significantly, section 4 of Subpart C of Chapter 97 of the Laws of 2011 recently amended Family Court Act (FCA) Section 176 to implement a similar complete transfer of probation of family court cases in accordance with rules promulgated by the Commissioner of DCJS.

2. Legislative objectives:

Specific regulatory provisions expand upon current intrastate probation transfer regulatory provisions pursuant to the aforementioned 2011 Chapter law in order to timely implement new statutory provisions and make other technical amendments to avoid confusion. In general, these regulatory amendments are consistent with legislative intent to regulate the administration of probation functions and the promotion of professional standards which govern administration and delivery of probation services in the area of transfer of probation. The overarching goal of these amendments is to provide the necessary framework for implementation of the new law governing family court complete probation transfer of supervision and jurisdiction and to incorporate other ancillary technical changes to reflect the 2010 agency merger and clarify and simplify certain provisions to minimize confusion. Further regulatory changes are consistent with Chapter 29 of the Laws of 2011 which repealed Chapter 155 of the Laws of 1955 and added new Executive Law Section 501-e wherein New York State formally adopted the new Interstate Compact for Juveniles. Additional flexibility to probation departments with respect to submission of intrastate transfer documents in terms of time frame has been included in an effort to provide mandate relief.

3. Needs and benefits:

The regulatory amendments with respect to expanding reference to any family court intrastate transfer of probation are critical to the prompt implementation of the aforementioned Chapter Law which amended FCA Section 176 to now require DCJS rulemaking. These and other transfer of probation regulatory amendments will better assist probation departments in carrying out probation transfer operations. Establishing the regulatory mechanism to effectuate a complete transfer of family court probation cases, where applicable, will ensure that such jurisdictions have total judicial authority and supervisory control of these probationers who reside within their jurisdiction and will better enable them to respond swiftly and certainly to probation violations, thereby safeguarding the public and promoting greater accountability. It will relieve courts of their jurisdiction and probation departments of their supervisory responsibility regarding newly transferred probation cases who reside elsewhere in the state but whose only connection to their jurisdiction was where they committed their offense. Regulatory changes are sought to further promote the general welfare by ensuring that the law’s intent with respect to complete transfers of family court probation cases is not hindered by lack of procedures and that probationers and probation departments are not adversely burdened as a result. Regulatory language is essential to implementation of this new law and will relieve probation departments of some costly and labor intensive practices associated with past family court intrastate transfers such as retaking of probation violators, seeking warrants from sending jurisdictions, and sending officers to testify on violations. Certain regulatory change will also afford relief to sending probation departments in intrastate transfer of probation cases by providing, at a minimum, two extra workdays to transmit certain requisite case record information to the receiving probation department. The amendments also remove obsolete language in the area of intrastate transfer, which has been superseded by Chapter 191 of the Laws of 2007, to prevent confusion among staff. Additionally, the regulatory change makes conforming technical amendments to reflect name and/or other technical changes with respect to the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles. Lastly, other technical changes have been made to reflect the 2010 consolidation of the former DPCA with DCJS.

4. Costs:

The regulatory amendments will not result in increased costs and should result in some savings related to violations as noted above.

5. Local government mandates:

The regulatory amendments do not establish additional mandates beyond existing state law. A specific regulatory amendment will provide local probation departments certain mandate relief with respect to intrastate transfer of probation operational requirements. It will afford sending probation departments a minimum of two extra days in which to transmit certain requisite intrastate material to the receiving probation department.

6. Paperwork:

No additional paperwork is necessary for the implementation of these rule changes.

7. Duplication:

These amendments do not duplicate any State or Federal law or regulation.

8. Alternatives:

Interstate and intrastate transfer of probation supervision is a critical aspect of the supervision function performed by probation departments. Thus, it is imperative that there be minimum regulatory standards in this area to ensure consistency among probation departments and better guarantee timely transmission of vital transfer information. Newly enacted amendments to FCA Section 176 require that DCJS promulgate rules and regulations governing family court intrastate transfer of probation. Further, CPL 410.80(1) confers rulemaking responsibility governing criminal court intrastate transfers of probation. New York State is a member state of both aforementioned Compacts which along with their governing rules have the force and effect of law and it is important that we retain certain regulatory provisions governing interstate transfer to optimize compliance. Consequently, it is not viable to have no rule in this area.

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (urban, suburban, and rural counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. OPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. The Director of the Office of Probation and Correctional Alternatives has communicated to the Acting Commissioner of the Division of Criminal Justice Services that there was overwhelming favorable support for the regulatory changes in the area of interstate and intrastate transfer of probation supervision. Other technical regulatory changes reflect recent 2011 statutory changes in the area of family court probation transfers.

9. Federal standards:

As noted earlier, there exists both an Interstate Compact for Adult Offender Supervision and a newly enacted Interstate Compact for Juveniles which New York State is a signatory state. These Compacts and their governing rules have the force and effect of federal law. OPCA within DCJS is the state entity which oversees local probation department compliance. There exist no federal standards governing intrastate transfer of supervision. The interstate transfer regulations are consistent with these aforementioned federal interstate standards and are designed to promote greater offender accountability and safeguard the public.

10. Compliance schedule:

Through prompt dissemination to staff of the regulatory amendments, local departments should be able to promptly implement these amendments and comply with its provisions. Due to the provisions of Chapter 97 of the Laws of 2011, which necessitate prompt DCJS rulemaking governing family court intrastate transfer of probation, it is imperative that these regulatory amendments shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effect of Rule:

These regulatory amendments will ensure timely implementation of Chapter 97 of the Laws of 2011 with respect to complete intrastate transfer of probation in family court cases and revise certain existing regulatory procedures in the area of Interstate and Intrastate Transfer of Probation Supervision to conform to other statutory changes relative to probation.

The regulatory amendments will better assist probation departments in carrying out interstate and intrastate probation operations. Establishing the regulatory mechanism to effectuate a complete transfer of family court probation cases, where applicable, will ensure that such jurisdictions have total judicial authority and supervisory control of these probationers who reside within their jurisdiction and will better enable them to respond swiftly and certainly to probation violations, thereby safeguarding the public and promoting greater accountability. It will relieve courts of their jurisdiction and probation departments of their supervisory responsibility regarding newly transferred probation cases who reside elsewhere in the state but whose only connection to their jurisdiction was where they committed their offense. Regulatory changes are sought to further promote the general welfare by ensuring that the law’s intent with respect to complete transfers of family court probation cases is not hindered by lack of procedures and that probationers and probation departments are not adversely burdened as a result. Regulatory language is essential to implementation of this new law and will relieve probation departments of some costly and labor intensive practices associated with past family court intrastate transfers such as retaking of probation violators, seeking warrants from sending jurisdictions, and sending officers to testify on

violations. Certain regulatory change also will afford relief to sending probation departments in intrastate transfer of probation cases by providing, at a minimum, two extra workdays to transmit certain requisite case record information to the receiving probation department. The amendments also remove obsolete language in the area of intrastate transfer which has been superseded by Chapter 191 of the Laws of 2007, to prevent confusion among staff. Additionally, the proposed regulatory change makes conforming technical amendments to reflect name changes with respect to one of the Interstate Compacts relating to interstate transfer of probation.

Lastly, other technical changes have been made to reflect the 2010 consolidation of the former Division of Probation and Correctional Alternatives (DPCA) with the Division of Criminal Justice Services (DCJS).

The amendments do not affect small business.

2. Compliance Requirements:

The regulatory changes will optimize probation compliance with recent statutory changes in the area of intrastate transfer of probation of family court cases and update existing regulatory provisions to conform with other past statutory changes in the area of interstate transfer of probation cases from the family and criminal courts and complete intrastate transfer of probation of criminal court cases so as to better promote compliance. Further, another regulatory change will afford mandate relief in intrastate transfers. Through prompt dissemination to staff of the regulatory amendments, it is anticipated that local departments will be able to promptly implement these amendments and readily comply with the amendments as soon as they are adopted. These regulatory amendments shall take effect immediately upon adoption.

There are no small business compliance requirements imposed by these rule amendments.

3. Professional Services:

No professional services are required to comply with the rule changes.

There are no professional services required of small business associated with these rule amendments.

4. Compliance Cost:

The regulatory changes should not result in probation departments incurring any compliance costs. The regulatory amendments will provide local probation departments certain mandate relief with respect to intrastate transfer of probation operational requirements by affording sending probation departments at a minimum two extra workdays in which to transmit certain requisite intrastate material to the receiving probation department.

5. Economic and Technological Feasibility:

There are no economic or technological issues or problems arising from these regulatory reforms in this area.

6. Minimizing Adverse Impacts:

DCJS foresees that these regulatory amendments will have no adverse impact on any local government. As noted in more detail below, the former DPCA, now the Office of Probation and Correctional Alternatives (OPCA) within DCJS pursuant to Chapter 56 of the Laws of 2010, collaborated with jurisdictions across the state, including rural, suburban, and urban counties, and probation professional associations in soliciting feedback as to the proposed regulatory changes in order to provide sound probation mandate relief. The regulatory changes afford slightly greater flexibility in current regulatory requirements with respect to interstate and intrastate transfer of probation supervision operations consistent with public safety and good professional practice.

As the interstate and intrastate transfer of probation supervision rule does not impact upon small business, the regulatory changes have no negative impact upon small business operations.

7. Small Business and Local Government Participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally, OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (urban, suburban, and rural counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. OPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. The Director of the Office of Probation and Correctional Alternatives has communicated to the Acting Commissioner of the Division of Criminal Justice Services that there was overwhelming favorable support for the regulatory changes in the area of interstate and intrastate transfer of probation supervision. Other regulatory changes are consistent with Chapter 29 of the Laws of 2011 wherein New York State became signatory to a new Interstate Compact for Juveniles

and Chapter 97 of the Laws of 2011 which amended Family Court Act Section 176 to implement a similar complete transfer of family court probation cases, in accordance with rules promulgated by the Commissioner of DCJS, which was previously enacted in 2007 with criminal court probation cases.

As this rule does not impact upon small businesses, there was no business involvement with respect to these regulatory changes.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Forty-four local probation departments, which are located in rural areas, will be affected by the rule amendments.

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

The regulatory changes impose no new reporting, recordkeeping, other compliance requirements nor any professional services. Rural counties will benefit from the regulatory changes in several ways. Establishing the regulatory mechanism to effectuate a complete transfer of family court probation cases, where applicable, will ensure that such jurisdictions have total judicial authority and supervisory control of these probationers who reside within their jurisdiction and will better enable them to respond swiftly and certainly to probation violations thereby safeguarding the public and promoting greater accountability. It will relieve courts of their jurisdiction and probation departments of their supervisory responsibility regarding newly transferred probation cases who reside elsewhere in the state but whose only connection to their jurisdiction was where they committed their offense. Regulatory changes are sought to further promote the general welfare by ensuring that the law's intent with respect to complete transfers of family court probation cases is not hindered by lack of procedures and that probationers and probation departments are not adversely burdened as a result. Regulatory language is essential to implementation of this new law and will relieve probation departments of some costly and labor intensive practices associated with past family court intrastate transfers such as retaking of probation violators, seeking warrants from sending jurisdictions, and sending officers to testify on violations. Certain regulatory changes also will afford their respective probation departments, as well as all others with relief by providing, at a minimum, two extra workdays to transmit certain requisite case record information to the receiving probation department. The amendments also remove obsolete language in the area of intrastate transfer which has been superseded by Chapter 191 of the Laws of 2007, to prevent confusion among staff as well as update the existing regulation to reflect the merger of former DPCA with DCJS, and to reflect the most current Interstate Compacts relative to interstate probation transfers.

3. Costs:

The regulatory amendments should not result in increased costs and should result in some savings as noted above.

4. Minimizing adverse impact:

DCJS foresees that these regulatory amendments will have no adverse impact on any jurisdiction, including rural areas. As noted in more detail below, the former Division of Probation and Correctional Alternatives (DPCA), now the Office of Probation and Correctional Alternatives (OPCA) within DCJS pursuant to Chapter 56 of the Laws of 2010, collaborated with jurisdictions across the state, including rural areas, and probation professional associations with rural membership in soliciting feedback as to the proposed regulatory changes in order to provide sound probation mandate relief. The regulatory changes are straightforward and minimal in terms of procedures. Regulatory provisions have been updated to reflect current practice and recent statutory changes. Additionally, probation departments have been afforded slightly greater flexibility in operation of intrastate transfer of probation supervision cases consistent with public safety and good professional practice.

5. Rural area participation:

Pursuant to Executive Order No. 17, the OPCA prepared initial Rule Review Findings in October 2009 of all of its rules and regulations and disseminated the findings to all probation departments, the Council of Probation Administrators (COPA) (the statewide professional association of probation directors), the New York State Probation Officers Association (NYSPOA), the New York State Association of Counties (NYSAC), the State Probation Commission, and the Division of the Budget (DOB). Additionally OPCA convened an October 26, 2009 meeting in Albany which was attended by over a dozen probation departments (rural, urban, and suburban counties), COPA and NYSPOA Presidents, NYSAC, and DOB representatives. OPCA staff went over all rules and regulations and reviewed them individually, discussed proposed regulatory changes, and solicited feedback from the audience. The Director of the Office of Probation and Correctional Alternatives has communicated to the Acting Commissioner of the Division of Criminal Justice Services that there was overwhelming favorable support for the regulatory changes in the area of interstate and intrastate transfer of probation supervision from rural, urban, and suburban jurisdictions. Other regulatory changes are consistent with

Chapter 29 of the Laws of 2011 wherein New York State became signatory to a new Interstate Compact for Juveniles and Chapter 97 of the Laws of 2011 which amended Family Court Act Section 176 to implement a similar complete transfer of probation of family court cases in accordance with rules promulgated by the Commissioner of DCJS as was previously enacted in 2007 with criminal court probation cases.

Job Impact Statement

These regulatory amendments will have no adverse effect on private or public jobs or employment opportunities. The revisions are technical and procedural in nature. Certain amendments delete obsolete language and where applicable substitute new language consistent with recent statutory changes. Further, the amendments regarding the timeframe for sending probation departments to transmit certain information for transfer purposes will afford departments with an additional few days to comply with existing requirements which have proven difficult to achieve in the time presently allotted.

Education Department

EMERGENCY RULE MAKING

Due Process Procedures for Criminal History Checks of Prospective School Employees and Certification Applicants

I.D. No. EDU-27-11-00002-E

Filing No. 838

Filing Date: 2011-09-20

Effective Date: 2011-09-20

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

Action taken: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (30) and 3035(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the current Commissioner's Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The proposed amendment will replace references to the specific staff titles with the terms "designee of the Commissioner" or "Commissioner's designee." The amendment will thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur. It is anticipated that, as a result of the retirement of the current Assistant Commissioner, effective June 23, 2011, the responsibility for determining such appeals will be assumed by a designee of the Commissioner of Education for such purpose.

The proposed amendment was adopted as an emergency action at the June Regents meeting, effective June 24, 2011. A Notice of Proposed Rule Making was published in the *State Register* on July 6, 2011.

The proposed amendment has been adopted as a permanent rule at the September 12-13, 2011 Regents meeting. Under the State Administrative Procedure Act (SAPA), the earliest the permanent rule can take effect is October 5, 2011, the date the notice of adoption is published in the *State Register*. However, the June emergency adoption will expire on September 21, 2011, 90 days after its filing with the Department of State on June 24, 2011. A lapse in the rule's effectiveness could disrupt the appeal process for determinations denying employment clearances to prospective school employees. A second emergency adoption is therefore necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the June 2011 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: Due process procedures for criminal history checks of prospective school employees and certification applicants.

Purpose: To conform to recent change in Department's Office of Teaching Initiatives.

Text of emergency rule: 1. Subparagraph (vii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective September 23, 2011, as follows:

(vii) Where the prospective school employee does not submit a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall make a determination denying clearance for employment and notification of such denial, along with the basis for such determination, shall be transmitted to the prospective school employee by certified mail, return receipt requested. In the case of a prospective school employee requesting conditional clearance for employment, such determination shall also deny the conditional clearance for employment. In the case of a prospective school employee who has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. Such notification shall state that the prospective school employee may appeal the determination to [the executive director of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education, at the address specified in the notification, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. Notification of the denial of clearance for employment and denial or termination of conditional clearance for employment shall also be given to the covered school.

2. Subparagraph (viii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective September 23, 2011, as follows:

(viii) Where the prospective school employee submits a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall, upon review of the prospective school employee's criminal history record, related information obtained by the department pursuant to the review of such criminal history record, and information and written argument provided by the prospective school employee in his or response, make a determination on whether clearance for employment shall be granted or denied. In such review, the department shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the department's determination is that clearance for employment is denied, the decision shall include the basis for such determination, and shall state that the prospective employee may appeal the department's determination to [the assistant commissioner of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education, at the address specified in the determination, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee. Where clearance for employment is denied, such determination shall be sent to the prospective school employee by certified mail, return receipt requested. Where clearance for employment is granted, such determination shall be sent to the prospective school employee by regular first class mail. Where clearance for employment is denied and the prospective school employee also requested conditional clearance for employment, such determination shall also deny the conditional clearance for employment. Where clearance for employment is denied and the prospective school employee has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. In addition, the covered school shall be notified of the denial or granting of clearance.

3. Paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective September 23, 2011, as follows:

(5) Appeal of department's determination.

(i) A prospective school employee who was denied clearance for employment by a determination of the department pursuant to paragraph (4) of this subdivision, may appeal that determination to [the assistant commissioner of the Office of Teaching Initiatives of the State Education Department] a designee of the Commissioner of Education who did not participate in the department's determination, provided that such appeal is mailed by regular first class mail or certified mail or is hand delivered to the address specified in the department's determination within 25 calendar days of the mailing of such determination denying clearance. [Such appeal shall be heard by the assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination].

(ii) . . .

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the [assistant commissioner, or a

State review officer designated by the assistant commissioner,] *Commissioner's designee* to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.

(iv) A prospective school employee may request oral argument as part of the appeal of the department's determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the [assistant commissioner, or a State review officer designated by the assistant commissioner] *Commissioner's designee*. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the prospective school employee wishes [the assistant commissioner, or the State review officer designated by the assistant commissioner,] *the Commissioner's designee* to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the [assistant commissioner or a State review officer designated by the assistant commissioner] *Commissioner's designee* makes the determination on whether clearance for employment shall be granted or denied.

(v) Where a timely request for an appeal is received, upon review of the prospective school employee's criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, and written information provided at oral argument if requested by the prospective school employee, the [assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination,] *Commissioner's designee* shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the [assistant commissioner or his or her designee] *Commissioner's designee* shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the determination of the [assistant commissioner, or his or her designee,] *Commissioner's designee* is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.

4. Subdivision (b) of section 87.5 of the Regulations of the Commissioner is amended, effective September 23, 2011, as follows:

(b) Procedures for clearance for certification. Where the criminal history record reveals conviction of a crime, or an arrest for a crime, the department shall transmit the criminal history record and related information to the department's [assistant commissioner of the] Office of Teaching Initiatives for a determination of good moral character pursuant to Part 83 of this Title, which procedure shall determine the clearance for certification.

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. EDU-27-11-00002-P, Issue of July 6, 2011. The emergency rule will expire November 18, 2011.

Text of 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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to

authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements and procedures necessary to implement the statutory requirements prescribed in Chapter 630 of the Laws of 2006. That statute authorizes nonpublic and private schools to require their prospective school employees to be fingerprinted, to undergo a criminal history check, and be cleared for employment by the State Education Department.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the current Commissioner's Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The proposed amendment will replace references to the specific staff titles with the terms "designee of the Commissioner" or "Commissioner's designee." The amendment will thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur. It is anticipated that, as a result of the retirement of the current Assistant Commissioner, effective June 23, 2011, the responsibility for determining such appeals will be assumed by a designee of the Commissioner of Education for such purpose.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to the regulatory agency: none.

The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of the State and Federal government.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment, and none were considered. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

The proposed amendment relates to appeals brought by prospective school employees of Department determinations denying clearance for employment on the basis of criminal record checks, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each public school district in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all public and nonpublic schools in the State and their prospective employees, 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.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements, or professional services requirements, on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

3. COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director"

of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department's Rural Education Advisory Committee, which includes representatives of schools in rural areas.

Job Impact Statement

The proposed amendment relates to due process procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees, in order to implement the requirements set forth in sections 305 and 3035 of the Education Law. Because the proposed amendment simply implements the statutory requirements, it will not have any impact on jobs and employment opportunities beyond the impact of the statute.

The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

EMERGENCY RULE MAKING

School Facility Report Cards

I.D. No. EDU-27-11-00009-E

Filing No. 832

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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

Action taken: Repeal of section 155.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (20), 409-d(1-3) and 409-e(1-4)

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

Specific reasons underlying the finding of necessity: The proposed amendment will reduce costs and provide mandate relief to school districts and boards of cooperative educational services (BOCES), by repealing section 155.6 of the Commissioner's Regulations to eliminate a requirement that school districts and BOCES prepare a school facility report card for each occupied school building.

The proposed amendment was adopted as an emergency action at the June 20-21, 2011 Regents meeting upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to provide immediate mandate relief to school districts and allow them to preserve critical programs, by repealing unnecessary requirements relating to school facility report cards, so that school districts may immediately make applicable changes in their 2011-12 budgets and timely prepare and issue their tax levies in July 2011. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 6, 2011.

The proposed amendment has now been adopted as a permanent rule at the September 19-20, 2011 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the permanent rule may become effective is after its publication in the State Register on October 5, 2011. Since the June 2011 emergency adoption will expire on September 18, 2011, 90 days after its filing with the Department of State on June 21, 2011, there would be a lapse in the rule's effectiveness. Another emer-

agency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the June 2011 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: School facility report cards.

Purpose: To repeal the requirement that school districts and BOCES prepare school facility report cards.

Text of emergency rule: Section 155.6 of the Regulations of the Commissioner of Education is repealed, effective September 19, 2011.

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. EDU-27-11-00009-EP, Issue of July 6, 2011. The emergency rule will expire November 17, 2011.

Text of 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) 474-8869, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law sections 409-d and 409-e, as added by Chapters 56 and 58 of the Laws of 1998 (Rebuilding Schools to Uphold Education - RESCUE), direct the Commissioner of Education to establish, develop and monitor a Comprehensive Public School Safety Program which includes a uniform code providing for school building inspections, the establishment of a safety rating system for school buildings and the establishment of a monitoring system to ensure that school buildings are safe and maintained in a state of good repair.

2. LEGISLATIVE OBJECTIVES:

The proposed repeal is consistent with the above statutory authority of the Commissioner to establish, develop and monitor a Comprehensive Public School Safety Program.

3. NEEDS AND BENEFITS:

The proposed repeal will reduce costs and provide mandate relief to school districts and boards of cooperative educational services (BOCES), by repealing section 155.6 of the Commissioner's Regulations to eliminate a requirement that school districts and BOCES prepare a school facility report card for each occupied school building. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

The national recession and the expiration of the federal stimulus funds has forced many districts to dip into their fund balance and reduce staffing and other resources for students. It is critical that districts receive relief from mandates that have not been demonstrated to justify their cost in order that districts can maintain critical services to students.

4. COSTS:

(a) Cost to state government: None.

(b) Cost to local government: None. The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

(c) Cost to private regulated parties: Not applicable. The regulation applies to school districts and BOCES.

(d) Cost to regulatory agency for implementation and continued administration of this rule: None. The school facilities report card was designed as a local tool to inform the taxpaying public about the condition of their district schools. It was not required to be submitted to the State Education Department, and the Department did not review the information contained in them. The Department did develop a format for the report and provided that to the districts. There are no costs or cost savings to the

Department as it had insignificant involvement after the distribution of the report card format.

5. LOCAL GOVERNMENT MANDATES:

The proposed repeal does not impose any additional program, service, duty or responsibility upon local governments, and will instead provide mandate relief to school districts without a commensurate risk to school safety, by repealing an existing requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

6. PAPERWORK:

The proposed repeal does not impose any additional reporting or other paperwork requirements. The elimination of the School Facilities Report Card will reduce the paperwork burden to school district. The report card format developed by the State Education Department merely refers readers to other available documentation.

7. DUPLICATION:

The proposed repeal does not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is intended to provide mandate relief to school districts by repealing a duplicative and unnecessary requirement.

9. FEDERAL STANDARDS:

There are no applicable federal standards for the School Facilities Report Card. Federal laws governing the triennial inspection required pursuant to the Asbestos Hazard Emergency Response Act, as referenced in Education law section 3641(4)(d) is not impacted.

10. COMPLIANCE SCHEDULE:

As this measure repeals an existing requirement for purposes of affording mandate relief, school districts and BOCES will not require additional time to comply with the requirements of the proposed amendment.

Regulatory Flexibility Analysis

Small Businesses:

The proposed repeal relates to school facilities report cards prepared by school districts and boards of cooperative educational services (BOCES). It does not impose any adverse impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendments that small businesses will not be affected, no further measures are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed repeal applies to each school district and BOCES in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed repeal does not impose any additional compliance requirements on school districts or BOCES, and will provide mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards.

3. PROFESSIONAL SERVICES:

The proposed repeal does not impose any professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed repeal will not require any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed repeal will reduce compliance requirements and costs for school districts and BOCES in that it will provide them with mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed repeal have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed repeal would apply to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed repeal does not impose any additional reporting, record-keeping and other compliance requirements on school districts or BOCES in rural areas, and will provide mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards.

3. COMPLIANCE COSTS:

The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

4. MINIMIZING ADVERSE IMPACT:

The proposed repeal will reduce compliance requirements and costs for school districts and BOCES in that it will provide them with mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

5. RURAL AREA PARTICIPATION:

Copies of the proposed repeal were provided to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed repeal relates to school facilities report cards prepared by school districts and boards of cooperative educational services (BOCES), and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the repeal that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

**EMERGENCY
RULE MAKING**

School Bus Driver Training and School Bus Idling Monitoring and Reporting

I.D. No. EDU-27-11-00010-E

Filing No. 833

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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

Action taken: Amendment of section 156.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (20), 3624 (not subdivided), 3637(1), (2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment will reduce costs and provide mandate relief to school districts.

The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide

mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

The proposed amendment was adopted as an emergency action at the June 20-21, 2011 Regents meeting upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to provide immediate mandate relief to school districts and allow them to preserve critical programs, by permitting increased flexibility in the scheduling of school bus driver safety training and eliminating unnecessary monitoring and reporting requirements, so that school districts may immediately make changes in their 2011-2012 budgets and timely prepare and issue their tax levies in July 2011. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 6, 2011.

The proposed amendment has now been adopted as a permanent rule at the September 19-20, 2011 Regents meeting. Pursuant to the State Administrative Procedure Act, the earliest the permanent rule may become effective is after its publication in the State Register on October 5, 2011. Since the June 2011 emergency adoption will expire on September 18, 2011, 90 days after its filing with the Department of State on June 21, 2011, there would be a lapse in the rule's effectiveness. Another emergency adoption is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the June 2011 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule.

Subject: School bus driver training and school bus idling monitoring and reporting.

Purpose: Provide mandate relief through increased scheduling flexibility and by repealing certain monitoring/reporting requirements.

Text of emergency rule: 1. Subparagraph (iii) of paragraph (5) of subdivision (b) of section 156.3 of the Regulations of the Commissioner of Education is amended, effective September 19, 2011, as follows:

(iii) All school bus drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1st and [the first day of school] *October 31* and between December 1st and [March] *May* 1st of each school year. Refresher courses for drivers of vehicles transporting pupils with disabilities exclusively shall also include instruction relating to the special needs of a pupil with a disability.

2. Paragraph (5) of subdivision (h) of section 156.3 is amended, effective September 19, 2011, as follows:

(5) Monitoring and reports. Each school district shall periodically [but at least semi-annually] monitor compliance with the provisions of this subdivision by school bus drivers and drivers of vehicles owned, leased or contracted for by such school district. [Each school district shall prepare a written report of such review, which shall describe the actions taken to review compliance and the degree of adherence found with the provisions of this subdivision. Copies of the report shall be retained in the school district's files for a period of six years and made available upon request. The commissioner may also require specific school districts to provide additional information as necessary to address health concerns related to their compliance with the provisions of this subdivision.]

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. EDU-27-11-00010-EP, Issue of July 6, 2011. The emergency rule will expire November 17, 2011.

Text of 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) 474-8869, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 3624 authorizes the Commissioner of Education to establish and define qualifications of school bus drivers and to make rules and regulations governing the operation of transportation facilities

used by pupils. Such rules and regulations shall include acts or conduct which would affect the safe operation of such transportation facilities.

Education Law section 3637 directs the Commissioner to promulgate regulations requiring school districts to minimize, to the extent practicable, the idling of the engine of any school bus and other vehicles owned or leased by the school district while such bus or vehicle is parked or standing on school grounds, or in front of any school.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to prescribe qualifications for school bus drivers and ensure the health and safety of students and pupil transportation.

3. NEEDS AND BENEFITS:

The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year. The proposed amendment is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions. The proposed amendment is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

4. COSTS:

- Costs to State government: None.
- Costs to local governments: None.
- Costs to regulated parties: None.
- Costs to the State Education Department: None.

The proposed amendment will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment provides mandate relief by providing greater flexibility in the scheduling of school bus driver safety training, and repealing requirements for semi-annual monitoring of compliance with school bus idling restrictions and the preparation, retention and submission of reports of such reviews.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements. The proposed amendment will reduce paperwork requirements to school districts in that it will provide them with mandate relief by removing the requirement to submit to the State Education Department semi-annual reports on compliance with school bus idling restrictions.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is intended to provide cost saving measures and mandate relief to school districts by amending semi-annual safety training for school bus drivers to coordinate with school calendars and by amending unnecessary monitoring and reporting requirements.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

We do not anticipate any difficulty for school districts to comply with the proposed rule by its effective date. The proposed amendment is intended to provide cost saving measures and mandate relief to school districts by amending semi-annual safety training for school bus drivers to coordinate with school calendars and by amending unnecessary monitoring and reporting requirements.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment provides mandate relief to school districts,

with respect to school bus driver safety instruction and monitoring of school bus idling restrictions, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to all public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts. The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

The proposed amendment to section 156.3(b)(5)(iii) is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers. The proposed amendment to section 156.3(h) is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements on rural areas. The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled

coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

The proposed amendment does not impose any additional professional service requirements on rural areas.

3. COSTS:

The proposed amendment does not impose any compliance costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, and will reduce costs and provide mandate relief to school districts in rural areas by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

The proposed amendment to section 156.3(b)(5)(iii) is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers. The proposed amendment to section 156.3(h) is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment provides mandate relief to school districts, with respect to school bus driver safety instruction and monitoring of school bus idling restrictions, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

EMERGENCY RULE MAKING

Waiver of Corporate Professional Practice Restrictions for Certain Mental Health Professions

I.D. No. EDU-37-11-00016-E

Filing No. 839

Filing Date: 2011-09-20

Effective Date: 2011-09-20

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

Action taken: Amendment of section 59.14 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6503-a(1)(a), (c), 6504 (not subdivided) and 6507(2)(a); and L. 2011, ch. 187

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

Specific reasons underlying the finding of necessity: The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Chapter 187 was

signed on July 21, 2011 to provide additional time for certain not-for-profit corporations and education corporations to apply to the Department for a waiver from restrictions on corporate practice for professional services provided under Articles 154 and 163 of the Education Law and psychotherapy services under section 8401(2) of the Education Law and authorized and provided under Articles 131, 139 or 153 of the Education Law.

Consistent with the statute, the proposed amendment extends to February 1, 2012 the date by which an entity must apply for a waiver. In order for the Department to comply with the new deadline and develop, publish and review the applications required under the new law in a timely manner, the regulations must be adopted on an emergency basis.

An emergency action is necessary for the preservation of the public health and general welfare to immediately conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, and thereby ensure that there is adequate time for eligible entities providing social work, psychological, and mental health practitioner services to apply for a waiver from corporate practice prohibitions and for the application to be processed by the Office of Professions, consistent with statutory requirements.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the November 2011 Regents meeting, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Waiver of corporate professional practice restrictions for certain Mental Health professions.

Purpose: To conform Commissioner's Regulations to Education Law, section 6503-a, as amended by L. 2011, ch. 187.

Text of emergency rule: Paragraphs (1) and (2) of subdivision (c) of section 59.14 of the Regulations of the Commissioner of Education are amended, effective September 20, 2011, as follows:

(1) To provide the services described in subdivision (a) of this section, an eligible entity shall have [obtained a waiver from] *applied to the department for a waiver* no later than [July] *February 1, 2012*. The department may[, however,] issue a waiver to a qualified entity after July 1, 2012, regardless of the date on which the entity was created, upon a demonstration of need for the entity's services satisfactory to the department (e.g., the entity provides services to an underserved population or in a shortage area).

(2) [Within 120 days after the posting of the application form on the department's website,] *No later than February 1, 2012*, any entity described in subdivision (b) of this section providing services described in subdivision (a) of this section on or after June 18, 2010, shall submit an application for a waiver on forms prescribed by the commissioner. Upon submission of an application for a waiver under this section, the entity may continue to operate and provide services until the department either denies or approves the entity's application.

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. EDU-37-11-00016-P, Issue of September 14, 2011. The emergency rule will expire December 18, 2011.

Text of 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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Education Law section 6503-a authorizes the Board of Regents to issue a waiver to qualified entities that seek to provide certain professional services, as defined in the Education Law.

Education Law section 6504 authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Education Law section 6507(2)(a) authorizes the Commissioner of Education to promulgate regulations relating to the professions.

Chapter 187 of the Laws of 2011 was approved on July 21, 2011 and amends Education Law section 6503-a to extend until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply for a waiver of the corporate practice restrictions in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment extends to February 1, 2012 the the date by which certain not-for-profit corporations and education corporations must apply for a waiver from restrictions on corporate practice for professional services provided under Articles 154 and 163 of the Education Law and psychotherapy services under section 8401(2) of the Education Law and authorized and provided under Articles 131, 139 or 153 of the Education Law.

3. NEEDS AND BENEFITS:

On June 18, 2010, Governor Paterson signed into law Chapters 130 and 132 of the Laws of 2010, which amended the Education Law to address critical issues relating to the authority of certain entities to employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists and to provide services within the scopes of practice of those professions. Prior to the restrictions on practice of those professions established by laws enacted in 2002, any individual or entity could provide psychotherapy and other services that are now restricted. While the new licensing laws provided exemptions for individuals in certain programs, these exemptions did not extend to thousands of not-for-profit and educational corporations throughout New York that provide essential services. This affected not only access to services for vulnerable persons, but also the ability of new graduates to meet the experience requirements for licensure in authorized settings, thereby restricting access to the licensed professions.

Chapter 130 of the Laws of 2010 added a new Education Law section 6503-a, which authorizes the Department to issue waivers of the corporate professional practice restrictions to certain not-for-profit or educational corporations that were in existence on the effective date of the law and that apply for the waiver by a specified deadline. As noted above, Chapter 187 of the Laws of 2011 amended Education Law section 6503-a to extend the time during which waiver applications can be submitted. An entity must now submit a waiver application by February 1, 2012 and may continue to provide services until the application is approved or denied. If an application is denied by the Department, the entity must cease providing professional services in New York.

The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends to February 1, 2012 the date by which certain not-for-profit corporations and education corporations must apply for a waiver from corporate professional practice restrictions in the Education Law.

4. COSTS:

(a) Costs to State government: The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, and does not impose any additional costs on State government.

(b) Cost to local government: The proposed amendment applies to certain not-for-profit corporations and education corporations and does not impose any costs on local government.

(c) Cost to private regulated parties: Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends the deadline for certain not-for-profit corporations and education corporations to apply for a waiver of corporate professional practice restrictions and will not impose any costs on applicants for the waiver.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed amendment does not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011, by extending until February 1, 2012 the deadline for certain not-for-profit corporations and education corporations to apply for a waiver to provide certain professional services under Title VIII of the Education Law. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no additional reporting or recordkeeping requirements beyond those imposed by section 6503-a of the Education Law. In accordance with section 6503-a, entities applying for a waiver will be required to submit to the State Education Department an application and evidence satisfactory to the Department that the entity meets the requirements in law and regulation for a waiver. Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends the deadline for submission of such application to February 1, 2012.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements, and is necessary to conform the Commissioner's regulations to Chapter 187 of the New York State Laws of 2011.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education Law section 6503-a. Therefore, there are no viable alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for the waiver of corporate practice prohibitions for certain not-for-profit or educational corporations, as defined in Education Law section 6503-a.

10. COMPLIANCE SCHEDULE:

The proposed amendment conforms the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment of section 59.14 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. The statute authorizes certain not-for-profit corporations and education corporations that were in existence on the statute's effective date to apply by a specified deadline for a waiver from the corporate professional practice restrictions in the Education Law. Issuance of the waiver permits such corporations to provide professional services within the scopes of practice of the professions of licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and/or licensed psychologists.

Section 6503-a was amended by Chapter 187 of the Laws of 2011, which was signed on July 21, 2011 and extended until February 1, 2012 the deadline for submitting a waiver application. The proposed amendment merely conforms section 59.14 of the Commissioner's regulations to the February 1, 2012 date extension for submission of a waiver application by certain not-for-profit corporations and education corporations, and will not impose any compliance requirements

or costs, or have an adverse impact on, small businesses and local governments as they are not authorized to apply for a waiver. Because it is clear from the nature of the proposed amendment that there will be no effect on small businesses or local governments, no further steps were needed to ascertain that fact and none were taken.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

Chapter 187 of the Laws of 2011 was signed on July 21, 2011 to amend Education Law section 6503-a by extending until February 1, 2012 the date by which certain not-for-profit corporations and education corporations as specified in the statute, must apply for a waiver from the corporate professional practice restrictions in the Education Law. The amendment does not change the purpose of the law establishing the waiver, which was signed into law on June 18, 2010 to address critical issues relating to the authority of these corporations to provide professional services within the scope of practice of licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists. The proposed amendment is applicable to not-for-profit corporations and education corporations that provide these professional services 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.

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

The proposed amendment is necessary to conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. There is no cost for the application and the proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional service requirements, on entities located in rural areas.

3. COSTS:

Consistent with Chapter 187 of the Laws of 2011, the proposed amendment merely extends to February 1, 2012 the deadline for certain not-for-profit corporations and education corporations to apply to the Department for a waiver of corporate professional practice restrictions, and will not impose any additional costs on entities in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform section 59.14 of the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. The proposed amendment does not impose any additional compliance or costs on entities in rural areas. Consistent with the statute, the proposed amendment merely extends until February 1, 2012, the date by which certain not-for-profit corporations and education corporations must apply to the Department for a waiver of corporate professional practice restrictions under Education law section 6503-a. The waiver ensures that not-for-profit corporations or education corporations that provide certain professional services are subject to oversight by the Board of Regents to safeguard the public.

Because the proposed amendment merely conforms the Commissioner's regulations to a statutory requirement that is uniformly applicable throughout the State, it is neither appropriate nor warranted to establish different requirements for entities located in rural areas.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners, the State Board for Social Work and from statewide professional associations whose memberships include individuals who live or work in rural areas.

Job Impact Statement

Education Law section 6503-a was signed into law on June 18, 2010 to address critical issues relating to the authority of certain entities to

employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists to provide services within the scopes of practice of those professions. The statute authorizes certain not-for-profit corporations and education corporations that were in existence prior to the statute's effective date to apply by a specified deadline for a waiver from the corporate practice restrictions in the Education Law. Section 6503-a was amended by Chapter 187 of the Laws of 2011, which was signed on July 21, 2011 and extended until February 1, 2012 the deadline for submitting a waiver application.

The proposed amendment merely conforms section 59.14 of the Commissioner's regulations to the February 1, 2012 date extension for submission of a waiver application, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed regulation that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Collaborative Drug Therapy Management

I.D. No. EDU-40-11-00001-EP

Filing No. 820

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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

Proposed Action: Amendment of sections 63.7 and 63.10 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6801(1-a), 6507, 6801-a(1-6) and 6827(2); and L. 2011, ch. 21

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

Specific reasons underlying the finding of necessity: The proposed amendment of section 63.7 and addition of section 63.10 of the Commissioner's regulations is necessary to conform the Commissioner's regulations to Chapter 21 of the Laws of 2011. The legislation was signed by the Governor on May 17, 2011, and adds a new section 6801-a of the Education Law authorizing the Collaborative Drug Management Therapy Demonstration Program for physicians and pharmacists working under the auspices of a teaching hospital. The new law, which sunsets three years from its effective date, restricts collaboration to pharmacists who meet specified education and experience requirements. In addition, the statute provides that pharmacists participating in CDTM complete five hours of relevant continuing education. The legislation authorizes the Commissioner to develop regulations necessary to implement the new law.

Consistent with the statute, the proposed amendment will add a new section 63.10 and amend section 63.7 of the Commissioner's Regulations to establish requirements necessary for implementation of Chapter 21 of the Laws of 2011. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular adoption, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act (SAPA), is at the December 12-13, 2011 meeting of the Board of Regents. If adopted at the December Regents meeting, the earliest the amendment could become effective pursuant to SAPA is December 28, 2011, the date of publication of the Notice of Adoption in the State Register. However, Chapter 21 of the Laws of 2011 takes effect on September 14, 2011, and directs that any rule or regulation necessary for the law's implementation be made and completed on or before such effective date.

Emergency action is necessary for the preservation of the public health and general welfare to immediately conform the Commissioner's regulations to Chapter 21 of the Laws of 2011, and thereby ensure that the Collaborative Drug Management Therapy Demonstration Program is implemented in a timely manner and consistent with statutory requirements.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 2011 Regents meeting, after

publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

Subject: Collaborative drug therapy management.

Purpose: Establish requirements to implement the Collaborative Drug Management Therapy Demonstration Program.

Text of emergency/proposed rule: Pursuant to sections 207, 6504, 6507, 6801-a and 6827 of the Education Law and Chapter 21 of the Laws of 2011.

1. Subparagraph (i) of paragraph (2) of subdivision (b) of section 63.7 of the Regulations of the Commissioner of Education is amended, effective September 14, 2011, as follows:

(i) [Exemptions. The following licensees shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section:

(a) licensees for the triennial registration period during which they are first licensed to practice pharmacy in New York State, exclusive of those first licensed to practice pharmacy in New York State pursuant to an endorsement of a license of another jurisdiction;

(b) licensees whose first registration date following January 1, 1997 occurs prior to January 1, 1998, for periods prior to such registration date; and

(c) licensees] *Exemption. Licensees* who are not engaged in the practice of pharmacy, as evidenced by not being registered to practice in New York State, shall be exempt from the continuing education requirements, as prescribed in subdivision (c) of this section, except as otherwise provided in paragraph (c)(2) of this section to meet the education requirements for the resumption of practice after a lapse in practice for a licensee who has not lawfully practiced continuously in another jurisdiction throughout such lapse period.

2. Paragraph (1) of subdivision (c) of section 63.7 of the Regulations of the Commissioner of Education is amended, effective September 14, 2011, as follows:

(1) During each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 45 hours of formal continuing education acceptable to the department, as defined in paragraph (4) of this subdivision, provided that no more than 22 hours of such continuing education shall consist of self-study courses. During registration periods beginning on or after September 1, 2003, a licensee shall complete as part of the 45 hours of formal continuing education, or pro-ration thereof, at least three hours of formal continuing education acceptable to the department in the processes and strategies that may be used to reduce medication and/or prescription errors. *Any licensee participating in collaborative drug therapy management pursuant to Education Law section 6801-a, shall complete as part of the 45 hours of formal continuing education, or pro-ration thereof, at least five hours of formal continuing education acceptable to the department in the area or areas of practice generally related to any collaborative drug therapy management protocols to which the pharmacist may be subject, provided that such continuing education shall not be completed as self-study.* [Any licensed pharmacist whose first registration date following January 1, 1997 occurs less than three years from that date, but on or after January 1, 1998, shall complete continuing education hours on a prorated basis at the rate of one and one-quarter hours of acceptable formal continuing education per month for the period beginning January 1, 1997 up to the first registration date thereafter. Such continuing education shall be completed during the period beginning January 1, 1997 and ending before the first day of the new registration period or at the option of the licensee during any time in the previous registration period.]

3. Section 63.10 of the Regulations of the Commissioner of Education is added, effective September 14, 2011, to read as follows:

§ 63.10 Collaborative drug therapy management.

(a) *Applicability. This section shall apply only to the extent that the applicable provisions in Education Law sections 6801 and 6801-a, authorizing certain pharmacists to participate in collaborative drug therapy management, have not expired or been repealed.*

(b) *Experience requirement for participating pharmacists.*

(1) *As used in Education Law section 6801-a(2)(b), a year of experience shall mean not less than 1,680 hours of work as a pharmacist within a period of one calendar year.*

(2) *In order to be counted as a year of experience that includes clinical experience in a health facility, such experience shall include, on average, not less than 15 hours per week of clinical experience which involves consultation with physicians with respect to drug therapy, as determined by the facility that employs or is affiliated with the pharmacist.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 18, 2011.

Text of 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: Commissioner of Education, John B. King, Jr., State Education Department, Office of P-12 Education, State Education Building, 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

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner to promulgate regulations in administering the admission to the practice of the professions.

Subdivision (1) of section 6508 of the Education Law provides that state boards for the professions shall assist the Board of Regents and Department on matters of professional licensing.

Section 6801-a of the Education Law establishes the Collaborative Drug Therapy Management (CDTM) Demonstration Program.

Subdivision (4) of section 6827 of the Education Law authorizes the Commissioner of Education to promulgate regulations setting standards for coursework that may be used to satisfy continuing education requirements for pharmacists.

Section (5) of chapter 21 of the Laws of 2011 authorizes and directs the promulgation of any rule necessary for the implementation of the CDTM demonstration program.

2. LEGISLATIVE OBJECTIVES:

On May 17, 2011 Governor Cuomo signed into law Chapter 21 of the Laws of 2011, which added a new section 6801-a of the Education Law authorizing the Collaborative Drug Therapy Management (CDTM) Demonstration Program for physicians and pharmacists working under the auspices of a teaching hospital. The new law, which sunsets three years from its effective date, restricts collaboration to pharmacists who meet specified education and experience requirements. In addition, the statute provides that pharmacists participating in CDTM complete five hours of relevant continuing education, and requires the Department, in consultation with the Department of Health, to prepare a report to the legislature on the implementation of the CDTM. The report will review the extent to which CDTM was implemented, and will examine whether, and the extent to which, it contributed to improvement of quality of care for patients, reduced the risk of medication error, reduced unnecessary health care expenditures, and was otherwise in the public interest.

The legislation authorizes the Department to develop regulations necessary to implement the new law. The proposed rule establishes standards for the experience required for a pharmacist to participate in CDTM, and revises continuing education requirements to reflect the new statutory provisions for pharmacists engaging in CDTM.

Concurrently, the proposed rule updates the continuing education regulations for pharmacists by deleting out-dated references.

3. NEEDS AND BENEFITS:

The proposed rule is necessary to implement Chapter 21 of the Laws of 2011, which establishes the Collaborative Drug Therapy Management (CDTM) Demonstration Program.

To date, 46 other states have already authorized collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies. The purpose of such collaboration is to reduce morbidity and mortality, reduce emergency room visits and hospital admissions, and otherwise reduce health care spending. Included among the many disease states in which such improvements have been documented are asthma, diabetes, and clotting disorders or other indications for anticoagulation.

4. COSTS:

(a) **Costs to State government:** The proposed rule is necessary to implement Chapter 21 of the Laws of 2011 and imposes no additional costs on State government, other than those inherent in the statute.

(b) **Costs to local government:** The proposed rule relates solely to the requirement for licensees engaged in the practice of pharmacy and does not impose any costs on local government.

(c) **Cost to private regulated parties.** The proposed rule will not increase costs, and may provide cost-savings to regulated parties, patients, institutions and patients. Therefore, there will be no additional costs to private regulated parties.

(d) **Costs to the regulatory agency for implementation and continued administration of the rule:** The proposed rule imposes no additional costs on the State Education Department, other than those inherent in the statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule relates solely to the requirement for licensees engaged in the practice of pharmacy and does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting requirements.

7. DUPLICATION:

The proposed rule does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to implement Chapter 21 of the Laws of 2011, which establishes the Collaborative Drug Therapy Management (CDTM) demonstration program. There are no viable alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Federal standards do not apply, nor does the proposed rule exceed federal standards.

10. COMPLIANCE SCHEDULE:

Consistent with the statute, the proposed rule would become effective on September 14, 2011, at which time licensees and participating facilities must comply with the proposed amendments if engaged in Collaborative Drug Therapy Management. Participation in CDTM is voluntary and it is anticipated that regulated parties will be able to comply with the rule's provisions by its effective date.

Regulatory Flexibility Analysis

The proposed rule is necessary to implement the Collaborative Drug Therapy Management (CDTM) demonstration program pursuant to Chapter 21 of the Laws of 2011, and relates to the practice of pharmacy, defining who and under what conditions certain pharmacists may engage in collaborative drug therapy management with physician prescribers of medications. The proposed rule also revises the continuing education requirements for pharmacists to conform with the CDTM demonstration program and to delete certain outdated provisions. The proposed rule will not impose any reporting, recordkeeping, or other compliance requirements, or any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The rule will apply to 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. Of the 22,344 pharmacists registered by the State Education Department, 2,821 pharmacists report their permanent address of record in a rural county.

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

The proposed rule is necessary to implement Chapter 21 of the Laws of 2011, which establishes the Collaborative Drug Therapy Management (CDTM) Demonstration Program. The proposed rule's provisions allow certain pharmacists, practicing within teaching hospitals, to engage in CDTM with physician prescribers of medications. The proposed rule will also delete continuing education provisions that are no longer applicable. The proposed rule will not impose reporting, recordkeeping, or other compliance requirements and will not require the use of additional professional services.

3. COSTS:

The proposed rule is necessary to implement Chapter 21 of the Laws of 2011 and does not impose any additional costs on regulated parties. The proposed rule will not increase costs, and may provide cost-savings to regulated parties, patients, institutions and patients.

4. MINIMIZING ADVERSE IMPACT:

Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendments to Regulations of the Commissioner of Education and has recommended the changes. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendments are supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists and pharmacies State-wide and regardless of their geographic location, to ensure a uniform standard of practice across the State. Accordingly, it is neither appropriate nor warranted to establish different requirements for entities located in rural areas.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from Statewide organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the regulations.

Job Impact Statement

The proposed rule is necessary to implement the Collaborative Drug Therapy Management (CDTM) demonstration program pursuant to Chapter 21 of the Laws of 2011, and relates to the practice of pharmacy, defining who and under what conditions certain pharmacists may engage in CDTM with physician prescribers of medications. The proposed rule also revises the continuing education requirements for pharmacists to conform with the CDTM demonstration program and to delete certain outdated provisions. The proposed rule will not adversely impact jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION**Teachers Performing Instructional Support Services in Boards of Cooperative Educational Services**

I.D. No. EDU-23-11-00003-A

Filing No. 836

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of sections 30-1.2, 30-1.8, 30-1.9, 80-1.7 and 80-1.8 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided)

Subject: Teachers performing instructional support services in boards of cooperative educational services.

Purpose: Create new tenure areas for teachers performing instructional support services in boards of cooperative educational services.

Text or summary was published in the June 8, 2011 issue of the Register, I.D. No. EDU-23-11-00003-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Student Eligibility for the Higher Education Opportunity Program**

I.D. No. EDU-26-11-00003-A

Filing No. 843

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 27-1.1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 and 6451(1)

Subject: Student eligibility for the Higher Education Opportunity Program.

Purpose: Update current criteria for determining student economic eligibility for Higher Education Opportunity Program.

Text or summary was published in the June 29, 2011 issue of the Register, I.D. No. EDU-26-11-00003-P.

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

Revised rule making(s) were previously published in the State Register on July 13, 2011.

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Certification in the Classroom Teaching Service Through Individual Evaluation

I.D. No. EDU-26-11-00004-A

Filing No. 835

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 80-3.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3004(1), 3006(1)(b) and (2)

Subject: Certification in the classroom teaching service through individual evaluation.

Purpose: Extend expiration date for applicants seeking certification through individual evaluation pathway.

Text or summary was published in the June 29, 2011 issue of the Register, I.D. No. EDU-26-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Conforming the Practice of Midwifery to Current Law

I.D. No. EDU-26-11-00013-A

Filing No. 841

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of sections 29.19, 52.20, 79-5.2, 79-5.3, 79-5.6; and repeal of sections 79-5.5 and 79-5.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6508(1) and 6509(9)

Subject: Conforming the practice of midwifery to current law.

Purpose: Removes unnecessary provisions and conforms the practice of midwifery to current law.

Text or summary was published in the June 29, 2011 issue of the Register, I.D. No. EDU-26-11-00013-P.

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

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

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the June 29, 2011 State Register, the State Education Department received the following comments:

COMMENT:

Three comments were received from midwives supporting the proposals.

RESPONSE:

The Department concurs and appreciates the support for the proposed regulations.

COMMENT:

One comment was received from a midwifery student expressing support for the proposals as encouraging independent practice.

RESPONSE:

The Department concurs and appreciates the support for the proposed regulations.

COMMENT:

One midwife commented that the proposed section 29.19.(b) is consistent with legislative intent, and that proposed section 52.20 reflects an improved educational requirement for midwives.

RESPONSE:

The Department concurs.

COMMENT:

One writer commented in support of the proposals on behalf of 10 midwives at an institutional practice.

RESPONSE:

The Department concurs and appreciates the support for the proposed regulations.

COMMENT:

One writer suggested that the proposal contain more specificity regarding collaborative relationships.

RESPONSE:

The Department reviewed the proposal and determined that no change is warranted. The proposed regulatory language is consistent with the legislation which eliminated a written collaborative practice requirement, instead allowing licensed midwives to document collaborative relationships in a variety of forms, consistent with the setting and the nature of the practice.

NOTICE OF ADOPTION

Massage Therapy Continuing Education

I.D. No. EDU-26-11-00014-A

Filing No. 842

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Addition of section 78.5 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a) and 7807(2); and L. 2010, ch. 463, section 2

Subject: Massage therapy continuing education.

Purpose: To implement recently enacted statutory authority requiring continuing education for licensed massage therapists.

Text or summary was published in the June 29, 2011 issue of the Register, I.D. No. EDU-26-11-00014-P.

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

Revised rule making(s) were previously published in the State Register on August 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Bldg., Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 474-3862, email: legal@mail.nysed.gov

Assessment of Public Comment

The proposed rule was published in the State Registrar on June 29, 2011 and a revised rule was published on August 3, 2011. Below is a summary of the comments received by the State Education Department and the Department's response to these comments.

COMMENT:

Several comments expressed support of the requirement for continuing education, noting that there was support for massage therapists to stay current in their field through continuing education as a way to uphold the standards of the profession.

RESPONSE:

The Department agrees with this comment and appreciates the support.

COMMENT:

Comments were received opposing the \$45 continuing education fee, summarized, collectively, as follows:

- I do not agree with the \$45 continuing education fee in addition to the license fee. Licensees already are required to incur the cost of taking continuing education courses. The extra \$45 fee imposes an additional burden on licensees, particularly independent providers who may not be able afford such cost.
- I cannot afford to take continuing education courses as a full-time licensed massage therapist working in New York City while supporting myself, since it will require that I have to take time off from work to take the classes.
- Adding a \$45 fee on top of the registration renewal fee when the Department is already getting \$900 from the continuing education provider is unacceptable. The \$900 fee should cover the costs to administer the continuing education requirements.
- The \$45 fee should be waived since massage therapists are already paying for continuing education. The fee should be waived for licensees with a certain number of years of experience. Continuing education courses should be allowed to be rolled over to the next registration period. There is no need to put a \$45 fee when the state is already collecting from the provider.

RESPONSE:

Section 7807(6) of the Education Law requires that licensees pay a mandatory continuing education fee of \$45 in addition to the triennial registration fee, payable on or before the first day of each triennial registration period. This proposed rule implements this statutory requirement. The Commissioner does not have the authority to waive the fee, which is prescribed in statute.

COMMENT:

Comments were received which opposed the requirement that sponsors of continuing education pay a \$900 fee for approval as a sponsor, which are summarized, collectively, as follows:

- The cost of continuing education may increase if educators are required to pay a fee to teach in New York.
- The requirements for a provider to pay a \$900 fee may eliminate independent qualified providers not directly affiliated with a school and who may not be able to afford such cost. This may restrict acceptable providers to those who can afford the fee or eliminate qualified providers and the courses available to be taken by licensees. Extra costs may also be incurred by licensees to travel to a qualified New York State licensed provider.
- There should be a certain number of hours that can be taken from providers who do not have to pay a fee. The number of continuing education credits allowed to be met through self-study should be increased.
- Taking a live seminar course that costs several hundred dollars plus lodging and meals for multiple day courses every three months isn't feasible for a person in my economic position. The professional association and others offer quality continuing education courses online that are affordable and these should be acceptable.

RESPONSE:

Section 7807(4) of the Education Law requires that sponsors of massage therapy continuing education file an application with the Department and pay a fee of \$900. The opposed regulation implements this statutory requirement. The Commissioner cannot waive this fee, which is prescribed in statute. The courses and training offered by sponsors who are professional associations and others that meet the requirements in the regulations could be acceptable under the statute and accordingly under this proposed regulation.

COMMENT:

Certain comments addressed the restriction in Section 7807(4) of the Education Law, which provides, in pertinent part, that while presenters of didactic instruction may be provided by persons who are not licensed by the State of New York as massage therapists, the practical application of such modalities and techniques must be done by licensed massage therapists, or those otherwise authorized, when this continuing education occurs in New York State. The comments were as follows:

- The requirement that all providers be New York State licensed massage therapists limits our options and increases costs for travel.
- Out-of-state providers are forbidden to demonstrate the practical aspects. I want to be able to feel their hands on me.
- Courses being offered by physical therapists and others that cover intake and other areas of massage therapy could not be taken.

RESPONSE:

As noted above, providers of didactic continuing education need not be licensed or otherwise authorized to practice massage therapy in New York. The restriction in Education Law section 7807(4) states that the practical application of modalities and techniques must be done by licensed massage therapists or by those otherwise authorized. This section of Educa-

tion Law is also consistent with the provisions of Article 155 of Education Law, which authorizes and establishes the practice of massage therapy and does not provide an exemption for persons from other states, whether licensed, or not, to practice in New York State. As provided in section 7807(4), any otherwise authorized person may provide the practical application of modalities and techniques in an approved continuing education program. Physical therapists are among those who are otherwise authorized to practice massage therapy in accordance with Section 7805(1) of Education Law.

COMMENT:

Certain comments addressed the number of hours of continuing education for each triennial period or the possibility of having to take additional hours if courses taken as continuing education for one profession cannot be used to meet the requirements for massage therapy. The comments were as follows:

- 36 hours every three years is a lot to ask of a massage therapist.
- For some in parallel fields, this is a new continuing education requirement that will mean excessive requirements if they have to take the same courses.

RESPONSE:

Section 7807(2) of the Education Law requires that during each triennial registration period, meaning a registration period of three years' duration, an applicant for registration shall complete at least 36 hours of continuing education, acceptable to the Department, a maximum of 12 hours of which may be in self-instructional coursework acceptable to the Department. The statute specifies that, during each triennial period, the licensee must complete 36 hours of continuing education, which, therefore, would not permit courses to be carried from one period to another. Additionally, the intent of the statute and regulations is to ensure that massage therapists obtain the required continuing education during each registration period. There are no mandated areas of study for each applicant, so individuals who have mandated continuing education study in massage therapy, in addition to another profession or discipline, would not be required to take the same courses, but would have to meet the mandated requirements in all professions where licensed. This law would not prohibit the Department from accepting specific courses to meet the requirement in more than one profession in accordance with the requirements of each profession.

COMMENT:

Education Law section 7807(2) requires that during each triennial registration period, meaning a registration period of three-year duration, an applicant for registration shall complete at least 36 hours of continuing education, acceptable to the Department, a maximum of 12 hours of which may be in self-instructional coursework acceptable to the Department. Clarity was sought regarding the content of the self-instruction, including the number of hours that could be taken through distance education or online instruction. Four comments were received as follows:

- I seek clarification of the 'self instruction' that is allowed for 12 hours. I understand that 5 hours of this can be online.
- I would like to know exactly what modes of learning, such as books, videos and DVDs can be accepted.
- The number of allotted hours for self study online should be increased and or better explained.
- I think that more courses should be able to be taken online than just six of the 12 hours of self-instruction courses.

RESPONSE:

Education Law section 7807(2) provides that 12 hours of acceptable coursework may be self-instructional. Such coursework can include all the subjects identified in subparagraph (i) of paragraph (2) of subdivision (c) of the proposed regulations. There is, however, no limit to the number of hours that can be taken in distance learning that is not self-instructional, including online instruction, as long as massage therapists have documentation acceptable to the Department verifying his or her completion of the coursework and detailing the duration of the course. There is a limit of six hours on the amount of self-instructional courses that have been approved by other jurisdictions but not approved in New York.

COMMENT:

A comment was received regarding the subjects deemed acceptable for continuing education. Particularly the comment requested that Lymphedema be expressly added to the examples of specific physical conditions in which a course may relate to which would deem the course acceptable continuing education. The commenter expressed concern that massage therapists who provide treatment for Lymphedema were not being treated fairly in light of pending federal legislation.

RESPONSE:

The proposed regulation merely offers an example of a course relating to a physical condition that qualifies as acceptable continuing education and does not provide an enumerated list of physical conditions in which courses relating thereto are deemed acceptable. Thus, the regulation does not exclude a course relating to Lymphedema as an acceptable subject for

the continuing education. To the extent Lymphedema is a physical condition that may require massage therapy, courses relating to such condition would be acceptable as continuing education coursework pursuant to the regulation. Additionally, the purpose of the regulation, however, is not to address federal or state legislation. This regulation implements a State statute.

COMMENT:

- The continuing education requirement may increase illegal practice by making it more difficult and expensive for practitioners to practice legally.
- We may actually be promoting illegal practice of massage therapy.
- Those who do practice legally may have to charge even more to recoup their expenses, and those who practice illegally have the liberty to continue to charge as they have been. This adds to the difficulty of doing business in New York State.

RESPONSE:

Section 7807 of the Education Law requires that licensed massage therapists to complete continuing education requirements to register each triennial period. The purpose of the regulations is to enhance the health, safety, and well-being of the citizens of the state who seek the services of licensed professionals by ensuring that such professionals maintain their professional competence. This regulation provides for the monitoring and enforcement of compliance with these requirements. Current law and regulations provides for the civil and criminal prosecution of illegal practice, which should prevent the unlawful practice of massage therapy while upholding the integrity of the field.

NOTICE OF ADOPTION

School Health Services

I.D. No. EDU-27-11-00001-A

Filing No. 834

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 136.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), 905(1) and (4)

Subject: School health services.

Purpose: To repeal requirement that school district provide hyperopia vision screenings to all newly entering students.

Text or summary was published in the July 6, 2011 issue of the Register, I.D. No. EDU-27-11-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Due Process Procedures for Criminal History Checks of Prospective School Employees and Certification Applicants

I.D. No. EDU-27-11-00002-A

Filing No. 837

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (30) and 3035(3)

Subject: Due process procedures for criminal history checks of prospective school employees and certification applicants.

Purpose: To conform to recent change in Department's Office of Teaching Initiatives.

Text or summary was published in the July 6, 2011 issue of the Register, I.D. No. EDU-27-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

School Facility Report Cards

I.D. No. EDU-27-11-00009-A

Filing No. 828

Filing Date: 2011-09-19

Effective Date: 2011-10-05

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

Action taken: Repeal of section 155.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), (20), 409-d(1-3) and 409-e(1-4)

Subject: School facility report cards.

Purpose: To repeal the requirement that school districts and BOCES prepare school facility report cards.

Text or summary was published in the July 6, 2011 issue of the Register, I.D. No. EDU-27-11-00009-EP.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

School Bus Driver Training and School Bus Idling Monitoring and Reporting

I.D. No. EDU-27-11-00010-A

Filing No. 829

Filing Date: 2011-09-19

Effective Date: 2011-10-05

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

Action taken: Amendment of section 156.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2) and (20), 3624 (not subdivided) and 3637(1), (2) and (3)

Subject: School bus driver training and school bus idling monitoring and reporting.

Purpose: Provide mandate relief through increased scheduling flexibility and by repealing certain monitoring/reporting requirements.

Text or summary was published in the July 6, 2011 issue of the Register, I.D. No. EDU-27-11-00010-EP.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Skills and Achievement Commencement Credential for Students with Disabilities

I.D. No. EDU-40-11-00006-P

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

Proposed Action: Amendment of sections 100.5, 100.6, 100.9 and 200.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 305(1), (2), 4402(1)-(7) and 4403(3)

Subject: Skills and Achievement Commencement Credential for Students with Disabilities.

Purpose: To replace Individualized Education Program (IEP) diploma with a Skills and Achievement Commencement Credential.

Text of proposed rule: 1. Subparagraph (iii) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(iii) Earning a Regents or local high school diploma shall be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall terminate a student's entitlement to a free public education pursuant to such statute. Earning a high school equivalency diploma [or], an Individualized Education Program diploma or a skills and achievement commencement credential as set forth in section 100.6 of this Part shall not be deemed to be equivalent to receipt of a high school diploma pursuant to Education Law, section 3202(1) and shall not terminate a student's entitlement to a free public education pursuant to such statute.

2. Section 100.6 of the Regulations of the Commissioner of Education is repealed, effective February 1, 2012.

3. A new section 100.6 of the Regulations of the Commissioner of Education is added, effective February 1, 2012, as follows:

§ 100.6. Skills and achievement commencement credential.

Beginning with the 2013-14 school year and thereafter, the board of education or trustees of a school district shall, and the principal of a nonpublic school may, issue a skills and achievement commencement credential to a student who has taken the State assessment for students with severe disabilities, as defined in section 100.1(t)(2)(iv) of this Part, in accordance with the following provisions:

(a) Prior to awarding the skills and achievement commencement credential, the governing body of the school district or nonpublic school shall ensure that:

(1) the student has been recommended by the committee on special education to take the alternate assessment in lieu of a required State assessment;

(2) such student meets the definition of a student with a severe disability as defined in section 100.1(t)(2)(iv); and

(3) the student has been afforded appropriate opportunities to participate in community experiences and development of employment and other instructional activities to prepare the student for post-secondary living, learning and employment.

(b) The credential may be issued at any time after such student has attended school for at least 12 years, excluding kindergarten, or has received a substantially equivalent education elsewhere, or at the end of the school year in which a student attains the age of 21.

(c) The credential shall be similar in form to the diploma issued by the school district or nonpublic school, except that there shall appear on such credential a clear annotation to indicate that the credential is based on achievement of alternate academic achievement standards.

(d) The credential shall be issued together with a summary of the student's academic achievement and functional performance, as required pursuant to section 200.4(c)(4) of this Title, that includes documentation of:

(1) the student's level of achievement and independence for each of the career development and occupational studies learning standards set forth in section 100.1(t)(1)(vii)(a), (b) and (c) of this Part including, but not limited to, career development, integrated learning, universal foundation skills that include basic skills in reading, writing, listening, speaking, math and functional math; thinking skills; personal qualities; interpersonal skills; use of technology; managing information and resources; systems skills;

(2) the student's academic skills, as measured by the State assessment for students with severe disabilities; and

(3) the student's strengths and interests and, as appropriate, other student achievements and accomplishments.

School districts may use the State model form developed by the commissioner for the summary of academic and functional performance or a locally-developed form that meets the requirements of this subdivision.

(e) If the student receiving a credential is less than 21 years of age, such credential shall be accompanied by a written statement of assurance that the student named as its recipient shall continue to be eligible to attend the public schools of the school district in which the student resides without the payment of tuition until the student has earned a regular high school diploma or until the end of the school year in which such student turns age 21, whichever shall occur first.

4. A new subdivision (g) is added to section 100.9 of the Regulations of the Commissioner of Education, effective February 1, 2012, as follows:

(g) *The provisions of this subdivision shall be deemed repealed on June 30, 2013 and no IEP diploma shall be awarded pursuant to this section on or after July 1, 2013.*

5. Subparagraph (iii) of paragraph (5) of subdivision (a) of section 200.5 of the Regulations of the Commissioner of Education is amended, effective February 1, 2012, as follows:

(iii) Prior to the student's graduation with an individualized education program (IEP) diploma or, beginning with the 2013-14 school year, prior to a student's exit with a skills and achievement commencement credential as set forth in section 100.6 of this Title, such prior written notice must indicate that the student continues to be eligible for a free appropriate public education until the end of the school year in which the student turns age 21 or until the receipt of a regular high school diploma.

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) 473-8269, 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, 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 educational work of the State.

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

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.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Education Law section 4402 establishes district's duties regarding education of students with disabilities.

Education Law section 4403 outlines Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in their best interests.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes. The proposed amendment repeals the individualized education program (IEP) diploma for students with disabilities upon expiration of the 2012-13 school year and, beginning with the 2013-14 school year, establishes a Skills and Achievement Commencement Credential only for students with the most significant cognitive disabilities who have taken the New York State Alternate Assessment (NYSAA) and who are not eligible for a regular diploma.

NEEDS AND BENEFITS:

The IEP diploma was established in 1984. Since that time, the State's learning standards and graduation requirements have been substantially revised. Therefore, to ensure that high standards are maintained for students with disabilities and they have the opportunity to exit school with regular high school diplomas or, for students who because of the severity of their disabilities cannot earn a regular diploma, the proposed amendment establishes a new credential that would be based on a student's achievement relating to the Career Development and Occupational Studies (CDOS) Learning Standards.

COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes. The proposed amendment replaces the IEP diploma with a new Skills and Achievement Commencement Credential. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with the existing requirements set forth in 34 CFR section 300.305(e)(3).

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations. The proposed amendment replaces the IEP diploma with a new Skills and Achievement Commencement Credential. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with existing requirements set forth in 34 CFR section 300.305(e)(3).

Section 100.5, as amended, adds that graduation with a Skills and Achievement Commencement Credential is not equivalent to receiving a high school diploma and does not terminate a student's entitlement to a free public education under section 3202(1) of Education Law.

Current section 100.6 relating to expired regulations for the award of local certificates for students with disabilities is repealed and a new section 100.6 is added to establish procedures for issuing a Skills and Achievement Commencement Credential to students with disabilities who have taken the NYSAA.

Section 100.9, as amended, provides that no high school IEP diploma shall be awarded on or after July 1, 2013.

Section 200.5, as amended, beginning with the 2013-14 school year, replaces the prior notice requirement relating to the provision of a free appropriate public education (FAPE) after graduation with an IEP diploma with the requirement that parents must be notified that a student awarded a Skills and Achievement Commencement Credential continues to be eligible for FAPE until the end of the school year in which the student turns age 21 or until the receipt of a regular high school diploma.

PAPERWORK:

The proposed amendment incorporates existing documentation requirements relating to Career Plans, Transition Planning and Services and Student Exit Summaries and, beginning with the 2013-14 school year, replaces the current prior written notice requirement relating to the provision of FAPE after graduation with an IEP diploma with a prior written notice requirement relating to the provision of FAPE after a student is awarded a Skills and Achievement Commencement Credential, and does not impose any additional paperwork requirements.

DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation.

ALTERNATIVES:

Options considered include retaining the existing requirements for an IEP diploma, but revising its name to differentiate it from a regular high school diploma to address parent and student misperceptions that an IEP diploma provides a student with access to post-secondary schools and employment. However, the Department determined this policy would not address the broader public concerns that such students be awarded a credential that meaningfully documents the student's level of achievement and skills for future employment and/or post-secondary training.

The proposed amendment requires that the Skills and Achievement Commencement Credential be provided along with a summary of the student's academic and functional performance. To minimize the impact of this requirement, the proposed amendment incorporates existing requirements for such documentation as set forth in 34 CFR section 300.305(e)(3) and that the local educational agency (LEAs) may use a locally-developed form or the model form developed by the Education Department for this purpose.

The proposed regulations establish that the new credential be effective two years from adoption (2013-14) to provide sufficient lead time for LEA implementation.

FEDERAL STANDARDS:

The proposed amendment is not required by federal law or regulations. There are no applicable federal statutes, regulations or other requirements.

COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment provides that the new credential be effective two years from adoption (2013-14 school year) to provide sufficient lead time for LEA implementation.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment would repeal the individualized education program (IEP) diploma option for students with disabilities upon expiration of the 2012-13 school year and, beginning with the 2013-14 school year, establish a new Skills and Achievement Commencement Credential

only for students with the most significant cognitive disabilities who have taken the New York State Alternate Assessment (NYSAA) and who are not eligible for a regular diploma. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to all public school districts, charter schools, and registered nonpublic high schools in the State, to the extent that they offer instruction in the high school grades.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments.

The proposed amendment would repeal the IEP diploma for students with disabilities upon expiration of the 2012-13 school year and, beginning with the 2013-14 school year, replace it with a new Skills and Achievement Commencement Credential. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with existing requirements set forth in 34 CFR section 300.305(e)(3).

Section 100.5, as amended, adds that receipt of a Skills and Achievement Commencement Credential is not equivalent to receiving a high school diploma and does not terminate a student's entitlement to a free public education under section 3202(1) of Education Law.

Current section 100.6, relating to expired regulations for the award of local certificates for students with disabilities, is repealed and a new section 100.6 is added to establish procedures for issuing a Skills and Achievement Commencement Credential to students with disabilities who have taken the NYSAA.

Section 100.9, as amended, provides that no high school IEP diploma shall be awarded on or after July 1, 2013.

Section 200.5, as amended, beginning with the 2013-14 school year, replaces the prior notice requirement relating to the provision of a free appropriate public education (FAPE) after graduation with an IEP diploma, with the requirement that parents must be notified that a student awarded a Skills and Achievement Commencement Credential continues to be eligible for FAPE until the end of the school year in which the student turns age 21.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments. The proposed amendment replaces the IEP diploma with a new Skills and Achievement Commencement Credential. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with existing requirements set forth in 34 CFR section 300.305(e)(3).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on local governments.

6. MINIMIZING ADVERSE IMPACT:

Options considered include retaining the existing requirements for an IEP diploma, but revising its name to differentiate it from a regular high school diploma to address parent and student misperceptions that an IEP diploma provides a student with access to post-secondary schools and employment. However, the Department determined this policy would not address the broader public concerns that such students be awarded a credential that meaningfully documents the student's level of achievement and skills for future employment and/or post-secondary training.

The proposed amendment requires that the Skills and Achievement Commencement Credential be provided along with a summary of the student's academic and functional performance. To minimize the impact of this requirement, the proposed amendment incorporates existing requirements for such documentation as set forth in 34 CFR section 300.305(e)(3) and that the local educational agency (LEAs) may use a locally-developed form or the model form developed by the Education Department for this purpose.

The proposed amendment provides that the new credential be effective two years from adoption (2013-14 school year) to provide sufficient lead time for LEA implementation.

7. LOCAL GOVERNMENT PARTICIPATION:

Since 2008, the Department has sought public comment on policy considerations regarding the State's current IEP diploma and alternatives. Representatives from local school districts and Boards of Cooperative Educational Services participated in discussion groups to evolve new

policy recommendations. In addition, copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, charter schools, and registered nonpublic high schools in the State, to the extent that they offer instruction in the high school grades, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements or professional services requirements on entities in rural areas.

The proposed amendment would repeal the individualized education program (IEP) diploma for students with disabilities upon expiration of the 2012-13 school year and, beginning with the 2013-14 school year, replace it with an alternate credential (i.e., "Skills and Achievement Commencement Credential") only for students with the most significant cognitive disabilities who have taken the New York State Alternate Assessment (NYSAA) and who are not eligible for a regular diploma. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with existing requirements set forth in 34 CFR section 300.305(e)(3).

Section 100.5, as amended, adds that graduation with a Skills and Achievement Commencement Credential is not equivalent to receipt of a regular high school diploma and does not terminate a student's entitlement to a free public education under section 3202(1) of Education Law.

Current section 100.6, relating to expired regulations for the award of local certificates for students with disabilities, is repealed and a new section 100.6 is added to establish procedures for issuing a Skills and Achievement Commencement Credential to students with disabilities who have taken the NYSAA.

Section 100.9, as amended, provides that no high school IEP diploma shall be awarded on or after July 1, 2013.

Section 200.5, as amended, replaces the prior notice requirement relating to the provision of a free appropriate public education (FAPE) after graduation with an IEP diploma with the requirement that parents must be notified that a student awarded a Skills and Achievement Commencement Credential continues to be eligible for FAPE until the end of the school year in which the student turns age 21.

3. COSTS:

The proposed amendment does not impose any additional costs on entities in rural areas. The proposed amendment replaces the IEP diploma with a new Skills and Achievement Commencement Credential. The summary of performance and related documentation that must be provided to a student receiving this credential are consistent with the existing requirements set forth in 34 CFR section 300.305(e)(3).

4. MINIMIZING ADVERSE IMPACT:

The Department considered retaining the existing requirements for an IEP diploma, but revising its name to differentiate it from a regular high school diploma, to address parent and student misperceptions that an IEP diploma provides a student with the same access to post-secondary schools and employment as a local or Regents diploma. However, the Department determined this policy would not address the broader public concerns that such students be awarded a credential that meaningfully documents the student's level of achievement and skills for future employment and/or post-secondary training.

The proposed amendment requires that the Skills and Achievement Commencement Credential be provided along with a summary of the student's academic and functional performance. To minimize the impact of this requirement, the proposed amendment incorporates existing requirements for such documentation as set forth in 34 CFR section 300.305(e)(3) and that the local educational agency (LEAs) may use a locally-developed form or the model form developed by the Education Department for this purpose.

The proposed amendment establishes that the new credential be effective two years from adoption (2013-14 school year) to provide sufficient lead time for LEA implementation. The proposed amendment establishes a new Skills and Achievement Commencement Credential that would be based on a student's achievement relating to the Career Development and Occupational Studies Learning Standards. The criteria relating to the Credential must be made applicable State-wide to ensure that State Learning Standards and graduation requirements are maintained for all students with disabilities. Therefore, it was not possible to establish different compliance and reporting requirements for regulated parties in rural areas, or to exempt them from the rule's provisions.

5. RURAL AREA PARTICIPATION:

Since 2008, the Department has sought public comment on policy considerations regarding the State's current IEP diploma and alternatives. Representatives from rural local school districts and Boards of Cooperative Educational Services participated in discussion groups to evolve new policy recommendations. In addition, the proposed amendment was submitted for comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment would repeal the individualized education program (IEP) diploma for students with disabilities upon expiration of the 2012-13 school year and, beginning with the 2013-14 school year, replace it with an alternate credential (i.e., Skills and Achievement Commencement Credential) only for students with disabilities with the most significant cognitive disabilities who have taken the New York State Alternate Assessment (NYSAA) and who are not eligible for a regular diploma.

The proposed amendment will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact 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

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

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

Filing No. 823

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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

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

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

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

Specific reasons underlying the finding of necessity: The Department's Division of Air Resources ("DAR") is amending 6 NYCRR Parts 200, 201 and 231. The revisions include two primary components, which are intended to incorporate: (1) key provisions of Environmental Protection Agency's ("EPA's") May 16, 2008 and October 20, 2010 NSR final rules for the regulation of particulate matter with an aerodynamic diameter less than or equal to 2.5 micro-meters ("PM-2.5"), 73 FR 28321 ("2008 NSR PM-2.5 final rule") and 75 FR 64864 ("2010 NSR PM-2.5 final rule"), respectively; and (2) key provisions of EPA's June 3, 2010 Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 FR 31514 ("GHG Tailoring Rule"). As set forth further below, failure to implement the 2008 and 2010 NSR PM-2.5 final rules would have adverse impacts on public health and general welfare in the State and necessitates the adoption of an emergency rule by the Department. Similarly, failure to adopt conforming provisions of the GHG Tailoring Rule as a matter of State law by January 2, 2011 would have adverse impacts on the State's general welfare, and necessitates the adoption of an emergency rule by the Department.

With regard to the first component of the instant action, NSR is a critical tool in meeting the Legislature's air quality objectives and ensuring that healthful air quality is preserved in areas of the State that meet the National Ambient Air Quality Standards ("NAAQS") for PM-2.5 and does not further degrade but actually improves in areas of the State which currently are not in attainment of the PM-2.5 NAAQS. Since the State of

New York currently has areas that are designated nonattainment for PM-2.5, the Department must have a nonattainment NSR ("NNSR") program that meets the requirements of Part D of Title I of the Clean Air Act ("CAA") in order to adopt and implement permit programs for the construction, modification and operation of major stationary sources in nonattainment areas of the State.

Subsequent to the promulgation of NAAQS for PM-2.5, EPA designated the New York City metropolitan area as nonattainment for the PM-2.5 standard, 70 FR 944, January 5, 2005. NNSR is now required for new major facilities and major modifications to existing facilities that emit PM-2.5 in significant amounts in the PM-2.5 nonattainment area. NNSR requires that every new major facility and major modification at existing facilities in the PM-2.5 nonattainment area control emissions of direct PM-2.5 through the requirement that such sources achieve Lowest Achievable Emission Rate ("LAER") and obtain emission offsets. On May 16, 2008 and October 20, 2010, EPA published its final rules governing the implementation of the NSR program for PM-2.5. EPA's final rule requires, among other things, that permits address directly emitted PM-2.5 as well as pollutants responsible for secondary formation of PM-2.5, referred to as precursors.

With regard to the second component of the instant action, EPA has recently taken multiple actions regarding the regulation of greenhouse gases ("GHGs") under the CAA: (1) the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 FR 66496 (December 15, 2009) ("Endangerment Finding"); (2) the Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 FR 25324 (May 7, 2010) ("Tailpipe Rule"); and (3) the Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, 75 FR 17004 (April 2, 2010) ("Trigger Rule"). Taken together, these three EPA actions and interpretations will result in GHGs being "subject to regulation" under the CAA as of January 2, 2011. On that date, because of EPA's actions, GHGs will need to be addressed as part of the CAA's Prevention of Significant Deterioration ("PSD") and Title V permitting programs.

Also, since EPA's actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule make GHGs subject to regulation under the CAA, and because current State law uses the same relevant language as federal law, GHGs will automatically become subject to regulation as a matter of State law on January 2, 2011. Therefore, it is necessary to clarify that GHGs are required to be addressed as a matter of federal law and as a result of EPA's actions, rather than as a result of this instant action. However, this action is necessary in order to clarify and conform State law to federal law as it relates to EPA's actions to address GHG regulation under its GHG Tailoring Rule, and therein revise the relevant State applicability thresholds for GHGs under the Department's PSD and Title V programs.

On June 3, 2010, EPA published its GHG Tailoring Rule in order to address impacts of GHGs becoming subject to regulation under the CAA as of January 2, 2011. According to EPA, the current statutory mass-based applicability thresholds in the CAA, of 100 or 250 tons per year (tpy), could subject a vast number of small GHG emission sources to PSD and Title V permitting program requirements. This would create a significant burden for smaller sources, many of which would be newly subject to PSD and Title V permitting requirements, as well as cause state and local permitting authorities to be inundated with permitting review. This impact is the result of the fact that the current applicability thresholds for those programs, while appropriate for traditional pollutants such as SO₂ and NO_x, are not necessarily feasible for GHGs since GHGs are emitted in much higher volumes than traditional pollutants. Because of this, EPA promulgated the GHG Tailoring Rule which 'tailors' the applicability thresholds for GHGs in order to exempt small sources from being newly subject to PSD or Title V permitting program requirements. As stated in the foregoing, since existing State regulations largely track the statutory text of the CAA in terms of the relevant applicability thresholds, smaller sources in New York will be similarly impacted. Thus, irrespective of whether GHG thresholds are tailored under the federal GHG Tailoring Rule, a vast number of small GHG emission sources in New York may likewise become subject to State PSD and Title V requirements as a matter of State law on January 2, 2011.

While the Department intends to follow EPA's approach under the federal GHG Tailoring Rule, the Department needs to immediately incorporate EPA's tailored applicability thresholds into State regulations before January 2, 2011. This is necessary in order to conform State regulations to federal law as it relates to EPA's GHG Tailoring Rule, and to make clear that small sources in the State with GHG emissions below the tailored thresholds of the GHG Tailoring Rule will not be newly subject to the PSD or Title V permitting programs. Without the GHG Tailoring Rule and this action, the State's PSD and Title V permitting program requirements may apply to all stationary sources that emit or have the potential to

emit GHGs at or above the CAA statutory thresholds of 100 or 250 tpy on or after January 2, 2011. Absent a State GHG tailoring rule, numerous smaller sources in New York such as schools, restaurants, and small commercial facilities may be negatively impacted by EPA's actions to regulate GHGs.

ADVERSE IMPACTS ON PUBLIC HEALTH

Particulate matter is a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. EPA first established a NAAQS for PM in 1971 and has since conducted several periodic reviews and revisions to establish both health-based (primary) and welfare-based (secondary) standards.

The health effects associated with exposure to PM-2.5 are significant. Epidemiological studies have shown a significant correlation between elevated PM-2.5 levels and premature mortality. Particulate matter, especially fine particles, contains microscopic solids or liquid droplets that can lodge deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of respiratory and cardiovascular problems including: increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing, for example; decreased lung function; aggravated asthma; development of chronic bronchitis; irregular heartbeat; nonfatal heart attacks; and premature death in people with heart or lung disease. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy people may experience temporary symptoms from exposure to elevated levels of particle pollution.

Based on the foregoing, the failure to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules may have far-reaching consequences that will adversely impact public health. Therefore, an emergency rulemaking to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules is necessary in order to preserve public health in New York State.

ADVERSE IMPACTS ON THE GENERAL WELFARE

In addition to the adverse public health impacts referenced above due to the State's failure to adopt and implement EPA's 2008 and 2010 NSR final rules incorporating health-based air quality standards for PM-2.5, there may also be significant impacts on the public welfare. New York currently has a PM-2.5 nonattainment area requiring the submittal of a State Implementation Plan ("SIP") revision in accordance with CAA requirements. As a result, the Department is required to submit to EPA a revised SIP incorporating the 2008 federal PM-2.5 NSR requirements prior to May 16, 2011. Since the CAA authorizes the EPA to impose significant sanctions for failure to submit a SIP or failure to implement a federal plan, including the withdrawal of federal highway funds and the imposition of two to one ("2:1") emission offset ratios to applicable new and modified sources in the State [CAA Section 179, 42 USC Section 7509], failure to submit a revised SIP by the May 16, 2011 deadline could have far reaching consequences which may negatively impact the public welfare. For example, the stricter emissions offset ratios will impose higher costs on State emission sources or, in some cases, possibly deter sources from commencing any new construction or essential modifications. These sanctions, along with the State's lack of authorization to issue permits for new and modified sources, could have a paralyzing effect on State commerce, significantly raising the cost of doing business and effectuating a virtual ban on construction in the State. In addition, the CAA authorizes EPA to withhold funding for certain state air pollution and planning control programs and take control of a state's air permitting programs under a Federal Implementation Plan (FIP).

Based on the foregoing, the failure to submit a revised SIP in accordance with the federal NSR rule for PM-2.5 may have far-reaching consequences that will adversely impact the general welfare. Therefore, an emergency rulemaking to incorporate key provisions of EPA's 2008 and 2010 NSR PM-2.5 final rules, and by May 16, 2011 for purposes of the 2008 NSR final rule, is necessary in order to preserve the general welfare in New York State.

Similarly, the State's failure to implement, by January 2, 2011, revised applicability thresholds which conform to EPA's GHG Tailoring Rule would have significant adverse impacts on the general welfare. As stated in the foregoing, regardless of this action, as of January 2, 2011, the Department will be required to address GHG emissions in its PSD and Title V permitting programs as a result of EPA's actions to regulate GHGs. EPA's GHG Tailoring Rule, which tailors the applicability thresholds under the Title V and PSD programs, is aimed at reducing the anticipated impact on smaller sources and on state and local permitting authorities as a matter of federal law. This action is necessary to clarify and conform State regulations to federal law along with the relevant applicability thresholds as a matter of State law.

Without this action, the State's PSD and Title V permitting program requirements may apply to all stationary sources that emit more than 100

or 250 tpy of GHGs beginning on January 2, 2011. As stated in the foregoing, this is because the State's existing regulations largely track the statutory text in terms of the relevant applicability thresholds. This would result in significant adverse impacts on the general welfare for two primary reasons: (1) a vast number of small stationary sources of GHG emissions in the State would be newly required to comply with significant PSD and Title V operating permit requirements, imposing additional costs on such sources, and resulting in adverse economic impacts; and (2) the Department's PSD and Title V permitting programs would be overwhelmed by the anticipated administrative burden, severely impairing the administrative functioning of these programs, creating significant permitting delays, and resulting in significant adverse economic impact on all sources in the State that require operating permits.

If, as of January 2, 2011, the State's PSD and Title V permitting programs applied to GHGs at the current CAA statutory applicability thresholds, a significant burden would be placed on smaller sources of GHG emissions in the State to comply with PSD or Title V operating permit requirements which would have a significant adverse impact on the general welfare of the State. The statutory applicability thresholds would newly subject a vast number of small GHG emission sources, not traditionally regulated under the CAA, to these permitting program requirements. For purposes of PSD sources that fall within the 250 tpy source categories, the Department has determined that the following source types may be impacted by EPA's regulation of GHGs: gas-fired boilers over 485,000 Btu/hr; oil-fired boilers over 350,000 Btu/hr; and wood-fired boilers over 220,000 Btu/hr. For Title V sources and PSD sources that fall within the existing 100 tpy source categories, GHG regulation would impact: gas-fired boilers over 194,000 Btu/hr; oil-fired boilers over 143,000 Btu/hr; and wood-fired boilers over 89,000 Btu/hr. Based on these projections, most single family residences would not be affected. However, a significant number of facilities that emit GHGs in quantities greater than the existing thresholds, but have never before been subject to either PSD or Title V permitting requirements, would now have to address GHGs under the state's PSD or Title V permitting programs, including many schools, auto-body garages, churches, multi-family residential buildings or dwellings, warehouses, and shopping centers. These smaller sources may be unduly burdened by the cost of new regulatory requirements, particularly individualized technology control requirements under the PSD program and complex permitting review requirements under Title V. This substantial cost on a vast number of new smaller sources would have a significant adverse impact on the State's economy.

Also, if, as of January 2, 2011, the State's PSD and Title V permitting programs applied to GHGs at the current CAA statutory applicability thresholds, the administrative burden on the Department would be overwhelming. EPA estimates that under the current 100 and 250 tpy threshold levels, nearly 82,000 projects per year would become subject to PSD. 75 FR 31514 at 31538. This would result in an estimated \$1.5 billion per year in PSD permitting cost, a 130 times increase in current annual burden hours for permitting authorities nationwide, and an increase in permit processing time from one to three years. Id. at 31539. For Title V purposes, EPA estimates that six million sources, under the current 100 tpy threshold level, would need Title V operating permits nationwide, representing for permitting authorities an additional 1.4 billion in work hours, an annual cost increase of \$21 billion, and an increase in permit processing time from six months to 10 years. Id. at 31539-31540. In addition, EPA notes that many permitting authorities will need up to two years to hire the necessary staff to handle a 10-fold increase in PSD permits, a 40-fold increase in Title V permits, and that 90 percent of staff would need additional training related to the permitting of GHG sources.

The federal requirement to review and issue a vast number of new CAA operating permits would represent a substantial administrative burden for the Department. This substantial increase would inevitably overwhelm the resources of the Department's permitting program. As a result, it would create a significant permitting backlog, resulting in extensive delays in permit issuance. Under such a scenario, new sources in the State would not be able to begin construction, nor would existing sources be able to make needed modifications, without the necessary PSD review and issuance of a Title V operating permit from the Department. Similarly, a source would not be able to operate in the State without a Title V permit from the Department. If the Department is unable to timely issue the necessary permits, many new projects may be halted for a significant period of time. Thus, particularly given the vast number of smaller sources that would be newly subject to these requirements, a substantial delay in permitting issuance would result in an adverse economic impact to the State.

Based on the foregoing, the failure to implement tailored applicability thresholds for GHGs under the State's PSD and Title V permitting programs as a matter of State law by January 2, 2011 would have significant adverse impacts on the State's permitting programs, numerous smaller sources, and the general economy. Therefore, an emergency

rulemaking to incorporate key provisions of EPA's GHG Tailoring Rule prior to January 2, 2011 is necessary in order to preserve the general welfare in New York State.

CONCLUSIONS

The normal rulemaking process consists of several rulemaking requirements under SAPA. While the Department prefers to submit a rule through the normal State rulemaking process, compliance with the normal rulemaking requirements would be contrary to public interest since, as explained in the foregoing, the failure to implement the 2008 and 2010 federal NSR PM-2.5 final rules may unnecessarily increase the risk to public health in this State. Also, the failure to submit a revised SIP for purposes of the 2008 federal NSR PM-2.5 final rule prior to the federal deadline of May 16, 2011, and the failure to implement the GHG Tailoring Rule as a matter of State law by January 2, 2011 may have significant adverse impacts on the State's general welfare.

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

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

Substance of emergency rule: The Department of Environmental Conservation (Department) is proposing to amend Parts 200, 201, and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review for New and Modified Facilities" respectively.

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

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

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

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

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

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

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

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

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

Existing Subpart 231-10 will be revised to state that emission reduction credits (ERCs) must be the same type of regulated NSR contaminant for the purposes of netting. Subdivisions are added to allow interpollutant trading and to state that if a contaminant is regulated as a precursor under multiple programs only one set of offsets is required. The section titled

mobile source and demand side management ERCs will be renamed to ERCs for emission sources not subject to Part 201.

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

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

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

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. ENV-12-11-00004-P, Issue of March 23, 2011. The emergency rule will expire October 15, 2011.

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

Summary of Regulatory Impact Statement

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

1. STATUTORY AUTHORITY

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

2. LEGISLATIVE OBJECTIVES

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

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

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

On May 16, 2008, EPA published a final rule regarding the regulation of PM-2.5 in attainment and nonattainment areas ('see' 73 Fed Reg 28321

[2008 federal NSR rule]). The May 16, 2008 federal NSR rule included the following key provisions: PM-2.5 precursors, offset trading ratios, and a SIP submission requirement.

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

On June 3, 2010, EPA published a final NSR rule tailoring the applicability criteria that determines which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD and Title V operating permit (Title V) programs of the CAA ('see' 75 Fed Reg 31514 [GHG Tailoring Rule]). The GHG Tailoring Rule included key provisions regarding the list of GHGs regulated, the permitting metric used, and the permitting applicability thresholds. In response to the U.S. Supreme Court's decision in *Masachusetts v. EPA*, 549 U.S. 497 (2007), EPA has taken several actions that, taken together, will result in GHGs being "subject to regulation" under the Act as of January 2, 2011. This will occur regardless of the GHG Tailoring Rule or this rulemaking. The GHG component of this rulemaking is necessary because of a number of actions taken by EPA regarding the regulation of GHGs under the CAA. This rulemaking will clarify the applicability thresholds for GHGs under the State's PSD and Title V permitting programs, in order to conform such thresholds to those set forth in the federal GHG Tailoring Rule.

3. NEEDS AND BENEFITS

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

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

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

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

Once GHGs become subject to regulation under the CAA, necessitating the review and processing of possibly thousands of new permits under the State's PSD or Title V permitting programs, the Department's ability to

maintain these programs under the existing thresholds applicable to GHGs will be significantly impaired. This proposed rule incorporates and otherwise conforms to the key provisions of the federal GHG Tailoring Rule, including provisions to “tailor” the existing applicability thresholds under the PSD and Title V permitting programs, in order to reduce the anticipated burdens on newly regulated facilities in the state and to alleviate the projected impairment of the state’s PSD and Title V programs.

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

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

The Part 231 amendments will include the remaining provisions from EPA’s May 16, 2008 PM-2.5 rule and include provisions for regulating GHGs under PSD. Precursors of PM-2.5, SO₂ and NO_x, have been added as nonattainment contaminants in the PM-2.5 nonattainment area. New York State has determined that emissions of VOCs and ammonia should not be included as PM-2.5 precursors. Interpollutant trading ratios have been added for PM-2.5 precursors by which direct emissions of PM-2.5 can be offset by reductions of SO₂ and/or NO_x. For GHGs the major facility threshold and significant project/significant net emission increase threshold have been clearly established as 100,000 tpy CO₂e and 75,000 tpy CO₂e, respectively, while maintaining the current mass based thresholds. A table has been added to 231-13 that lists the global warming potential (GWP) of the six individual gases that comprise GHGs and references the table in the federal GHG Mandatory Reporting Rule. For PSD and Title V applicability, a source’s GHG emissions must equal or exceed both the mass based and CO₂e based emission thresholds. In accordance with the October 20, 2010 federal NSR rule PM-2.5 increments, SILs, and SMC have been added to their respective tables in Part 231.

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

4. COSTS

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

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

As a result of EPA’s actions making GHG’s “subject to regulation” as of January 2, 2011 there may be some new requirements and costs for newly subject facilities. However, these new costs, if any, are not directly attributable to this proposed rule, but are a result of EPA’s actions under the Endangerment Finding, Tailpipe Rule, and Trigger Rule, which will result in GHGs becoming subject to regulation under the CAA on January 2, 2011. One of the primary purposes of the GHG component of this

rulemaking is to alleviate any such new costs by conforming State regulations to the federal GHG Tailoring Rule.

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

5. PAPERWORK

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

6. STATE AND LOCAL GOVERNMENT MANDATES

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

7. DUPLICATION

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

8. ALTERNATIVES

1. Take No Action.

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

9. FEDERAL STANDARDS

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

10. COMPLIANCE SCHEDULE

The proposed amendments do not involve the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register, anticipated to be in May 2011. Current permit

renewal schedules for regulated industries will continue and provisions of this regulation will be incorporated at the time of permit renewal. Permits for new facilities and permit modifications for existing facilities will continue to be addressed upon submittal of a permit application by the facility, and subsequent review of such application by the Department.

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

Regulatory Flexibility Analysis

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

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

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 200, 201, and 231. The proposed rulemaking will apply statewide. The proposed Part 231 greenhouse gas (GHG) applicability thresholds for facilities in New York State are high enough so that it is unlikely that any small business or local government that owns or operates a facility would be newly subject to the requirements of Part 231. The Department is undertaking this rulemaking to comply with 2008 and 2010 federal New Source Review (NSR) and Title V rule revisions. The May 16, 2008 federal NSR rule modified both the Nonattainment New Source Review and Prevention of Significant Deterioration (PSD) regulations at 40 CFR 51.165 and 52.21, respectively. The June 3, 2010 federal NSR rule (75 Fed Reg 31514 [GHG Tailoring Rule]) modified the PSD regulation at 40 CFR 52.21 and Title V at 40 CFR 70. The October 20, 2010 federal NSR rule modified both the Nonattainment New Source Review and PSD regulations at 40 CFR 51.165 and 52.21, respectively. All of these federal NSR rules require states with a State Implementation Plan (SIP) approved NSR program to revise their regulations and submit the revisions to EPA for approval into their SIP. The Department's existing NSR program at Part 231 is subject to this requirement.

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

COMPLIANCE REQUIREMENTS:

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

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

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

the existing Part 231 as they will be required to conduct in the proposed revisions to Part 231. Therefore, the proposed revisions to Part 231 will cause no additional costs to existing facilities that are already subject to the requirements of NSR and only minimal additional costs to new facilities subject to Part 231.

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

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

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

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

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on any small business or local government. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors and GHGs. The proposed revisions to Parts 200, 201, and 231 will provide regulatory relief for smaller facilities with respect to GHGs as

a result of the increased permitting thresholds and it is not anticipated that many facilities will be newly subject to Title V and PSD as a result of the regulation of GHGs.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

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

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

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

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED:

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

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

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

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

COMPLIANCE REQUIREMENTS:

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

COSTS:

NSR reviews are conducted for new NSR major facilities or when an existing facility proposes a modification which by itself is major for NSR.

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

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

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

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

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

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected

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

RURAL AREA PARTICIPATION:

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

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

Job Impact Statement

NATURE OF IMPACT:

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

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

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

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

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

REGIONS OF ADVERSE IMPACT:

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

MINIMIZING ADVERSE IMPACT:

The proposed rulemaking revisions as described above are not expected to create significant adverse impacts on existing jobs or promote the development of any significant new employment opportunities. The proposed revisions will not alter the way the current regulations are implemented but instead include the regulation of PM-2.5 precursors, increments, significant impact levels, significant monitoring concentra-

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

SELF-EMPLOYMENT OPPORTUNITIES:

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

Assessment of Public Comment

The agency received no public comment

NOTICE OF ADOPTION

Incorporation by Reference of Federal NESHAP Rules

I.D. No. ENV-52-10-00014-A

Filing No. 821

Filing Date: 2011-09-15

Effective Date: 30 days after filing

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

Action taken: Amendment of Part 200 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303 and 19-0305

Subject: Incorporation by reference of Federal NESHAP rules.

Purpose: Incorporation by reference of the Federal NESHAP rules, update the reference to the Consumer Price Index, and correct errors.

Text or summary was published in the December 29, 2010 issue of the Register, I.D. No. ENV-52-10-00014-P.

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

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

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

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

Filing No. 822

Filing Date: 2011-09-15

Effective Date: 30 days after filing

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

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

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

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

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

Substance of final rule: The Department of Environmental Conservation (Department) is proposing to amend Parts 200, 201, and 231 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions," "Permits and Registrations" and "New Source Review for New and Modified Facilities" respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 201-2.1(b)(21), 231-4.1(b)(13) and 231-13.5.

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

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

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

No changes were made to previously published RIS, RFA, RAFA or JIS.

Assessment of Public Comment

1) Comment: Paragraph 231-5.5(b)(3) and Paragraph 231-6.6(b)(3) list interpollutant offset ratios for PM-2.5, NO_x, and SO² which were developed from the EPA's final rule on Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM-2.5) dated May 16, 2008. Although at the time of the PM-2.5 final rule EPA recommended "that States use these hierarchies and trading ratios in their interpollutant trading programs to provide consistency and streamline the trading process" [see 73 FR 28339 (May 16, 2008)], EPA is reconsidering these interpollutant trading ratios and they may no longer be presumptively approvable. Please note that in order for EPA to approve these proposed interpollutant trading ratios in Part 231 or any other ones for a specific permit application, NYSDEC must develop a technical demonstration of trading ratios on a case-by-case basis with public input into that process. (Commenter 1)

Response: The New York State Department of Environmental Conservation (Department) elected to use EPA's recommended interpollutant trading ratios and rely on EPA's technical work and presumption that such ratios will be approvable by EPA absent a credible showing that EPA's trading ratios are not appropriate [73 Fed. Reg. 28321 (May 16, 2008)]. EPA states in the preamble to its May 16, 2008 final Rule that "to be approved, the trading program must either adopt EPA's recommended trading ratios or be backed up by regional-scale modeling..." To date, EPA has not formally revised its recommended interpollutant trading ratios, therefore, the Department will not revise the proposed interpollutant trading ratios in Part 231 at this time. If EPA promulgates revisions to its recommended interpollutant trading ratios in the future, the Department will evaluate the revised ratios and make any necessary revisions to Part 231.

2) Comment: Please note that EPA intends to finalize the proposed rule entitled "Deferral for CO² emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs" [see 76 FR 15249 (March 21, 2011)] on or around July 1, 2011. This date will be after the close of the public comment period for this proposed Part 231 revision but most likely before this Part 231 revision becomes final. NYSDEC may wish to look into the feasibility of including the biomass deferral provisions into the final Part 231 rule. (Commenter 1)

Response: Thank you for your comment. The Department will evaluate any future revisions to the PSD or Title V programs when the applicable federal rules are final.

3) Comment: The Regulatory Impact Statement (RIS) Summary notes that precursors of PM-2.5, sulfur dioxide (SO²), and nitrogen oxides (NO_x) have been added as nonattainment contaminants in the PM-2.5 nonattainment area. The draft regulation also would allow direct emissions of PM-2.5 to be offset by reductions of SO² and/or NO_x. However, IPPNY observes that no PM-2.5 emission reduction credits (ERCs) are in place for use with this program. Also, IPPNY is concerned about the ERC offset ratio of 200 tons NO_x for one ton of PM-2.5. We believe that this ratio is out of balance with the reality of a useful emission control program. If this ratio is used, the licensing of a new facility in an area that is not in compliance with the PM-2.5 requirements could be impeded. (Commenter 2)

4) Comment: The development and use of a viable New York State PM-2.5 ERC program, in conjunction with this rulemaking, should be considered and created in a timely manner. Use of inter- and intra- state NO_x and SO² ERC programs to offset PM-2.5 emissions should be considered as an alternative, rather than the primary, method of control. The absence of readily available PM-2.5 ERCs for any development in nonattainment regions for PM-2.5 is counter to the goals of both the EPA and the DEC. A lack of these ERCs does not foster an environment for either placement of newer lower-emitting technology, or modifications via major changes to facilities, which would result in lower regional emissions. (Commenter 2)

Response to comments 3 and 4: EPA's May 16, 2008 final Rule requires PM-2.5 offsets in state areas designated as PM-2.5 nonattainment. Since

New York has a designated PM-2.5 nonattainment area, the Department was required to include the PM-2.5 offset requirement as part of its Part 231 regulation. The use of interpollutant (NO_x or SO₂) offsets to meet the PM-2.5 offset requirement is an option. It is not a mandate. As a result, it provides some flexibility in complying with the PM-2.5 offset requirement. EPA stated in its May 16, 2008 final Rule that it completed a technical assessment to develop preferred interpollutant trading ratios and recommended that States use these ratios in their interpollutant trading programs to provide consistency and streamline the trading process. The Department is aware that the current ERC registry does not contain direct PM-2.5 ERCs. The Department, however, is in the process of reviewing ERC applications which will likely create PM-2.5 ERCs. As with all ERCs, it is up to industry to create the needed credits. Also, please see response to comment 1.

5) Comment: NSR reviews are done on a case-by-case basis, so the cost of compliance is facility-specific. According to the DEC, the draft regulation will cause no additional costs to existing facilities that already are subject to the requirements of NSR and will have only minimal additional costs for new facilities; however, IPPNY disagrees with this assessment and believes that the proposed changes related to PM-2.5 will result in significant new requirements and costs for newly subject facilities. In particular, IPPNY is concerned that, with the recent cost of NO_x ERC offsets reaching as much as \$15,000 per ton, the DEC's proposed 200 to one offset ratio will be cost prohibitive. (Commenter 2)

Response: The commenter appears to be referencing statements in the first paragraph of section 4 of the Regulatory Impact Statement (RIS). That paragraph, however, is intended to convey that no additional costs would be incurred by existing facilities as it relates to new permit, records, or reporting requirements. As stated elsewhere in the RIS, however, the Department acknowledges that additional costs will be incurred as a result of this rule. In particular, the Department stated in the second paragraph of section 4 of the RIS that, "[a]dditional costs will be incurred due to the fact that precursors to PM-2.5, SO₂ and NO_x, will now be regulated as nonattainment contaminants in the PM-2.5 nonattainment area. Emission offsets will now be required for emission increases of SO₂ as well as the application of LAER." Additional cost considerations are referenced in the RIS as well as in the other supporting documents accompanying this rulemaking.

6) Comment: We are pleased that these proposed New York amendments are consistent with the Federal Tailoring Rule requirements and that, beyond the requirement to obtain a permit; the proposed amendments do not include any emission standards or control requirements for greenhouse gases. (Commenter 3)

Response: Thank you for your comment. You are correct that there are no specific emission standards or control requirements to meet Best Available Control Technology requirements.

APPENDIX

LIST OF COMMENTERS

Commenter number	Name and Affiliation
1	Environmental Protection Agency
2	Independent Power Producers of New York, Inc.
3	Dominion Transmission, Inc.

Department of Health

NOTICE OF ADOPTION

Per-Patient Spending Limits for Certified Home Health Agencies (CHHA)

I.D. No. HLT-31-11-00001-A

Filing No. 844

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 86-1.13 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3614(12)

Subject: Per-Patient Spending Limits for Certified Home Health Agencies (CHHA).

Purpose: To control over-utilization of CHHA services. The change would apply an average annual per-patient spending limit.

Text or summary was published in the August 3, 2011 issue of the Register, I.D. No. HLT-31-11-00001-P.

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

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

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to this regulation. These comments and DOH's responses are summarized below.

1. COMMENT: Comments were received from the NYS Association of Health Care Providers, which argued that the Commissioner of Health should exercise the discretion available in the enabling statute to revise the proposed regulation to exempt "special needs" patients, in addition to the statutorily mandated exemption for children.

RESPONSE: Since the aggregate savings amount is mandated in the statute any further discretionary exemption of discrete groups will increase the reductions imposed on those groups remaining subject to the ceilings. The Department has therefore concluded that it would not be appropriate to exempt additional groups of patients from these ceilings. In addition, the Department's analysis of Medicaid CHHA claims data does not support the conclusion that non-children special needs patients are more resource intensive than non-children CHHA patients generally.

2. COMMENT: Comments were received from St Mary's Healthcare System for Children, which argued that the commissioner of Health should exercise the discretion available in the enabling statute to revise the proposed regulation to exempt all patients of CHHAs who primarily serve children, including those patients of the CHHA who have "aged out" and are 18 years old or older.

RESPONSE: The statute does not permit DOH to exempt categories of CHHAs, only discrete categories of patients and such an exemption would have to apply to all such patients, regardless of the nature of the CHHA caring for them. As indicated in DOH's response to comment #1, the DOH believes that it is best to share the burden of these ceilings as widely as possible and limit exemptions to the statutorily mandated exemption for children under age 18.

3. COMMENT: Objections were raised concerning the use of 2009 base year data in computing the utilization ceilings.

RESPONSE: Use of 2009 base year data to compute these ceilings is required by the enabling statute.

4. COMMENT: Objections were raised concerning the "entire reconciliation process" and a suggestion was made to delay any implementation of this process.

RESPONSE: The reconciliation process is required by the enabling statute and the Department is legally obliged to implement it as written.

5. COMMENT: Objections were raised concerning the use of the federal "outcome and assessment information set" ("OASIS") in computing the CMI adjustments to the utilization ceilings for each agency. An assertion was made that OASIS does not accurately take into account patients with developmental disabilities.

RESPONSE: In applying risk adjustment to a population it is important to use the same measurement set for all individuals in the analysis. The OASIS data set is being employed because its use is mandated for all CHHAs by the federal government and it is thus the best available data that covers all patients across all CHHAs.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the NYS Register.

Lead Poisoning Control - Environmental Assessment and Lead Hazard Control

I.D. No.	Proposed	Expiration Date
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HLT-37-10-00018-P September 15, 2010 September 15, 2011

Insurance Department

EMERGENCY RULE MAKING

Suitability in Annuity Transactions

I.D. No. INS-40-11-00004-E

Filing No. 830

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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

Action taken: Addition of Part 224 (Regulation 187) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 308, 309, 2110, 2123, 2208, 3209, 4226 and 4525; and art. 24

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

Specific reasons underlying the finding of necessity: This Part requires life insurance companies and fraternal benefit societies ("insurers") to set standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of a transaction are appropriately addressed.

As a result of a low interest rate environment, unsuitable annuities have been aggressively marketed to this state's most vulnerable residents, particularly senior citizens. In New York alone, life insurance companies wrote \$17 billion in annuity premiums in 2009. The increased complexity of annuities, including the significant investment risk assumed by purchasers of some annuity products, requires the immediate adoption of this Part, which provides critical consumer protections in all annuity sales transactions.

The Dodd-Frank Wall Street Reform and Consumer Protection Act 01'2010 (the "Act") places a high level of importance on state regulation of the suitability of annuities. In an effort to provide incentives to states to adopt suitability requirements, the Act offers state agencies that promulgate suitability regulations federal grants of between \$100,000 to \$600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products. In order for the Department to be considered for the grants for 2011, and the subsequent two years, a rule governing suitability and another governing the use of senior-specific certifications and designations in the sale of life insurance and annuities had to be promulgated by December 31, 2010 and must be maintained in effect. Given the state's fiscal crisis and the constraints on the Department's budget, the federal grant money would fund critical efforts to protect consumers.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Suitability in Annuity Transactions.

Purpose: Set forth standards and procedures for recommendations to consumers with respect to annuity contracts.

Text of emergency rule: A new Part 224 is added to read as follows:

Section 224.0 Purpose.

The purpose of this Part is to require insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These standards and procedures are substantially similar to the National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. To date, more than 30 states have implemented the NAIC Model, while NASD Rule 2310 has applied nationwide for nearly 20 years. Accordingly, this Part intends to bring these national standards for annuity contract sales to New York.

Section 224.1 Applicability.

This Part shall apply to any recommendation to purchase or replace an annuity contract made to a consumer by an insurance producer or an insurer, where no insurance producer is involved, that results in the purchase or replacement recommended.

Section 224.2 Exemptions.

Unless otherwise specifically included, this Part shall not apply to transactions involving:

(a) a direct response solicitation where there is no recommendation made; or

(b) a contract used to fund:

(1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(2) a plan described by Internal Revenue Code sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

(3) government or church plan defined in Internal Revenue Code section 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Internal Revenue Code section 457;

(4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or

(5) a settlement or assumption of liabilities associated with personal injury litigation or any dispute or claim resolution process.

Section 224.3 Definitions.

For the purposes of this Part:

(a) Consumer means the prospective purchaser of an annuity contract.

(b) Insurer means a life insurance company defined in Insurance Law section 107(a)(28), or a fraternal benefit society as defined in Insurance Law section 4501(a).

(c) Recommendation means advice provided by an insurance producer, or an insurer where no insurance producer is involved, to a consumer that results in a purchase or replacement of an annuity contract in accordance with that advice.

(d) Replace or Replacement means a transaction subject to Part 51 of this Title (Regulation 60) and involving an annuity contract.

(e) Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

(1) age;

(2) annual income;

(3) financial situation and needs, including the financial resources used for the funding of the annuity;

(4) financial experience;

(5) financial objectives;

(6) intended use of the annuity;

(7) financial time horizon;

(8) existing assets, including investment and life insurance holdings;

(9) liquidity needs;

(10) liquid net worth;

(11) risk tolerance; and

(12) tax status.

Section 224.4 Duties of Insurers and Insurance Producers.

(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance policies or contracts and as to the consumer's financial situation and needs, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

(1) consumer has been reasonably informed of various features of the annuity contract, such as the potential surrender period and surrender charge, availability of cash value, potential tax implications if the consumer sells, surrenders or annuitizes the annuity contract, death benefit, mortality and expense fees, investment advisory fees, potential charges for and features of riders, limitations on interest returns, guaranteed interest rates, insurance and investment components, and market risk;

(2) the consumer would benefit from certain features of the annuity contract, such as tax-deferred growth, annuitization or death or living benefit;

(3) the particular annuity contract as a whole, the underlying subaccounts to which funds are allocated at the time purchase or replacement of the annuity contract, and riders and similar product enhancements, if any, are suitable (and in the case of a replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

(4) in the case of a replacement of an annuity contract, the replacement is suitable including taking into consideration whether:

(i) the consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death, living or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the annuity contract, or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(ii) the consumer would benefit from annuity contract enhancements and improvements; and

(iii) the consumer has had another annuity replacement, in particular, a replacement within the preceding 36 months.

(b) Prior to the recommendation of a purchase or replacement of an annuity contract, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer's suitability information.

(c) Except as provided under subdivision (d) of this section, an insurer shall not issue an annuity contract recommended to a consumer unless there is a reasonable basis to believe the annuity contract is suitable based on the consumer's suitability information.

(d)(1) Except as provided under paragraph (2) of this subdivision, neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subdivision (a) or (c) of this section related to any annuity transaction if:

(i) no recommendation is made;

(ii) a recommendation was made and was later found to have been prepared based on materially inaccurate material information provided by the consumer;

(iii) a consumer refuses to provide relevant suitability information and the annuity purchase or replacement is not recommended; or

(iv) a consumer decides to enter into an annuity purchase or replacement that is not based on a recommendation of the insurer or the insurance producer.

(2) An insurer's issuance of an annuity contract subject to paragraph (1) of this subdivision shall be reasonable under all the circumstances actually known to the insurer at the time the annuity contract is issued.

(e) An insurance producer or an insurer, where no insurance producer is involved, shall at the time of purchase or replacement:

(1) document any recommendation subject to subdivision (a) of this section;

(2) document the consumer's refusal to provide suitability information, if any; and

(3) document that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

(f) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and insurance producers' compliance with this Part. An insurer may contract with a third party to establish and maintain a system of supervision with respect to insurance producers.

(g) An insurer shall be responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

(h) No insurance producer shall make a recommendation to a consumer to purchase an annuity contract about which the insurance producer has inadequate knowledge.

(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(1) truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint with the superintendent; or

(3) cooperating with the investigation of a complaint.

Section 224.5 Insurer Responsibility.

The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the insurance producer, or any third party that the insurer contracts with pursuant to subdivision (f) of section 224.4 of this Part. In determining any penalty or other disciplinary action against the insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

Section 224.6 Recordkeeping.

All records required or maintained under this Part, whether by an insurance producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Regulation 152).

Section 224.7 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, except where such act or practice shall be a defined violation, as defined in section 2402(b) of the Insurance Law, and in either such case shall be a violation of section 2403 of the Insurance Law.

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 17, 2011.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and Article 24 of the Insurance Law.

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

Section 308 authorizes the Superintendent to address to any authorized insurer or its officers any inquiry relating to its transactions or condition or any matter connected therewith.

Section 309 authorizes the Superintendent to make examinations into the affairs of entities doing or authorized to do insurance business in this state as often as the Superintendent deems it expedient.

Section 2110 provides grounds for the Superintendent to refuse to renew, revoke or suspend the license of an insurance producer if, after notice and hearing the licensee has violated any insurance laws or regulations.

Section 2123 prohibits an agent or representative of an insurer from making misrepresentations, misleading statements and incomplete comparisons.

Section 2208 provides that an officer or employee of a licensed insurer or a savings bank who has been certified pursuant to Article 22 is subject to section 2123 of the Insurance Law.

Section 3209 mandates disclosure requirements in the sale of life insurance, annuities, and funding agreements.

Section 4226 prohibits an authorized life, or accident and health insurer from making misrepresentations, misleading statements, and incomplete comparisons.

Section 4525 applies Articles 2, 3, and 24 of the Insurance Law, and Insurance Law Section 2110(a), (b), and (d) through (f), and Sections 2123, 3209, and 4226 to authorized fraternal benefit societies.

Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

2. Legislative objectives: The Legislature has long been concerned with the issue of suitability in sales of life insurance and annuities. Chapter 616 of the Laws of 1997, which, in part, amended Insurance Law § 308, required the Superintendent to report to the Governor, Speaker of the Assembly, and the majority leader of the Senate on the advisability of adopting a law that would prohibit an agent from recommending the purchase or replacement of any individual life insurance policy, annuity contract or funding agreement without reasonable grounds to believe that the recommendation is not unsuitable for the applicant (the "Report"). The Legislature set forth four criteria that an agent would consider in selling products, including: a consumer's financial position, the consumer's need for new or additional insurance, the goal of the consumer and the value, benefits and costs of any existing insurance.

In drafting the Report, the Department considered the legislative changes set forth in Chapter 616 of the Laws of 1997, and the Department's subsequent regulatory requirements that were designed to improve the disclosure requirements to consumers that purchased or replaced life insurance policies and annuity products. It was the Department's determination in the Report that additional time was needed to assess the efficacy of those changes.

Since the Department's Report, the purchase of annuities have become complex financial transactions resulting in a greater need for consumers to rely on professional advice and assistance in understanding available annuities and making purchase decisions. While the Financial Industry Regulatory Authority ("FINRA") regulation and standards for the sale of certain variable annuities have existed nationwide for some time, the National Association of Insurance Commissioners ("NAIC") adopted, in 2003 (and further revised in 2010), the Suitability in Annuity Transactions Model Regulation (the "NAIC Model") for all annuity transactions. To date, more than 30 states have implemented the NAIC Model. Accordingly, this Part is intended to bring these national standards for annuity contract sales to New York. In addition, in light of a low interest rate environment that encourages unsuitable annuity sales, and federal incentives to impose suitability standards, the minimum suitability standards are critical.

3. Needs and benefits: This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. It regulates the activities of insurers and producers who make recommendations to consumers to purchase or replace annuity contracts to ensure that insurers and producers make suitable recommendations based on relevant information obtained from the consumers.

As a result of a low interest rate environment, unsuitable annuities have been aggressively marketed to this state's most vulnerable residents, particularly senior citizens. In New York alone, life insurance companies wrote \$17 billion in annuity premiums in 2009. The increased complexity of annuities, including the significant investment risk assumed by purchasers of some annuity products, requires the immediate adoption of this Part, which provides critical consumer protections in all annuity sales transactions. In fact, the Dodd-Frank Wall Street Reform and Consumer

Protection Act of 2010 (the "Act") places such a high level of importance on state regulation of the suitability of annuities that, in an effort to provide incentives to states to adopt suitability requirements, the Act offers state agencies that promulgate suitability regulations federal grants of between \$100,000 to \$600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products.

4. Costs: Section 224.4(f) of New York Comp. Codes R. & Reg., tit. 11, Part 224 ("Regulation 187") requires an insurer to establish a supervision system designed to ensure an insurer's and its insurance producers' compliance with the provisions of Regulation 187. Additionally, § 224.4(g) requires an insurer to be responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

As previously stated, the standards and procedures required by this rule are substantially similar to the standards and procedures set forth in the NAIC Model and the NASD Rule 2310. Thus, insurers selling variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers who sell fixed annuities in states where the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers should incur minimal additional costs in order to comply with the requirements of this rule.

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

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

6. Paperwork: The rule requires an insurance producer or an insurer to document: any recommendation subject to § 224.4(a) of Regulation 187; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation. Additionally, all records required or maintained in accordance with this rule must be maintained in accordance with Part 243 (Regulation 152).

The documentation required in this rule is substantially similar to the requirements of the aforementioned NAIC Model and NASD Rule 2310. As the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the similar provisions in other jurisdictions. As a result, minimal additional paperwork is expected to be required of most insurers in order to comply with the requirements of this rule.

7. Duplication: Sales of insurance products that are securities under federal law, such as variable annuities, are required to meet the suitability standards and procedures in the NASD Rule 2310. However, there currently exists no state or federal rule that specifically requires application of suitability standards in the sales of all annuities to New York consumers.

8. Alternatives: This rule is a modified version of the NAIC Model. NAIC Model provisions detailing the procedures and standards of the supervision system required to be established by an insurer and the insurance producer training requirements were not included in this rule.

In 2009, the Department held four public hearings throughout the state to gather information about suitability in order to ascertain whether additional oversight and regulation was needed to protect consumers when they are considering the purchase of life insurance and annuities in New York State and if so, the scope and form of such regulation. Testimony at the public hearings by the life insurance industry and agent trade associations supported adoption of a regulation setting forth standards and procedures for recommendations to consumers that was consistent with the NAIC Model.

An outreach draft of this regulation was posted on the Department's website for public comment. In addition to submitted written comments, the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors - New York State (NAIFA - New York State), an agent trade association, met with Department representatives to discuss the draft. Some revisions were made to the draft based on these comments and discussions. NAIFA-New York State remains concerned about producer education and training provisions in the regulation and supports the NAIC Model provisions, which permit an insurance producer to rely on insurer-provided product-specific training standards and materials to comply with the regulation.

9. Federal standards: While NASD Rule 2310 requires suitability standards to be met in the sale of insurance products which are securities under federal law, there are no minimum federal standards for the sale of fixed annuity products.

10. Compliance schedule: The standards included in this rule were previously adopted on an emergency basis and have applied to any recom-

mendation to purchase or replace an annuity contract made to a consumer on or after June 30, 2011 by an insurance producer or an insurer and therefore, insurance producers and insurers have been required to comply with the requirements of the rule since such time. Therefore, this rule will be implemented upon its permanent adoption.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

This rule is directed to insurers and insurance producers. Most of insurance producers are small businesses within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

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

2. Compliance requirements: The affected parties are required to make suitable recommendations for the purchase or replacement of annuity contracts based on relevant information obtained from the consumers. The rule requires an insurance producer to document: any recommendation subject to Section 224.4(a) of this Part, the consumer's refusal to provide suitability information, if any, and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's recommendation. Furthermore, all records required under this rule are to be maintained in accordance with Part 243 of this Title.

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

4. Compliance costs: Minimum additional costs are anticipated to be incurred by regulated parties. While there may be costs associated with the compliance of this rule, these costs should be minimal.

5. Economic and technological feasibility: Although there may be minimal additional costs associated with the new rule, compliance is economically feasible for small businesses.

6. Minimizing adverse impact: There is little if no adverse economic impact on small businesses. The compliance, documentation and record-keeping requirements of this rule should have little impact on small businesses. Differing compliance or reporting requirements or timetables for small businesses were not necessary.

7. Small business and local government participation: Affected small businesses had the opportunity to comment at suitability public hearings held by the Insurance Department in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and insurance producers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule requires an insurance producer or an insurer to document: any recommendation subject to section 224.4(a) of this Part; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

All records required or maintained under this Part shall be maintained in accordance with Part 243 (Regulation 152).

3. Costs: The standards and procedures required by this rule are substantially similar to the National Association of Insurance Commissioners' "Suitability in Annuity Transactions" Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. Accordingly, insurers that currently sell variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers that sell fixed annuities in states in which the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers will incur minimal additional costs in order to comply with the requirements of this rule.

4. Minimizing adverse impact: This rule applies to insurers and insurance producers that do business throughout New York State. As previously stated, the standards and procedures required by this rule are substantially similar to the NAIC Model for annuities and the NASD Rule

2310 for securities. Since the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the provisions contained in this rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment at suitability public hearings held by the Insurance Department in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

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

EMERGENCY RULE MAKING

Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities

I.D. No. INS-40-11-00005-E

Filing No. 831

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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

Action taken: Addition of Part 225 (Regulation 199) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2103, 2104, 2110, 2403 and 4525

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

Specific reasons underlying the finding of necessity: This Part sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance policy or annuity contract. The Part prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into thinking that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

Seniors are often misled and harmed by the use of senior-specific certifications and designations by insurance producers that imply the existence of a level of expertise and knowledge in senior matters that in fact does not exist. Misleading certifications and professional designations such as "certified elder planning specialist" and "certified senior advisor" are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients, resulting in the loss of seniors' savings, by insurance producers utilizing misleading senior-specific certifications or designations. Legislators and regulators, both federal and state, responding to such reports, have proposed and/or adopted prohibitions on the use of senior-specific designations in a misleading manner. In 2008, the National Association of Insurance Commissioners adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). The standards and procedures in this rule are substantially the same as those already adopted by the NAIC Model. While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides this consumer protection by prohibiting the use of misleading senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. In an effort to provide incentives to states to adopt such regulations, the Act offers state agencies that promulgate such regulations federal grants of between \$100,000 and \$600,000 towards

enhanced protection of seniors in connection with the sale and marketing of financial products. In order for the Department to be considered for the grants for 2011, and the subsequent two years, a rule governing the use of senior-specific certifications and designations in the sale of life insurance and annuities, and another governing suitability had to be promulgated by December 31, 2010 and must be maintained in effect. Given the state's fiscal crisis and the constraints on the Department's budget, the federal grant money would fund critical efforts to protect consumers.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

Purpose: To protect consumers from misleading use of senior-specific certifications and designations in the sale of life ins or annuities.

Text of emergency rule: Section 225.0 Purpose.

The purpose of this Part is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract.

Section 225.1 Applicability.

This Part shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract by an insurance producer.

Section 225.2 Prohibited uses of senior-specific certifications and professional designations.

(a)(1) No insurance producer shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or providing services to seniors in connection with the solicitation, sale or purchase of a life insurance policy or annuity contract or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance policy or annuity contract, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance policy or annuity contract.

(2) The prohibited use of senior-specific certifications or professional designations includes use of:

(i) a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) a nonexistent or self-conferred certification or professional designation;

(iii) a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(iv) a certification or professional designation that was obtained from a certifying or designating organization that:

(a) is primarily engaged in the business of instruction in sales or marketing;

(b) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(c) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(d) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision (a)(2)(iv) of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(1) The American National Standards Institute (ANSI);

(2) The National Commission for Certifying Agencies; or

(3) any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(c) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or providing services to seniors, factors to be considered shall include:

(1) use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d)(1) For purposes of this Part, a job title held by an insurance producer within an organization or other entity that is licensed or registered by a state or federal financial services regulatory agency shall not be deemed a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization or other entity; or

(ii) specifies an individual's area of specialization within the organization or other entity.

(2) For purposes of this subdivision, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

Section 225.3 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law and shall be a violation of section 2403 of the Insurance Law.

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 17, 2011.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 2103, 2104, 2403, 2110, and 4525 the Insurance Law.

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

Sections 2103 and 2104 provide the Superintendent with licensing authority over insurance agents and brokers.

Section 2110 authorizes the Superintendent to investigate and discipline those licensees.

Section 2403 prohibits any person from engaging in this state in any trade practice constituting a defined violation or a determined violation as defined in Article 24.

Section 4525 specifically subjects fraternal benefit societies to certain provisions of Article 21, as well as to any other section that specifically applies to fraternal benefit societies.

2. Legislative objectives: Various sections of the Insurance Law address advertisements, statements and representations of licensees used in the solicitation of insurance. These sections seek to protect consumers and insurers in New York by establishing prohibitions and uniform standards governing the dissemination of such information to the public. Although this regulation is directed to certain practices involving the sale of life insurance and annuity contracts, many of the provisions of the law pursuant to which this regulation is promulgated apply equally to other kinds of insurers. In addition, certain other Insurance Law provisions and regulations promulgated thereunder may have corresponding applicability to other kinds of insurance. In any case, the focus of this regulation to life insurance and annuity contracts should not be construed to imply that similar prohibitions do not apply to, or that corrective action should not be implemented for, other types of insurers or other kinds of insurance.

Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act") places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. To encourage state regulation, the Act offers those state agencies with such regulations in effect federal grants to fund specified regulatory activities that provide enhanced protection of seniors in connection with the sale and marketing of financial products.

This rule sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract. It prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into believing that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

3. Needs and benefits: Seniors are often misled and harmed by insurance producers' use of senior-specific certifications and designations,

which wrongly imply the existence of expertise and knowledge of senior matters. Misleading certifications and professional designations such as "certified elder planning specialist" and "certified senior advisor" are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients by insurance producers who utilized misleading senior-specific certifications or designations, which resulted in the loss of seniors' savings. Federal and state legislators and regulators, in responding to such reports, have proposed and adopted prohibitions on the misleading use of senior-specific designations. In 2008, the National Association of Insurance Commissioners ("NAIC") adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides a consumer protection that prohibits the misleading use of senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities. In recognition of the need to provide such consumer protection, the Insurance Department is adopting the NAIC Model, with minimal modifications, as Part 225 to Title 11 NYCRR (Regulation 199). The modifications from the NAIC Model conformed terminology and formatting to New York standards as well as added the violations section of the regulation.

4. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

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

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

6. Paperwork: The rule does not impose any reporting or recordkeeping requirements on affected insurance producers.

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

8. Alternatives: The Insurance Department considered not implementing the NAIC Model and proceeding under the Department's more general enforcement authority under Article 24. However, because of the misleading and fraudulent marketing practices reported in recent years, the Department determined that a regulation would be the best way to address the situation.

An outreach draft of the regulation was posted on the Department's website on October 5, 2010 for a 14-day comment period. Interested parties, such as the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors - New York State (NAIFA - New York State), an agent trade association, supported the adoption of this Part in written comments and/or discussions with the Insurance Department.

9. Federal standards: There are no minimum standards imposed by the federal government for the same or similar subject area.

10. Compliance schedule: Insurance producers who currently make appropriate use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract should not need to change their sales practices. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

Regulatory Flexibility Analysis

1. Small businesses: The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting or recordkeeping requirements or compliance costs on small businesses.

This rule is substantially the same as the National Association of Insurance Commissioners' ("NAIC") Model regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities and is directed to licensed insurance producers within New York State. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations. The rule does not impose any additional compliance requirements on insurance producers.

2. Local governments: The Insurance Department finds that this rule will not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at insurance producers, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurance producers covered by this rule do business in every county in this state, including ru-

ral areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule prohibits the misuse of senior-specific certifications and professional designations by insurance producers in connection with the solicitation, sale, or purchase of, or advice made in connection with, a life insurance policy or annuity contract.

The rule does not impose any reporting, recordkeeping, or professional services requirements on affected insurance producers.

3. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited directly by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

4. Minimizing adverse impact: This rule should not result in an adverse impact on rural areas.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period that commenced on October 5, 2010.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This rule sets forth standards to protect consumers from misleading and fraudulent sales practices with respect to the use of senior-specific certifications and professional designations by insurance producers in the solicitation, sale, or purchase of, or advice made in connection with, life insurance policies and annuity contracts.

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

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Employees Occupational Safety and Health Standards

I.D. No. LAB-40-11-00007-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 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a(4)(a)

Subject: Public Employees Occupational Safety and Health Standards.

Purpose: To incorporate by reference updates to OSHA standards into the State Public Employee Occupational Safety and Health Standards.

Text of proposed rule: Regulation 12 NYCRR § 800.3 is amended to add the following subdivision:

(dw) Standards Improvement Project - Phase III, Final Rule-75 FR 33590-33612, June 8, 2011.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-2259, email: michael.paglialonga@labor.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.

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to that Act. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Department of Motor Vehicles

NOTICE OF ADOPTION

Point System

I.D. No. MTV-31-11-00006-A

Filing No. 840

Filing Date: 2011-09-20

Effective Date: 2011-10-05

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

Action taken: Amendment of section 131.3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 510(3)(i)

Subject: Point System.

Purpose: To increase the point value for both texting and cell phone violations.

Text or summary was published in the August 3, 2011 issue of the Register, I.D. No. MTV-31-11-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, DMV, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Reallocation of Unencumbered Customer-Sited-Tier Funds

I.D. No. PSC-11-11-00002-A

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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, with modification, NYSERDA's proposed reallocation of unencumbered Customer-Sited-Tier funds and resolving other issues.

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

Subject: Reallocation of unencumbered Customer-Sited-Tier funds.

Purpose: To approve reallocation of unencumbered Customer-Sited-Tier funds.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving, with modification, New York State Energy Research and Development Authority's (NYSERDA) proposed reallocation of unencumbered Customer-Sited-Tier funds and resolved other issued, 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.

(03-E-0188SA27)

NOTICE OF ADOPTION

Transfer of Water Supply Assets

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

Filing Date: 2011-09-15

Effective Date: 2011-09-15

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 Joint Petition of National Aqueous Corporation and White Knight Management for the transfer of water supply assets located in the Town of Thompson, Sullivan County.

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

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving Joint Petition of National Aqueous Corporation and White Knight Management for the transfer of water supply assets located in the Town of Thompson, Sullivan County, 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-W-0081SA1)

NOTICE OF ADOPTION

Modify the Collection and Distribution of \$600,000 Funding Amount for the Temporary Transition Fund Extension

I.D. No. PSC-15-11-00010-A

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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 modifying the collection and distribution of \$600,000 funding amount for the Temporary Transition Fund Extension.

Statutory authority: Public Service Law, sections 4, 5, 90, 91, 92, 94 and 96

Subject: Modify the collection and distribution of \$600,000 funding amount for the Temporary Transition Fund Extension.

Purpose: To approve the modification of the collection and distribution of \$600,000 funding amount for the Temporary Transition Fund.

Substance of final rule: The Commission, on September 15, 2011 adopted an order modifying the collection and distribution of \$600,000 funding amount for the Temporary Transition Fund Extension, 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-M-0527SA2)

NOTICE OF ADOPTION

Remediating Erroneous LAUF Incentive Payments to the Company and Correcting Current Targets

I.D. No. PSC-15-11-00018-A

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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 directing Consolidated Edison Company of New York, Inc. to adopt recommendations that the tariff Lost and Unaccounted for Funds (LAUF) and LAUF incentive mechanism of the current three year rate plan continue forward.

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

Subject: Remediating erroneous LAUF incentive payments to the company and correcting current targets.

Purpose: To approve the remedy for erroneous LAUF incentive payments to the company and correcting current targets.

Substance of final rule: The Commission, on September 15, 2011 adopted an order directing Consolidated Edison Company of New York, Inc.'s (Company) to adopt the recommendation in the Company's Report that the tariff Lost and Unaccounted for Funds (LAUF) and LAUF incentive mechanism of the current three year rate plan continue forward incorporating the revised LAUF calculations, 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-0643SA1)

NOTICE OF ADOPTION

Interconnection Plan Mitigating the Potential to Discriminate in Favor of Affiliates

I.D. No. PSC-19-11-00008-A

Filing Date: 2011-09-20

Effective Date: 2011-09-20

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 Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. Interconnection Plan mitigating the potential to discriminate in favor of affiliates and against independent developers.

Statutory authority: Public Service Law, sections 2(2-b), (4), (13), 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and 66-c

Subject: Interconnection Plan mitigating the potential to discriminate in favor of affiliates.

Purpose: To approve the Interconnection Plan mitigating the potential to discriminate in favor of affiliates.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving Consolidated Edison Company of New York, Inc.'s and Orange and Rockland Utilities, Inc.'s Interconnection Plan mitigating the potential to discriminate in favor of affiliates and against independent developers, when making arrangements for the interconnection to delivery systems of renewable generation projects that are sized up to 20 MW, 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-0182SA1)

NOTICE OF ADOPTION**Verizon of New York Inc.'s Request to Retain \$4.0 Million, of a \$6.2 Million Property Tax Refund**

I.D. No. PSC-21-11-00004-A

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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, with conditions, Verizon of New York Inc.'s request to retain \$4.0 million, the intrastate portion, of a \$6.2 million property tax refund associated with the 2010-2011 tax year.

Statutory authority: Public Service Law, section 113(2)

Subject: Verizon of New York Inc.'s request to retain \$4.0 million, of a \$6.2 million property tax refund.

Purpose: To approve Verizon of New York Inc.'s request to retain \$4.0 million, of a \$6.2 million property tax refund.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving, with conditions, Verizon of New York Inc.'s request to retain \$4.0 million, the intrastate portion, of a \$6.2 million property tax refund associated with the 2010-2011 tax year, 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-C-0209SA1)

NOTICE OF ADOPTION**Joint Proposal for the Allocation of Property Tax Refunds**

I.D. No. PSC-25-11-00011-A

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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 terms and provisions of the July 29, 2011 joint proposal of Dept. of Public Service Staff and Long Island Water Corporation d/b/a Long Island American Water for the allocation of property tax refunds.

Statutory authority: Public Service Law, section 113(2)

Subject: Joint proposal for the allocation of property tax refunds.

Purpose: To approve the joint proposal for the allocation of property tax refunds.

Substance of final rule: The Commission, on September 15, 2011, adopted an order approving the terms and provisions of the July 29, 2011 joint proposal of Department of Public Service Staff and Long Island Water Corporation d/b/a Long Island American Water for the allocation of property tax refunds, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(10-W-0449SA1)

NOTICE OF ADOPTION**Continuation and Expansion of Standby Rate Exemptions for Environmentally Advantageous Technologies**

I.D. No. PSC-25-11-00012-A

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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, in part, the petition of UTC Power Corporation exemption from standby rates for environmentally advantageous technology customers.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (8), (10) and (12)

Subject: Continuation and expansion of standby rate exemptions for environmentally advantageous technologies.

Purpose: To approve, in part, standby rates exemptions.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving, in part, the petition of UTC Power Corporation for exemption from standby rates for environmentally advantageous technology customers, 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-0279SA1)

NOTICE OF ADOPTION**NYSEG's Procedures, Terms and Conditions of Its Targeted Financial Assistance (TFA) Program**

I.D. No. PSC-27-11-00007-A

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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 New York State Electric & Gas Corporation (NYSEG) for a waiver from the restrictions of the current Targeted Financial Assistance (TFA) program.

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

Subject: NYSEG's procedures, terms and conditions of its Targeted Financial Assistance (TFA) program.

Purpose: To approve NYSEG's procedures, terms and conditions of its Targeted Financial Assistance (TFA) program.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving the petition of New York State Electric & Gas Corporation for a waiver from the restrictions of the current Targeted Financial Assistance (TFA) program and be allowed to grant \$5 million from the economic development reserve fund to this customers, 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-0312SA1)

NOTICE OF ADOPTION

Economic Development Collaborative Revisions

I.D. No. PSC-28-11-00004-A

Filing Date: 2011-09-15

Effective Date: 2011-09-15

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 Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective 9/19/11, to comply with the Economic Development Collaborative Revisions.

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

Subject: Economic Development Collaborative Revisions.

Purpose: To approve amendments to PSC No. 220—Electricity, effective 9/19/11, to comply with the Economic Development Collaborative Revisions.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective September 19, 2011, to comply with the Economic Development Collaborative Revisions to Service Classification No. 12—Special Contract Rates, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0050SA4)

NOTICE OF ADOPTION

Tariff Amendments to Implement Delivery Service Rates Pursuant to the Recharge New York Power Program Act

I.D. No. PSC-28-11-00006-A

Filing Date: 2011-09-19

Effective Date: 2011-09-19

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 directing six utilities to submit proposed tariff amendments to implement delivery service rates pursuant to the Recharge New York Power Program Act, to become effective 10/1/11.

Statutory authority: Public Service Law, sections 4(1), 65, 66; Public Authorities Law, section 1005; and Economic Development Law, section 188-a(d)

Subject: Tariff amendments to implement delivery service rates pursuant to the Recharge New York Power Program Act.

Purpose: To direct 6 utilities to file amendments to implement delivery service rates pursuant to the Recharge New York Power Program Act.

Substance of final rule: The Commission, on September 15, 2011 adopted an order directing Central Hudson Gas and Electric, Inc., Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation to submit proposed tariff amendments to implement delivery

service rates pursuant to the Recharge New York Power Program Act, to become effective October 1, 2011, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0176SA2)

NOTICE OF ADOPTION

Waiver of Tariff Provisions Referencing 16 NYCRR Parts 501 and 502

I.D. No. PSC-28-11-00007-A

Filing Date: 2011-09-15

Effective Date: 2011-09-15

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 request of Saratoga Water Services, Inc. (company) and Brian Hayes for waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: Waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502.

Purpose: To approve the waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502.

Substance of final rule: The Commission, on September 15, 2011, adopted an order approving the request of Saratoga Water Services, Inc. and Brian Hayes for waiver of tariff provisions referencing 16 NYCRR Parts 501 and 502, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-W-0403SA1)

NOTICE OF ADOPTION

Issue Up to \$515 Million of Long-Term Debt, Preferred Stock, and Hybrid Securities Not Later Than 12/31/13

I.D. No. PSC-29-11-00013-A

Filing Date: 2011-09-16

Effective Date: 2011-09-16

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 New York State Electric & Gas Corporation to issue up to \$515 million of Long-Term Debt, Preferred Stock, and Hybrid Securities not later than December 31, 2013.

Statutory authority: Public Service Law, section 69

Subject: To issue up to \$515 million of Long-Term Debt, Preferred Stock, and Hybrid Securities not later than 12/31/13.

Purpose: To approve the issuance of up to \$515 million of Long-Term Debt, Preferred Stock, and Hybrid Securities not later than 12/31/13.

Substance of final rule: The Commission, on September 15, 2011 adopted

an order approving New York State Electric & Gas Corporation to issue up to \$515 million of Long-Term Debt, Preferred Stock, and Hybrid Securities not later than December 31, 2013, 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-M-0342SA1)

NOTICE OF ADOPTION

Fishers Island Electric Corporation's Amendments to PSC No. 2—Electricity, Effective 10/1/11

I.D. No. PSC-30-11-00008-A

Filing Date: 2011-09-15

Effective Date: 2011-09-15

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 Fishers Island Electric Corporation's amendments to PSC No. 2—Electricity, effective 10/1/11, to establish an annual reconciliation to its Purchased Power Adjustment.

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

Subject: Fishers Island Electric Corporation's amendments to PSC No. 2—Electricity, effective 10/1/11.

Purpose: To approve Fishers Island Electric Corporation's amendments to PSC No. 2—Electricity, effective 10/1/11.

Substance of final rule: The Commission, on September 15, 2011 adopted an order approving Fishers Island Electric Corporation's amendments to PSC No. 2—Electricity, effective 10/1/11, to establish an annual reconciliation to its Purchased Power Adjustment.

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-0359SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notification Concerning Tax Refunds

I.D. No. PSC-40-11-00008-P

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

Proposed Action: The PSC is considering Verizon New York Inc.'s petition seeking retention of a portion of a property tax refund related to its regulated, intrastate New York operations.

Statutory authority: Public Service Law, section 113(2)

Subject: Notification concerning tax refunds.

Purpose: To consider Verizon New York Inc.'s request to retain a portion of a property tax refund.

Substance of proposed rule: On September 8, 2011, Verizon New York Inc. (Verizon) filed a petition proposing the disposition of that portion of a property tax refund allocable to its regulated, intrastate New York operations. The tax refund of approximately \$1,600,000 was the result of

the settlement of claims related to their real property assessments in the Town of North Hempstead. Verizon requests permission to retain that portion of the tax refund allocable to its regulated, intrastate New York operations of approximately \$1,000,000. The Commission may approve, reject or modify in whole or in part, the company's request, or may take other related action.

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-C-0479SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of a Financing

I.D. No. PSC-40-11-00009-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 petition from Sithe/Independence Power Partners, L.P. requesting approval of a financing in the amount of a \$1.25 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 Sithe/Independence Power Partners, L.P. (Sithe) requesting approval of a financing in the amount of a \$1.25 billion credit agreement. The debt would be secured in part by recourse to electric generation plant located in New York that Sithe 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-M-0483SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Participation of Regulated Local Exchange Carriers in the New York Data Exchange, Inc. (NYDE)

I.D. No. PSC-40-11-00010-P

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

Proposed Action: The PSC is considering whether to partially modify its

order requiring regulated local exchange carriers to share limited customer credit information through a specific third-party clearinghouse by revoking that requirement and allowing Verizon to opt out.

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

Subject: Participation of regulated local exchange carriers in the New York Data Exchange, Inc. (NYDE).

Purpose: Whether to partially modify its order requiring regulated local exchange carriers' participation in NYDE.

Substance of proposed rule: The Commission is considering whether to partially modify its order in Cases 94-C-0095, et al. requiring regulated local exchange carriers to share limited customer credit information through a third party clearinghouse, New York Data Exchange, Inc. (NYDE), by revoking that requirement. This modification will not only eliminate sharing customer credit information through NYDE, but also allow Verizon New York Inc. to end its participation in NYDE.

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-C-0427SP1)

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

National Grid's Rule 16.6 - Letter of Credit by Non-Residing Applicants

I.D. No. PSC-40-11-00011-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 whether to approve, reject, in whole or in part, or modify a petition filed by Oot Bros., Inc regarding the enforcement of Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) Tariff Rule 16.6 (PSC 220).

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

Subject: National Grid's Rule 16.6 - Letter of Credit by Non-Residing Applicants.

Purpose: To waive the enforcement of National Grid's Rule 16.6 - Letter of Credit by Non-Residing Applicants.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by Oot Bros., Inc. (Petitioner) regarding the enforcement of Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) Tariff Rule 16.6 (PSC 220) - Letter of Credit by Non-Residing Applicants. The Petitioner requests to be reimbursed by National Grid the sum of \$67,870.22 paid on April 23, 2010, together with interest from April 23, 2010, and that National Grid be restrained from calling due the Letters of Credit posted by the Petitioner for Phase 1 of the Harbor Lights Project, as well as any other Letters of Credit posted by the Petitioner to National Grid prior to March 1, 2010. The Commission may apply aspects of its decision here to the requirements for tariffs of 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-M-0486SP1)

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

Granting of Transfer of Plant In-Service to a Regulatory Asset

I.D. No. PSC-40-11-00012-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 a petition filed by Central Hudson Gas & Electric Corporation seeking to transfer and reclassify gas plant in-service propane air peaking facilities to a regulatory asset.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Granting of transfer of plant in-service to a regulatory asset.

Purpose: To approve transfer and recovery of unamortized plant investment.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition from Central Hudson Gas & Electric Corporation (Central Hudson) seeking approval to transfer, reclassify and recover gas plant in-service propane air peaking facilities to a regulatory asset. Central Hudson proposes that the disposition and recovery of these assets will be addressed by Central Hudson in its next gas rate case. The Commission may grant, deny or modify, in whole or in part, the petition filed by the Company, and may also consider related matters.

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

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

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

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

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

(11-G-0420SP1)

Department of State

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of State publishes a new notice of proposed rule making in the NYS Register.

The Local Government Efficiency Grant Program

I.D. No.	Proposed	Expiration Date
DOS-37-10-00008-P	September 15, 2010	September 15, 2011