

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Incorporation by Reference in 1 NYCRR of the 2012 Edition of National Institute of Standards and Technology (NIST) Handbook 44

I.D. No. AAM-37-12-00001-A

Filing No. 1197

Filing Date: 2012-11-30

Effective Date: 2012-12-19

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

Action taken: Amendment of section 220.2(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporation by reference in 1 NYCRR of the 2012 edition of National Institute of Standards and Technology (NIST) Handbook 44.

Purpose: To incorporate by reference in 1 NYCRR the 2012 edition of NIST Handbook 44.

Text or summary was published in the September 12, 2012 issue of the Register, I.D. No. AAM-37-12-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Mike Sikula, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3452, email: Mike.Sikula@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Unauthorized Providers of Health Services

I.D. No. DFS-51-12-00001-E

Filing No. 1191

Filing Date: 2012-11-28

Effective Date: 2012-11-28

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

Action taken: Addition of Subpart 65-5 (Regulation 68-E) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302 and arts. 3 and 4; and Insurance Law, sections 301, 5109 and 5221 and arts. 4 and 51

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

Specific reasons underlying the finding of necessity: This regulation concerns the de-authorization of certain providers of health services. Insurance Law § 5109(a) requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

For years, certain owners and operators of professional service corporations and other types of corporations have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile premiums, and schemes such as the fraudulent staging of auto accidents endangers the innocent public. Furthermore, it places in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

For the reasons stated above, emergency action is necessary for the public health, public safety, and general welfare.

Subject: Unauthorized Providers of Health Services.

Purpose: Establish standards and procedures for the investigation and suspension or removal of a health service provider's authorization.

Text of emergency rule: Section 65-5.0 Preamble.

(a) For years, certain owners and operators of professional service corporations or other similar business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. This fraud costs no-fault insurers tens if not hundreds of millions of dollars, which insurers ultimately pass on to New York consumers in the form of higher automobile insurance premiums.

(b) Among other schemes, of great concern to the public are the ownership, control, and daily operation of professional service corporations or other similar business entities by individuals who are not licensed to practice medicine. Ownership of professional service corporations by unlicensed persons works as follows. Unlicensed persons pay licensed physicians to use the physicians' names, signatures, and licenses for the purpose of fraudulently billing no-fault insurers for services that were never rendered, are of no diagnostic value, or are medically unnecessary. These physicians essentially sell their licenses, for a fee, and become "paper owners" of the professional service corporation, which in turn permits unlicensed and unqualified persons to own, operate, and control a professional service corporation, although they are prohibited from having any financial interest in such a corporation pursuant to Article 15 of the Business Corporation Law. Schemes such as this, which could involve professional business entities other than professional service corporations and health care professionals other than physicians, severely compromise the safety and integrity of the health care system in New York. As a result, certain professional business entities have become unjustly enriched through the ill-gotten proceeds of illegal activity, increasing the cost of insurance premiums for the driving public. More important, these abuses threaten the affordability of health care and the public's health, safety, and welfare.

(c) Insurance Law section 5109 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health and the Commissioner of Education, to establish standards and procedures for the investigation and suspension or removal of a provider of health services' authorization to demand or request payment for health services provided under Article 51 of the Insurance Law. This Subpart implements Insurance Law section 5109.

Section 65-5.1 Definitions.

As used in this Subpart, the following terms shall have the meaning ascribed to them:

(a) "Health services" or "medical services" means services, supplies, therapies, or other treatments as specified in Insurance Law section 5102(a)(1)(i), (ii), or (iv).

(b) "Insurer" shall have the meaning set forth in Insurance Law section 5102(g), and also shall include the motor vehicle accident indemnification corporation and any company or corporation providing coverage for basic economic loss, as defined in Insurance Law section 5102(a), pursuant to Insurance Law section 5103(g).

(c) "Noticing commissioner" means the Commissioner of Health or the Commissioner of Education, whomever sends a notice of hearing under this Subpart.

(d) "Provider of health services" or "provider" means a person or entity who or that renders health services.

(e) "Superintendent" means the Superintendent of Financial Services.

Section 65-5.2 Investigations.

(a) The superintendent may investigate any reports made pursuant to Insurance Law section 405, allegations, or other information in the superintendent's possession, regarding providers of health services engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). After conducting an investigation, the superintendent will send to the Commissioner of Health and the Commissioner of Education a list of any providers who or that the superintendent believes may have engaged in any of the unlawful activities set forth in Insurance Law section 5109(b), together with a description of the grounds for inclusion on the list. Within 45 days of receipt of the list, the Commissioner of Health and Commissioner of Education shall notify the superintendent in writing whether they confirm that the superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance Law.

(b) The Commissioner of Health and the Commissioner of Education also may investigate any reports, allegations, or other information in their possession, regarding providers engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). If either commissioner conducts an investigation, then the commissioner, or the superintendent, if so designated, shall be responsible for providing notice and an opportunity to be heard to the providers of health services that they are subject to deauthorization from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance

Law. Nothing in this section, however, shall preclude the superintendent, Commissioner of Health, or Commissioner of Education from conducting joint investigations and hearings, or from conducting professional misconduct proceedings against the providers of health services pursuant to the Public Health Law or Title VIII of the Education Law.

Section 65-5.3 Notice; how given.

(a)(1) The superintendent, Commissioner of Health, or Commissioner of Education shall give notice of any hearing to a provider at least 30 days prior to the hearing, in writing, either by delivering it to the provider or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of the provider or if no such address is known, then to the residence address of the provider.

(2) The notice shall refer to the applicable provisions of the law under which action is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the provider to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) It shall be sufficient for the superintendent or noticing commissioner to give to the provider:

(i) notice of the time and the place at which an opportunity for hearing will be afforded; and

(ii) if the person appears at the time and place specified in the notice or any adjourned date, a hearing.

(b) If the noticed provider seeks a hearing, then the provider shall notify the superintendent or noticing commissioner in writing, within ten days of receipt of the notice, that a hearing is demanded; in such case the superintendent or noticing commissioner shall give the provider a further notice of the time and place of such hearing in the manner stated in this section, to the address specified by the provider if supplied.

(c) At least ten days prior to the hearing date fixed in the notice, the provider may file an answer to any charges with the superintendent or noticing commissioner.

(d) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(e) The statement of any regular salaried employee of the Department of Financial Services, Department of Health, or Department of Education, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts that show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

Section 65-5.4 Hearings.

(a) Unless otherwise provided, any hearing may be held before the superintendent, Commissioner of Health or Commissioner of Education, any deputy, or any designated salaried employee of the Department of Financial Services, Department of Health, or Department of Education who is authorized by the superintendent or noticing commissioner for such purpose. The hearing shall be noticed, conducted, and administered in compliance with the State Administrative Procedure Act.

(b) The person conducting the hearing shall have the power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence, and shall report his or her findings, in writing, to the superintendent or noticing commissioner with a recommendation. The report, if adopted by the superintendent or noticing commissioner, may be the basis of any determination made by the superintendent or noticing commissioner.

(c) Every such hearing shall be open to the public unless the superintendent or noticing commissioner, or the person authorized by the superintendent or noticing commissioner to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private.

(d) Every provider affected shall be permitted to: be present during the giving of all the testimony; be represented by counsel; have a reasonable opportunity to inspect all adverse documentary proof; examine and cross-examine witnesses; and present proof in support of the provider's interest. A stenographic record of the hearing shall be made, and the witnesses shall testify under oath.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

Section 65-5.5 Report of hearing and findings.

(a) Pending a final determination by the superintendent, Commissioner of Health, or Commissioner of Education, if the superintendent or noticing commissioner believes that the provider has engaged in any activity set forth in Insurance Law section 5109(b), then the superintendent or noticing commissioner may temporarily prohibit the provider from demanding or requesting any payment for medical services under Article 51 of the Insurance Law for up to 90 days from the date of the notice of such temporary prohibition pursuant to Insurance Law section 5109(e).

(b) *The hearing officer shall issue to the superintendent or noticing commissioner the report described in Section 65-5.4(b) of this Subpart, with a recommendation. The superintendent or noticing commissioner may adopt, modify, remand, or reject the hearing officer's report and recommendation.*

(c) *Upon consideration of the hearing officer's report and recommendation, the superintendent or noticing commissioner may issue a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Article 51 of the Insurance Law and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Article 51.*

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 February 25, 2013.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Regulatory Impact Statement

1. **Statutory authority:** Sections 202 and 302 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Article 3 of the Financial Services Law sets forth administrative and procedural provisions, while Article 4 of the Financial Services Law confers certain powers and duties on the Superintendent with regard to financial frauds prevention. Insurance Law § 5109 requires the Superintendent to promulgate standards and procedures for investigating and suspending or removing, after notice and a hearing, the authorization of health service providers to bill no-fault insurance if they engage in certain unlawful conduct. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. In addition, Article 4 of the Insurance Law sets forth requirements for reporting and preventing fraud, while Article 51 of the Insurance Law governs the no-fault insurance system.

2. **Legislative objectives:** Insurance Law § 5109 requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109. Furthermore, Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

3. **Needs and benefits:** For years, certain owners and operators of professional service corporations and other business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile insurance premiums, and schemes such as the fraudulent staging of auto accidents endanger the innocent public. Furthermore, these activities place in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

Therefore, after consultation with the Commissioner of Health and the Commissioner of Education, the Superintendent drafted this rule to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109.

4. **Costs:** This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance

benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

5. **Local government mandates:** This rule does not impose any requirement on a city, town, village, school district, or fire district.

6. **Paperwork:** This rule does not impose any additional paperwork.

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

8. **Alternatives:** There were no significant alternatives to consider.

9. **Federal standards:** There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. **Compliance schedule:** Insurance Law § 5109(a) requires notice to all health service providers of the provisions of § 5109 and this rule at least 90 days in advance of the effective date of the rule. This rule was initially promulgated on an emergency basis on March 9, 2012, to take effect 95 days after filing with the Secretary of State, i.e., June 12, 2012, and was repromulgated on an emergency basis on June 6, 2012, to take effect on June 12, 2012, and again on August 31, 2012. The Department provided the required notice by, among other things, posting a copy of the rule on its website on March 9, 2012; emailing notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and publishing the rule in the *State Register* on March 29, 2012.

Regulatory Flexibility Analysis

1. **Effect of the rule:** The Department of Financial Services ("Department") finds that this rule will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments. The basis for this finding is that this rule does not impose any substantive requirements on small businesses or local governments. In addition, this rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department does not have any information to indicate that any self-insurers are small businesses.

This rule also affects health service providers, some of whom may be considered small businesses. However, this rule does not impose any substantive requirements on health service providers.

Some local governments self-insure their no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, this rule does not impose any substantive requirements on local governments, and any impact on local governments would be positive and should reduce their costs.

2. **Compliance requirements:** This rule does not impose any additional paperwork.

3. **Professional services:** This rule does not require anyone to use professional services. However, if a health service provider is subject to a hearing, the provider may be represented by counsel.

4. **Compliance costs:** This rule does not impose compliance costs on small businesses or local governments, because it does not impose any substantive requirements. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers.

5. **Economic and technological feasibility:** This rule does not impose any substantive requirements on small businesses or local governments, so there should not be any issues pertaining to economic and technological feasibility.

6. **Minimizing adverse impact:** This rule affects uniformly health service providers and no-fault insurers in all parts of New York State and the rule is mandated by statute. The Department does not believe that it will have an adverse impact.

7. **Small business and local government participation:** The Department issued a press release regarding the rule on March 8, 2012; posted a copy of the rule on its website on March 9, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and published the rule in the *State Register* on March 29, 2012. In addition, interested parties will have the opportunity to comment once the proposal is published in the *State Register*.

Rural Area Flexibility Analysis

1. **Types and estimated number of rural areas:** Health service providers, insurers, and self-insurers affected by this regulation do business in every

county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some of the home offices of these health service providers, insurers, and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements: This rule does not impose any additional paperwork.

3. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

4. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in both rural and nonrural areas of New York State and the rule is mandated by statute. The Department of Financial Services does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: The Department issued a press release regarding the rule on March 8, 2012; posted a copy of the rule on its website on March 9, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; and published the rule in the State Register on March 29, 2012. In addition, interested parties will have the opportunity to comment once the proposal is published in the State Register.

Job Impact Statement

This rule will not have any adverse impact on jobs and employment opportunities of persons engaging in lawful conduct in New York State, because the rule only allows the Superintendent of Financial Services, Commissioner of Health, or Commissioner of Education to investigate and suspend or remove the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-51-12-00002-E

Filing No. 1194

Filing Date: 2012-11-29

Effective Date: 2012-11-29

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

Action taken: Amendment of Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2601 and 3404(e)

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

Specific reasons underlying the finding of necessity: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe in properly settling claims.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing

extensive power outages, loss of life and property, and ongoing harm to public health and safety. Just a week later, a nor'easter hit the State, causing further damage. The counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange suffered the greatest damage from Storm Sandy and the nor'easter.

Carriers insuring property in affected areas have not always begun investigating claims, including by deploying insurance adjusters to adjust the claims, in a prompt manner. As a result, homeowners and small business owners have not always been able to start to repair or replace their damaged property. As the holiday season approaches and temperatures drop, it is of the utmost importance that homeowners and small business owners be able to start rebuilding their homes and businesses right away.

Given the nature and extent of the damage and the approaching winter, the Superintendent concluded that the existing regulation's time frames were inadequate to protect the public and ensure its safety and welfare. Accordingly, with respect to the counties where damage was the greatest, this amendment reduces the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim and, if the insurer wishes its investigation to include an inspection of the damaged or destroyed property, requires that the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, occur within the prescribed time frames. In addition, the rule clarifies that, where necessary to protect health or safety, a claimant may commence immediate repairs to heating systems, hot water systems, and necessary electrical connections, as well as exterior windows, exterior doors, and, for minor permanent repairs, exterior walls, in order to enable property to retain heat, and that any policy requirement that the policyholder exhibit the remains of the property may be satisfied by the policyholder submitting proof of loss documentation of the damaged or destroyed property, including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Subject: Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To ensure timely claims investigation and permit certain immediate repairs when necessary to protect health or safety.

Text of emergency rule: Section 216.5(a) is amended to read as follows:

(a)(1) Every insurer shall [establish procedures to] commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of [receipt of] receiving notice of claim. An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(2)(i) *Notwithstanding paragraph one of this subdivision, for claims that would otherwise be subject to the provisions of paragraph one the provisions of this paragraph shall instead apply, with respect to any claim occurring from October 26, 2012 through November 15, 2012 in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:*

(a) *loss of or damage to real property;*

(b) *loss of or damage to personal property; or*

(c) *other liabilities for loss of, damage to, or injury to persons or property.*

(ii) *Every insurer shall commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within six business days of receiving notice of claim, provided, however, that if a claimant, or the claimant's authorized representative, filed a claim between October 26, 2012 and November 29, 2012, then the insurer shall commence an investigation of the claim within six business days after November 29, 2012 or 15 business days of receiving notice of claim, whichever is sooner. If the insurer wishes its investigation to include an inspection of the damaged or destroyed property, the inspection, whether*

performed by the insurer, an independent adjuster, or other representative of the insurer, must occur within the time frames specified in this paragraph.

(iii) An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, that the insurer reasonably believes will be required of the claimant, within six business days of receiving notice of the claim.

(iv) A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, the agent notifies the person filing the claim that the agent is not authorized to receive notices of claim.

(v) Where necessary to protect health or safety, a claimant may commence immediate repairs to heating systems, hot water systems, and necessary electrical connections, as well as exterior windows, exterior doors, and, for minor permanent repairs, exterior walls, in order to enable property to retain heat, and any policy requirement that the policyholder exhibit the remains of the property may be satisfied by the policyholder submitting proof of loss documentation of the damaged or destroyed property, including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property. This subparagraph does not apply to claims under flood policies issued under the national flood insurance program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires February 26, 2013.

Text of rule and any required statements and analyses may be obtained from: Brenda Gibbs, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-6623, email: brenda.gibbs@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301, 2601, and 3404(e) of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair claims settlement practices, and imposes penalties if an insurer engages in these acts. Insurance Law § 3404(e) sets forth the form of the standard fire insurance policy (which form may be substituted for another policy form provided that, with respect to the peril of fire, terms and provisions are no less favorable to the insured), which requires an insured to protect the insured's property from further damage.

2. Legislative objectives: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Furthermore, Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have not always begun to investigate all claims, including by deploying insurance adjusters to adjust the claims, in a prompt manner. As a result, many homeowners and small business owners have not been able to start to repair or replace their damaged property. As the holiday season approaches and temperatures drop, it is of the utmost importance that homeowners and small business owners be able to start to rebuild their homes and businesses right away.

Therefore, with respect to New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, this rule reduces the number of

days within which an insurer must commence an investigation of a claim upon receiving notice of the claim and, if the insurer wishes its investigation to include an inspection of the damaged or destroyed property, requires that the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, occur within the prescribed time frames. In addition, the rule clarifies that, where necessary to protect health or safety, a claimant may commence immediate repairs to heating systems, hot water systems, and necessary electrical connections, as well as exterior windows, exterior doors, and, for minor permanent repairs, exterior walls, in order to enable property to retain heat, and that any policy requirement that the policyholder exhibit the remains of the property may be satisfied by the policyholder submitting proof of loss documentation of the damaged or destroyed property, including photographs or video recordings; material samples, if applicable; and inventories, as well as receipts for any repairs to or replacement of property. The clarification regarding repairs does not apply to claims under flood policies issued under the national flood insurance program.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they may need to hire additional staff to comply with the reduced time period within which they must commence an investigation. However, because of the magnitude of the storm and the extraordinary degree of damage, it is hard to quantify the cost impact. This rule should, though, speed up the claims process and thereby may reduce costs for homeowners and small business owners who will be able to repair or replace their damaged or destroyed property sooner.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

6. Paperwork: This rule does not impose any additional paperwork.

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

8. Alternatives: The Department considered making these rules applicable to the entire state. However, since the concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers affected by this rule operate in every county in this state, including rural areas as defined under State Administrative Procedure Act ("SAPA") § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers operating in rural areas by reducing the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim and, if the insurer wishes its investigation to include an inspection of the damaged or destroyed property, the inspection, whether performed by the insurer, an independent adjuster, or other representative of the insurer, requiring that the inspection occur within the prescribed time frames.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers in rural areas, because they may need to hire additional staff to comply with the reduced time period within which they must commence an investigation. However, because of the magnitude of the storm and the extraordinary degree of damage, it is hard to quantify the cost impact. However, this rule should speed up the claims process and thereby may reduce costs for homeowners and small business owners who will be able to repair or replace their damaged or destroyed property sooner.

4. Minimizing adverse impact: The Department of Financial Services considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety or general welfare has been endangered, establishment of differing compliance or reporting requirements or timetables in rural areas is not appropriate; however the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus impact of the rule on rural areas is minimized.

5. Rural area participation: Public and private interests in rural areas will have an opportunity to participate in the rule making process once the rule is published in the State Register and posted on the Department's website.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule reduces the number of days within which an insurer must commence an investigation of a claim upon receiving notice of the claim, and, where necessary to protect health or safety, permits a claimant to commence immediate repairs to certain of the claimant's property without awaiting an inspection.

The Department does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

Department of Health

NOTICE OF ADOPTION

State Aid: Radioactive Materials and Radiation Producing Equipment; Individual Water and Sewage Systems; Calculation

I.D. No. HLT-39-12-00010-A

Filing No. 1198

Filing Date: 2012-12-03

Effective Date: 2012-12-19

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

Action taken: Amendment of Part 40 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 602, 603 and 619

Subject: State Aid: Radioactive Materials and Radiation Producing Equipment; Individual Water and Sewage Systems; Calculation.

Purpose: Establish funding for safety programs related to radioactive materials and radiation-producing equipment. Technical amendments.

Text or summary was published in the September 26, 2012 issue of the Register, I.D. No. HLT-39-12-00010-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Health

NOTICE OF ADOPTION

Partial Hospitalization Medicaid Fee Increase

I.D. No. OMH-41-12-00003-A

Filing No. 1192

Filing Date: 2012-11-28

Effective Date: 2012-12-19

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

Action taken: Amendment of Parts 588 and 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 43.02
Subject: Partial Hospitalization Medicaid Fee Increase.

Purpose: Increase the Medicaid fees paid to all Partial Hospitalization Programs licensed by the Office of Mental Health.

Text or summary was published in the October 10, 2012 issue of the Register, I.D. No. OMH-41-12-00003-EP.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ulster County Motor Vehicle Use Tax

I.D. No. MTV-51-12-00008-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 29.12 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Ulster County motor vehicle use tax.

Purpose: To impose a motor vehicle use tax.

Text of proposed rule: Section 29.12 is amended by adding a new subdivision (al) to read as follows:

(al) Ulster County. The Ulster County Legislature adopted a resolution on November 13, 2012 to establish an Ulster County Motor Vehicle Use Tax. The County Executive of Ulster County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after March 1, 2013 and upon the renewal of registrations expiring on and after April 1, 2013. The Commissioner of Finance is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Ulster County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3,500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3,500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Ulster County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Room 522A; Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Ida Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Room 522A; Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(al) to provide for the collection of a Ulster County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On November 13, 2012 the Ulster County Legislature enacted a resolution requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this resolution, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax.

The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Ulster County resolution. The merits of the tax may have been debated before the Ulster County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Public Service Commission

NOTICE OF ADOPTION

Denying Arbor Hills Waterworks, Inc.’s Request to Implement Escrow Account for Capital Improvements Statement No. 2

I.D. No. PSC-51-06-00021-A

Filing Date: 2012-11-29

Effective Date: 2012-11-29

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

Action taken: On 11/27/12, the PSC adopted an order denying Arbor Hills Waterworks, Inc.’s request to implement Escrow Account for Capital Improvements Statement No. 2.

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

Subject: Denying Arbor Hills Waterworks, Inc.’s request to implement Escrow Account for Capital Improvements Statement No. 2.

Purpose: To deny Arbor Hills Waterworks, Inc.’s request to implement Escrow Account for Capital Improvements Statement No. 2.

Substance of final rule: The Commission, on November 27, 2012, adopted an order denying a request by Arbor Hills Waterworks, Inc. (Arbor Hills) to implement Escrow Account for Capital Improvements Statement No. 2, to its tariff schedule PSC No. 3 – Water and directed Arbor Hills to file a consecutively numbered supplement announcing cancellation of the request, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov 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.

(06-W-1455SA1)

NOTICE OF ADOPTION

Collect Annually \$40 Million, Through a Site Investigation and Remediation Recovery Surcharge Beginning 1/1/13

I.D. No. PSC-24-10-00007-A

Filing Date: 2012-11-28

Effective Date: 2012-11-28

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

Action taken: On 11/27/12, the PSC adopted an order authorizing the petition of KeySpan Gas East Corporation d/b/a National Grid to collect an-

nually \$40 million, through a Site Investigation and Remediation Recovery Surcharge beginning on January 1, 2013.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Collect annually \$40 million, through a Site Investigation and Remediation Recovery Surcharge beginning 1/1/13.

Purpose: To authorize the collection of \$40 million, through a Site Investigation and Remediation Recovery Surcharge beginning 1/1/13.

Substance of final rule: The Commission on November 27, 2012, adopted an order authorizing the petition of KeySpan Gas East Corporation d/b/a National Grid (KEDLI) to collect annually \$40 million, through a Site Investigation and Remediation Recovery Surcharge beginning on January 1, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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.

(06-G-1186SA8)

NOTICE OF ADOPTION

Collect Annually \$25 Million, Through a Site Investigation and Remediation Recovery Surcharge Beginning 1/1/13

I.D. No. PSC-24-10-00008-A

Filing Date: 2012-11-28

Effective Date: 2012-11-28

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

Action taken: On 11/27/12, the PSC adopted an order authorizing the petition of The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery NY to collect annually \$25 million, through a Site Investigation and Remediation Recovery Surcharge beginning on 1/1/13.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Collect annually \$25 million, through a Site Investigation and Remediation Recovery Surcharge beginning 1/1/13.

Purpose: To authorize the collection of \$25 million, through a Site Investigation and Remediation Recovery Surcharge beginning 1/1/13.

Substance of final rule: The Commission on November 27, 2012, adopted an order authorizing the petition of The Brooklyn Union Gas Company, d/b/a National Grid NY (KEDNY) to collect annually \$25 million, through a Site Investigation and Remediation Recovery Surcharge beginning on January 1, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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.

(06-G-1185SA10)

NOTICE OF ADOPTION

Allow West Valley to Establish Financing for Capital Improvements

I.D. No. PSC-10-11-00004-A

Filing Date: 2012-11-29

Effective Date: 2012-11-29

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

Action taken: On 11/27/12, the PSC adopted an order approving the peti-

tion of West Valley Water Co., Inc. to establish financing for capital improvements.

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

Subject: Allow West Valley to establish financing for capital improvements.

Purpose: Allow West Valley to enter into a \$2,587,374 loan agreement with the Environmental Facilities Corporation.

Substance of final rule: The Commission, on November 27, 2012, adopted an order approving the February 9, 2011 petition of West Valley Crystal Water Company, Inc. to establish financing for capital improvements by entering into a loan agreement with the Environmental Facilities Corporation and authorized to allow the company to collect an annual surcharge from its customers to repay a Drinking Water State Revolving Fund loan to reconstruct its water system, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov 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-0059SA1)

NOTICE OF ADOPTION

Requirements for the State's Major Electric and Gas Companies Regarding Site Investigation and Remediation

I.D. No. PSC-27-11-00003-A

Filing Date: 2012-11-28

Effective Date: 2012-11-28

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

Action taken: On 11/27/12, the PSC adopted an order concerning costs for site investigation and remediation.

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

Subject: Requirements for the State's major electric and gas companies regarding site investigation and remediation.

Purpose: To approve requirements for the State's major electric and gas companies regarding site investigation and remediation.

Substance of final rule: The Commission, on November 27, 2012 adopted an order concerning costs for Site Investigation and Remediation (SIR) and directed major electric and gas companies to file annual reports for as long as new SIR expenses are being incurred, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov 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-0034SA1)

NOTICE OF ADOPTION

Petition of 92 Equities LLC to Submeter Electricity at 201 West 92nd and 200 West 93rd Streets, New York, NY

I.D. No. PSC-27-11-00008-A

Filing Date: 2012-12-03

Effective Date: 2012-12-03

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

Action taken: On 11/27/12, the PSC adopted an order approving the peti-

tion of 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Petition of 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, New York, NY.

Purpose: To approve the petition of 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, New York, NY.

Substance of final rule: The Commission, on November 27, 2012 adopted an order approving the petition of 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, New York, New York located in the territory of Consolidated Edison Company of New York, Inc. subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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-0316SA1)

NOTICE OF ADOPTION

Billing Provisions

I.D. No. PSC-09-12-00012-A

Filing Date: 2012-11-29

Effective Date: 2012-11-29

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

Action taken: On 11/27/12, the PSC adopted an order directing Central Hudson Gas & Electric Corp. to file a supplement to cancel revisions to PSC No 15—Electricity.

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

Subject: Billing Provisions.

Purpose: To direct Central Hudson Gas & Electric Corp. to file a supplement cancelling revisions to PSC 15—Electricity.

Substance of final rule: The Commission, on November 27, 2012, adopted an order directing Central Hudson Gas and Electric Corporation to file a supplement cancelling revisions to PSC 15—Electricity and directed major electric utilities to file tariffs providing for the billing of net metered 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov 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.

(12-E-0043SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 to 894.4

I.D. No. PSC-29-12-00025-A

Filing Date: 2012-12-03

Effective Date: 2012-12-03

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

Action taken: On 11/27/12, the PSC adopted an order approving the Town of Cameron's (Steuben County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3, and 894.4 to expedite the cable television franchising process with Time Warner Cable.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 to 894.4.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 to expedite the cable television franchising process.

Substance of final rule: The Commission, on November 27, 2012 adopted an order approving the Town of Cameron's (Steuben County) request for waiver of the rules contained in 16 NYCRR §§ 894.1, 894.2, 894.3, and 894.4 to expedite the cable television franchising process with Time Warner Cable, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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.

(12-V-0288SA1)

NOTICE OF ADOPTION

Waiver of 16 NYCRR Sections 894.1 to 894.4

I.D. No. PSC-30-12-00009-A

Filing Date: 2012-12-03

Effective Date: 2012-12-03

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

Action taken: On 11/27/12, the PSC adopted an order approving the Town of Rathbone's (Steuben County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3, and 894.4 to expedite the cable television franchising process with Time Warner Cable.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 to 894.4.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 to expedite the cable television franchising process.

Substance of final rule: The Commission, on November 27, 2012 adopted an order approving the Town of Rathbone's (Steuben County) request for waiver of the rules contained in 16 NYCRR §§ 894.1, 894.2, 894.3, and 894.4 to expedite the cable television franchising process with Time Warner Cable, 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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.

(12-V-0292SA1)

NOTICE OF ADOPTION

Modification of the Deferral Limitation Provision in the Three Year Electric Rate Plan

I.D. No. PSC-32-12-00013-A

Filing Date: 2012-11-28

Effective Date: 2012-11-28

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

Action taken: On 11/27/12, the PSC adopted an order approving a revision to O&R's electric rate plan established by the Commission order issued 6/15/12 with respect to the operation of the deferral limitation provision.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Modification of the deferral limitation provision in the three year electric rate plan.

Purpose: To approve the modification of the deferral limitation provision in the three year electric rate plan.

Substance of final rule: The Commission, on November 27, 2012 adopted an order approving a revision to Orange and Rockland Utilities, Inc.'s electric rate plan established by the Commission order issued 6/15/12 with respect to the operation of the deferral limitation provision., 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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov 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-0408SA3)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

National Grid Proposes to Retain All Property Tax Refunds

I.D. No. PSC-51-12-00006-P

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

Proposed Action: The Commission is considering a petition filed by Niagra Mohawk Power Corporation d/b/a National Grid (National Grid) for approval to retain a tax refund from the NYS Department of Taxation & Finance.

Statutory authority: Public Service Law, sections 2, 5, 65 and 113(2)

Subject: National Grid proposes to retain all property tax refunds.

Purpose: To consider National Grid's proposal to retain all property tax refunds.

Public hearing(s) will be held at: 10:30 a.m., February 20, 2013 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY (Evidentiary Hearings)*

*On occasion there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 12-M-0447.

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

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

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by National Grid seeking approval to retain a New York State sales tax refund allocable to its regulated New York electric and gas operations. The total tax refund of approximately \$2.17 million represents a partial recovery of the sales tax paid by National Grid on customer receivables that were subsequently determined to be uncollectible and written off. National Grid has requested approval to retain the refund in its entirety.

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.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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.ny.gov

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.

(12-M-0447SP1)

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

To Consider the Petition for Clarification from 42nd and 10th Associates, LLC

I.D. No. PSC-51-12-00003-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition for clarification filed by 42nd and 10th Associates, LLC.

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

Subject: To consider the petition for clarification from 42nd and 10th Associates, LLC.

Purpose: To consider the petition for clarification from 42nd and 10th Associates, LLC.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition for clarification filed by 42nd and 10th Associates, LLC seeking clarification that residents of 440 West 42nd Street, New York, New York may be charged up to the Consolidated Edison Company of New York, Inc.'s Service Class (SC) 1 rate for submetered electricity provided to their rental and condominium units.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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.ny.gov

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

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

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

(09-E-0492SP3)

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

Transfer of Utility Assets in Excess of \$100,000

I.D. No. PSC-51-12-00004-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 grant, deny or modify a November 27, 2012 petition of the Brooklyn Union Gas Company (BUG) to transfer property at 809-873 Neptune Ave., Brooklyn, NY, to Storage Deluxe pursuant to PSL section 70.

Statutory authority: Public Service Law, section 70

Subject: Transfer of utility assets in excess of \$100,000.

Purpose: To grant or deny the sale of 809-873 Neptune Ave., Brooklyn, NY, from BUG to Storage Deluxe for \$15 million, no contingencies.

Substance of proposed rule: The Commission is considering whether to approve, reject, or modify a petition submitted by The Brooklyn Union Gas Company (d/b/a/National Grid) (BUG), pursuant to Public Service Law § 70, seeking permission to transfer certain real property to Storage Deluxe LLC. BUG seeks to sell the property at 809-873 Neptune Avenue, Brooklyn, NY, to Storage Deluxe for \$15 million, with no contingencies. The Commission may grant, deny or modify the petition or take other action related to it.

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.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

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.ny.gov

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.

(12-G-0539SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-51-12-00005-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Kissling Interests, LLC to submeter electricity at 175 North Street, Buffalo, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Kissling Interests, LLC to submeter electricity at 175 North Street, Buffalo, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed Kissling Interests, LLC to submeter electricity at 175 North Street, Buffalo, New York, located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid.

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.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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.ny.gov

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.

(12-E-0337SP1)

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

Uniform System of Accounts - Request for Accounting Authorization

I.D. No. PSC-51-12-00007-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition of United Water Owego-Nichols Inc. to defer approximately \$525,000 of incremental net plant additions related to Tropical Storm Lee.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Uniform System of Accounts - Request for Accounting Authorization.

Purpose: To allow the company to defer an item of expense or capital beyond the end of the year in which it was incurred.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a peti-

tion filed by United Water Owego-Nichols Inc. for permission to defer approximately \$525,000 of incremental net plant additions related to Tropical Storm Lee that occurred in September 2011 and collect such deferred storm costs via a surcharge.

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.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

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

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.

(12-W-0534SP1)

Racing and Wagering Board

EMERGENCY RULE MAKING

The Minimum Price for Which a Horse Shall be Entered in a Claiming Race

I.D. No. RWB-33-12-00002-E

Filing No. 1193

Filing Date: 2012-11-29

Effective Date: 2012-11-29

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

Action taken: Amendment of section 4038.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

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

Specific reasons underlying the finding of necessity: The Board has determined that immediate adoption of this rule is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Between November, 2011 and April 2012, 18 thoroughbred horses in New York State that were entered in claiming races were injured and subsequently died. Their deaths prompted a comprehensive analysis of the circumstances and possible causes for the deaths of these horses. One common aspect in these races is the fact that the horse that broke down was involved in a claiming race. This rule is necessary to remove an incentive that a trainer or owner may have for entering an undervalued horse in proportion to the value of the purse that is offered in the claiming race. In other words, this rule will mandate a claiming price to purse proportion and thus establish a relationship between investment in a horse and the potential purse in a manner designed to provide a safer racing environment in which financial incentive is lessened to race a horse that should not be raced.

Given the danger of a horse breaking down, and the safety threat presented to both the jockey on the horse and the jockeys riding in close proximity, this rule is necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or to gain positional advantage. An outclassed horse in a superior racing field may be forced to race beyond its limits and result in a fatal breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and reve-

nue generated in support of government. Claiming races are an essential part of thoroughbred racing and pari-mutuel wagering. This rule is necessary to ensure integrity in the claiming process, and in turn promote the situation that when a horse steps onto a race track, it is fit to compete in the race in which it is entered.

Subject: The minimum price for which a horse shall be entered in a claiming race.

Purpose: To diminish the risk of injury to human and equine participants in horse racing.

Text of emergency rule: Section 4038.2 of 9 NYCRR is amended to read as follows:

4038.2. Minimum price for claim.

The minimum price for which a horse may be entered in a claiming race shall [be \$ 1,200.] *not be less than fifty percent of the value of the purse for the race.*

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. RWB-33-12-00002-EP, Issue of August 15, 2012. The emergency rule will expire December 19, 2012.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to ensure that entries in claiming races in thoroughbred racing meet a minimum value, thereby ensuring that the horses are competitive in class proportional to the purses for which they are competing. The current rule was adopted prior to 1974 and continued when the Board's comprehensive rules were codified in 1974.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse up for sale to another other individual.

The rule as written does not take into account principles of proportional economics in relation to current purses. Purses have increased due in part to the advent of video lottery terminals (VLTs). Video lottery terminals opened up at Aqueduct on October 28, 2011, making Aqueduct an attractive venue for owners to race their horses. This year, purses at the NYRA have increased substantially. As reported by The Saratogian newspaper on March 17, 2012, NYRA spokesman Dan Silver said that for the first two months of 2012, purses at Aqueduct have averaged \$396,000 per day, which is up from \$266,000 per day over the same period last year. Subsequently, doubts have been raised publicly in the pari-mutuel wagering community as to whether the quality of horses has kept pace with the growth of claiming race purses.

Horses drop in class, but still compete for larger purses than they did in the previous higher class. This disproportionate relationship has resulted in inferior horses competing for more money, particularly when other states have smaller purses for higher grades. This rule will establish a relationship between investment in a horse and the potential purse in a manner designed to provide a safer racing environment.

Not only does this rule removes the flat threshold of \$1,200 (which the Racing and Wagering Board was unable to justify through archival research), the new rules adopt a sliding scale, which is more reasonable given that claiming purses may rise or fall in the future.

This rulemaking is consistent with one of the recommendation from the American Association of Equine Practitioners in its 2009 whitepaper titled "Putting the Horse First: Veterinary Recommendations for the Safety and Welfare of the Thoroughbred Racehorse," where veterinarians advised that purses should not exceed claiming prices by more than 50%.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules. Naturally, there will be an economic impact on horse owners who will not be able to enter their horses in races, but it impossible to gauge that number due to the speculative nature of whether an owner or trainer will decide to enter a horse in a claiming race, the changing value of a horse in relation to subjective performance and the performance of other race horses.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed published results, claiming values and horses that may or may not compete in future claiming races. After considering the issue, it determined that there was no reliable formula for determining the costs of this rule by excluding horse based on their value in comparison to the value of the purses.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. It is not possible to ascertain the potential costs due to the variables involved in owner's discretion and the value of claiming horses.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The Board will utilize the existing documents for administrative adjudication to determine whether the suspension of a pre-race detention order is appropriate.

7. Duplication: None.

8. Alternatives: The only alternative that the Board considered is to retain the rule as currently written, which is not acceptable. This rulemaking reverses a 2006 amendment, which eliminated the consideration of a horse's value in proportion to the purse that is offered in a claiming race. Given the narrow purpose of requiring a specific value in proportion to the purse offered, no viable alternative could be presented.

9. Federal standards: None.

10. Compliance schedule: The rule was previously approved as an emergency rulemaking and has been in effect since April 2012. This emergency rulemaking will be effective upon submission to the Department of State on November 29, 2012. A Notice of Adoption for this amendment will be submitted to the Department of State and will go into effect on December 19, 2012 upon publication in the State Register.

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

As is evident by the nature of this rulemaking, this proposal affects the entry of horses in claiming races proportional to the value of the horse. This will not affect jobs or employment opportunities because racetracks can still offer claiming races with purses that are proportional to the value of some lower-priced claiming horses. This rule merely requires a proportional economic relationship between the purse offered and the value of a claiming horse. This amendment will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to enter a horse in a claiming race where it is can be outperformed to the point of serious injury or death to the horse or jockey. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The rule does not impose any technological changes on the industry either. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102 (8) nor does it negatively affect employment.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

NOTICE OF ADOPTION

The Minimum Price for Which a Horse Shall be Entered in a Claiming Race

I.D. No. RWB-33-12-00002-A

Filing No. 1195

Filing Date: 2012-12-03

Effective Date: 2012-12-19

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

Action taken: Amendment of section 4038.2 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

Subject: The minimum price for which a horse shall be entered in a claiming race.

Purpose: To diminish the risk of injury to human and equine participants in horse racing.

Text or summary was published in the August 15, 2012 issue of the Register, I.D. No. RWB-33-12-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Assessment of Public Comment

The Board received two comments regarding the amendment to Section 4038.2 of 9E NYCRR during the 45-day public period.

The Jockey Club commented by letter in support of the amendment. The comments were submitted on behalf of its Thoroughbred Safety Committee, whose goals are "to review every facet of equine health and to recommend actions the industry can take to improve the health and safety of thoroughbred." Their September 26, 2012 letter of support stated: "On behalf of The Jockey Club's Thoroughbred Safety Committee, please accept this letter indicating its support and endorsement of the proposed amendment to Section 4038.2 of 9 NYCRR."

The Jockey Club noted that the amendment mirrors the position of the American Association of Equine Practitioners.

The Board also received comments via e-mail on September 27, 2012 from an individual named Charles Beckham, who indicated that the rule erroneously imposes a statewide claiming price standard based on racing at the New York Racing Association tracks, which operate in New York City and Saratoga Springs. Mr. Beckham was critical of the amendment because "We now have a \$4,500 claiming price – which makes us unique – the only place in America to have such a ridiculous claiming price. . . Why not let Finger Lakes return to the \$4,000 claiming and with our \$9,000 purse. We are not NYRA. . . Keep your rule for NYRA but exempt Finger Lakes."

The Board consider Mr. Beckham's comments and determined that an exemption would not be warranted because while Finger Lakes is separate from NYRA, which offers higher purses, both tracks operate in the national thoroughbred economy. Trainers and owners have horses that compete at both Finger Lakes and NYRA race tracks through the horses' careers. This rule is intended to establish a industry standard that can be applied equally throughout the thoroughbred industry, which is why it is supported by the Jockey Club and mirror the position of the AAEP. Creating an exemption for Finger Lakes would undermine the basic purpose of removing an incentive that a trainer or owner may have for entering an undervalued horse in proportion to the value of the purse that is offered in the claiming race, regardless of where the horse is raced.

Prior to the 45-day public comment period that ended in September, the Board received comments as part of the emergency rulemaking process. The Board received an e-mail on July 20, 2012 from Gallagher's Stud farm in Ghent, New York expressing support for the amendment.

Don Coombs, the Jockey Club Steward from Finger Lakes Race Track submitted an e-mail on July 17, 2012 suggesting that the amendment should include language that clarifies whether or not New York Bred Overnight supplements should be included in the total purse value. The Board does not believe that such distinctions are necessary and that the language sufficiently describes the total purse value and automatically includes supplements. The Board does not anticipate a need to further clarify the text.

The Board received an e-mail on May 14, 2012 from an individual named Brian Culnan in response to the Board's overall efforts to change claiming rules. Mr. Culnan did not specifically comment on the amendment to 9E NYCRR 4038.2, but offered other rule change suggestions related to claiming races. The suggestions were forwarded to staff for discussion and possible consideration as a future rule amendment.

Urban Development Corporation

EMERGENCY RULE MAKING

The Innovate NY Fund

I.D. No. UDC-51-12-00009-E

Filing No. 1203

Filing Date: 2012-12-04

Effective Date: 2012-12-04

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

Action taken: Addition of Part 4252 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 9-c and 16-u; L. 1968, ch. 174

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

Specific reasons underlying the finding of necessity: The current economic crisis, including high unemployment and the immediate lack of seed stage capital for job generating small business, are the reasons for the emergency adoption of this Rule which is required for the immediate implementation of the Innovate NY Fund Program in order to promptly provide assistance to the State's small businesses engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments. This assistance will sustain and increase employment generated by these businesses.

Subject: The Innovate NY Fund.

Purpose: Provide the basis for administration of The Innovate NY Fund.

Text of emergency rule: Part 4252

Innovate NY Fund

Section 4252.1 Purpose

The purpose of these regulations is to facilitate administration of the Innovate NY Fund (the "Fund" or the "Program") authorized pursuant to section sixteen-u of the New York State Urban Development Corporation Act (the "Act").

Section 4252.2 Definitions

The following terms shall have the meanings given below:

1. "Beneficiary Company" shall mean a Seed Stage Business that an Investment Entity selects for a Fund investment (also referred to as a "Portfolio Company" after the Fund investment is made).

2. "Carried Interest on Capital Gains" shall mean the share of any profits that the owners, partners or members of an Investment Entity receive as compensation.

3. "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation created by chapter one hundred seventy-four of the Laws of nineteen hundred sixty-eight, as amended.

4. "Disbursement Process" means the process for disbursing Program funds to Investment Entities.

5. "Due Diligence" shall mean an in-depth investigative approach to evaluating the Beneficiary Company and verifying an investment opportunity, which may include assessment of the management team, business plan, financial history, financial projections, and the Beneficiary Company's technology and products/services.

6. "Emerging Technology Field" shall mean one or more of the emerging technologies, as defined in section thirty-one hundred two-e of the Public Authorities Law, or any field, area or technology that is achieving or has the potential to achieve contemporary technological advances, innovation, transformation or development.

7. "Equity" shall mean common stock, convertible preferred stock, stock warrants or convertible notes or bonds that can also convert to common stock, and similar types of securities.

8. "Follow-on Investment" shall mean a subsequent investment made by an investor after an initial round of investment in a Portfolio Company.

9. "Hybrid Investment" shall mean an investment that combines Equity and debt features, such as preferred stocks, convertible bonds, and convertible notes.

10. "Investment Entity" shall mean a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York.

11. "Leveraging" or "leverage" shall mean utilizing investment assets alongside other sources of capital.

12. "Matching Investment Funds" shall mean monies secured in addition to Program funds.

13. "Portfolio Company" shall mean a Beneficiary Company after the Fund investment is made.

14. "Seed-Stage Business" shall mean a Small Business, located in New York State and working in one or more Emerging Technology Fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments.

15. "Small Business" shall have the meaning as set forth in section 131 of the Economic Development Law.

16. "State" shall mean the State of New York.

Section 4252.3 Investment Objectives

The Fund objective is to invest in Seed Stage Businesses through Investment Entities that are selected by and are under contract to the Corporation. Investment priority shall be given to Seed Stage Businesses involved in commercialization of research and development or high technology manufacturing.

Section 4252.4 Selection of Investment Entities

The Corporation shall identify and select Investment Entities through one or more competitive statewide, regional or local solicitations. Investment Entity applicants shall be evaluated on criteria including, but not limited to, the applicant's: (a) record of success in raising investment funds and successfully investing them; (b) capacity to perform Due Diligence and to provide management expertise and other value-added services to Beneficiary Companies; (c) financial resources for identifying and investing in seed-stage and early-stage companies; (d) ability to secure non-State Matching Investment Funds at a ratio that is equal to or greater than one-to-one (1:1); (e) ability to evaluate the commercial potential of emerging technologies; (f) ability to secure partnerships with local or regional investors; (g) conflict of interest policy acceptable to the Corporation; (h) investment record and capacity to invest in the State; (i) management fees, promotes, share of return and other fees and charges and; (j) other criteria that the Corporation determines is relevant to making investment decisions consistent with the purposes of the Fund. Applicants must specify particular industry sector, regional or other investment strategies. The Corporation shall determine the amount of the Program funds to commit to an Investment Entity. After an Investment Entity is under contract to the Corporation, the Corporation may award additional Program funds to an Investment Entity without an additional solicitation.

Section 4252.5 General Requirements

1. The Corporation and each Investment Entity receiving Program funds shall enter into one or more written agreements governing the Corporation's investment, which may include a Limited Partnership Agreement, that are consistent and in compliance with the Act, including section 16-u thereof, this rule, and other applicable laws and regulations.

2. The Corporation shall distribute Program funds promptly pursuant to a Disbursement Process agreed to between the Corporation and the Investment Entity in order to enable the Investment Entity to fulfill its commitments to Beneficiary Companies in a timely manner.

3. The commitment period for an Investment Entity to make investments with the Program funds shall typically be three years or less.

4. Returns on investments or interest accrued with respect to Program funds received by an Investment Entity through the Fund shall be returned to the Corporation in accordance with the agreements entered into between the Investment Entity and the Corporation.

Section 4252.6 Eligible Investments in Beneficiary Companies

In order to be eligible for an investment, including a Follow-on Investment, that includes Program funds, a Beneficiary Company must be a Seed-Stage Business. Prior to the investment of Program funds in a Beneficiary Company, the Beneficiary Company must agree, pursuant to a written agreement satisfactory to the Corporation, that the Beneficiary Company will be located and remain located within the State for a period satisfactory to the Corporation and that in the event that the Beneficiary Company breaches such obligation, the Corporation shall have all remedies at law and such other remedies as the Corporation may set forth in the agreement with the Beneficiary Company, which may include recovery or recapture, if full or in part, of the Program funds investment.

Investment Entities shall not invest Program funds in a Beneficiary Company in an amount greater than five hundred thousand dollars, or seven hundred fifty thousand dollars in the case of a biotechnology-related

Beneficiary Company, at any one time, unless the Beneficiary Company and the Investment Entity can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional economic activity in New York State and the Corporation consents to such greater investment in writing. Program funds may be used for Follow-on Investments in Portfolio Companies, subject to the investment amount limits and exceptions set forth above. Investments in Beneficiary Companies may take the form of Equity or Hybrid Investments.

Section 4252.7 Fund Accounts

Each participating Investment Entity shall deposit Program funds and program related investment proceeds (including, without limiting the foregoing, returns and interest) into a bank account in a State or Federally chartered banking institution, satisfactory to the Corporation, or as otherwise agreed in writing between the Corporation and the Investment Entity.

Section 4252.8 Matching Investment Funds Requirements

At such time as an Investment Entity has invested fifty percent of the Program funds committed to such Investment Entity and annually thereafter, the aggregate investments of Program funds by the Investment Entity in Beneficiary Companies shall be leveraged with Matching Investment Funds from private sources of capital, excluding investments after the initial funding round, at a ratio equal to or greater than two to one (2:1). Investments made in funding rounds prior to the date of the initial investment of Program Funds shall not be counted toward satisfying this Matching Investment Funds requirement. Funding provided by the State of New York, including, but not limited to, Small Business Technology Investment Fund proceeds, does not satisfy this Matching Investment Funds requirement.

Section 4252.9 Fees and Capital Gains

The Investment Entities may charge fees, pursuant to a written schedule of fees, and receive Carried Interest on Capital Gains with the prior written approval of the Corporation. The amount of any fees and the amount of the Carried Interest on Capital Gains will be detailed in the agreements to be entered into between the Investment Entity and the Corporation. Returns to the Corporation, such as capital gains and the return of the investment, will be detailed in the agreements to be entered into between the Investment Entity and the Corporation.

Section 4252.10 Auditing, Compliance and Reporting

The Corporation shall evaluate the investment activities of each participating Investment Entity in conformance with the agreements to be entered into between the Corporation and the Investment Entity, in accordance with the criteria set forth in section 16-u of the Act, and this rule and in accordance with other applicable law and regulations. Each Investment Entity will be required to provide quarterly and annual reports outlining the impact and effectiveness of the investments made, current status, leveraged funds, business revenue, numbers of jobs created, and other items as determined by Corporation. These annual reports and additional reports as requested at the discretion of the Corporation may be required to include:

- a. The number of investments made;*
- b. The type of each investment;*
- c. The location of each Beneficiary Company;*
- d. The amount of Program funds and private funds invested in each Beneficiary Company;*
- e. The projected and actual number of jobs created or retained by each Beneficiary Company receiving Program funds;*
- f. The type of product or technology being developed or produced by each Beneficiary Company; and*
- g. Such other information as the Corporation may require.*

The Corporation may conduct or request audits of the Investment Entities in order to ensure compliance with the provisions of section 16-u of the Act, any regulations promulgated with respect thereto and agreements between the Investment Entities and the Corporation of all aspects of the use of Program funds and investment transactions.

In the event that the Corporation finds substantive noncompliance at any time, the Corporation may terminate the Investment Entity's participation in the Program. The agreements between the Corporation and the Investment Entity shall provide that, upon termination of an Investment Entity's participation in the Program, the Investment Entity shall return to the Corporation, promptly after its demand thereof, all Program funds held by the Investment Entity, and provide to the Corporation, promptly after its demand thereof, an accounting of all Program funds, including all currently outstanding investments that were made using Program funds. Notwithstanding such termination, the Investment Entity shall remain liable to the Corporation with respect to any unpaid amounts due from the Investment Entity pursuant to the terms of the agreements between the Corporation and the Investment Entity. In the event that an Investment Entity's participation in the Program is terminated, the

Corporation, in its discretion, may transfer to one or more of the other participating Investment Entities without an additional solicitation all or part of the award made to such Investment Entity.

Section 4252.11 Confidentiality and State Employees

To the extent permitted by law, all information regarding the financial condition, marketing plans, customer lists, or other trade secrets and proprietary information of a Beneficiary Company shall be confidential and exempt from public disclosures.

To the extent permitted by law, no full-time employee of the State of New York or any agency, department, authority or public benefit Corporation thereof shall be eligible to receive assistance under this Program.

Section 4252.12 Non-Discrimination and Affirmative Action

The Corporation's affirmative action and non-discrimination policies and programs are grounded in both public policy and applicable law, including but not limited to, Section 2879 of the Public Authorities Law, Article 15-A of the Executive Law and Section 6254 (11) of the Unconsolidated Laws. These laws mandate the Corporation to take affirmative action in implementing programs. The Corporation has charged the affirmative action department with overall responsibility to ensure that the spirit of these mandates is incorporated into the Corporation's policies and projects. Where applicable, the affirmative action department will work with applicants in developing an appropriate Affirmative Action Program for business and employment opportunities generated by the Corporation's participation of the Program.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 3, 2013.

Text of rule and any required statements and analyses may be obtained from: Antovk Pidedjian, Sr. Counsel, New York Urban Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017, (212) 803-3792, email: apidedjian@esd.ny.gov

Regulatory Impact Statement

1. **Statutory Authority:** Section 9-c of the New York State Urban Development Corporation Act Chapter 174 of the Laws of 1968 (Uncon. Laws section 6259-c), as amended (the "Act"), provides, in part, that the Corporation shall, assisted by the Commissioner of Economic Development and in consultation with the Department of Economic Development, promulgate rules and regulations in accordance with the State Administrative Procedure Act.

Section 16-u of the Act provides for the creation of the Innovate NY Fund (the "Program") and authorizes the New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation"), within available appropriations, to fund investments in small businesses engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments. The investments will be made in these small businesses through investment entities that are selected by and are under contract with the Corporation.

2. **Legislative Objectives:** Section 16-u of the Act (Uncon. Laws section 6266-u, added by Chapter 103 of the Laws of 2011) sets forth the legislative objective of authorizing the Corporation, within available appropriations, to provide funds to investment entities, including regional and local development organizations, technology development organizations, research universities and investment funds that provide seed-stage investments to support emerging New York state businesses that have demonstrated potential for substantial growth and job development in an emerging technology field and have the potential to generate additional economic activity in New York State. The adoption of 21 NYCRR Part 4252 will further these goals by setting forth the types of available assistance, evaluation criteria, the application process and related matters for the Program.

3. **Needs and Benefits:** The State has allocated \$25,922,157 of federal funds for this program. Innovate NY will provide investments to investment entities, in order to provide funding for those organizations' equity and quasi equity investments in New York's eligible small businesses. Small businesses have been determined to be a major source of employment throughout New York State. Small businesses have historically had difficulties obtaining capital in order to remain competitive and grow their operations, and the current economic difficulties have exacerbated this problem. Making equity investments in small businesses should sustain and potentially increase the employment provided by such businesses, especially during this period of historically high unemployment and underemployment. The Program allows the Corporation to use investment entities contracted through a competitive process by the Corporation to invest Program funds. The rule further facilitates the administration of the Program by defining eligible and ineligible small businesses, permissible types of investments and other criteria to be applied by the institutions in making equity investments in small businesses.

4. **Costs:** The Program is funded by a State appropriation of federal

funds in the amount of \$25,922,157 dollars. Pursuant to the rule, the amount of Program funds invested will not be greater than \$500,000 (or greater than \$750,000 in the case of any individual biotechnology-related beneficiary) at any one time, unless the beneficiary company can demonstrate to the satisfaction of the Corporation that exceeding the applicable investment limit significantly increases the potential of the investment to result in substantially greater growth, job development, and additional economic activity in New York State and the Corporation consents to such investment in writing. The costs to investment entities that participate in the Program would depend on the size of their existing fund and their particular structure for sourcing, evaluating, and monitoring investments. The investment entities will propose a compensation structure for administering the Innovate NY funds, and that structure is likely to include both a management fee and a component of carried interest on capital gains.

5. Paperwork / Reporting: There are no additional reporting or paperwork requirements as a result of this rule for Program participants except those required by the statute creating the Program such as quarterly and annual reports on the organization's activity and providing information in connection with an audit by the Corporation with respect to the organization's use of Program funds. Standard documents used for most other assistance by the Corporation will be employed in keeping with the Corporation's overall effort to facilitate the application process for all of the Corporation's clients.

6. Local Government Mandates: The Program imposes no mandates – program, service, duty, or responsibility – upon any city, county, town, village, school district or other special district.

7. Duplication: The regulations do not duplicate any existing state or federal rule.

8. Alternatives: While larger financial institutions can potentially provide small business financing and the investment entities already provide small business capital, the access of seed-stage businesses to capital is very limited. The State has established the Program in order to enhance the access of small businesses to such capital, and the proposed rule provides the regulatory basis for providing investment entities for equity investments in small businesses in accordance with the statutory requirements of the Program.

9. Federal Standards: There are no minimum federal standards related to this regulation. The regulation is not inconsistent with any federal standards or requirements. Federal funds through US Treasury's State Small Business Credit Initiative are being used for this program and all regulations associated with SSBCI will be followed.

10. Compliance Schedule: The regulation shall take effect immediately upon adoption.

Regulatory Flexibility Analysis

1. Effects of Rule: In the rule: "Small business" is defined as a business that is resident and authorized to do business in the State, independently owned and operated, not dominant in its field, and employs one hundred or fewer persons on a full time basis; "Investment Entity" is defined as a regional and local economic development organization, technology development organization, research university, or investment fund that provides or is otherwise qualified to make seed-stage investments in companies located in the State of New York and "Seed-Stage Business" is defined as a small business, located in New York State and working in one or more emerging technology fields, which demonstrates a potential for substantial growth and job development, has the potential to generate additional economic activity in New York State, and that is pre-revenue, has only begun to earn revenue, or has not yet received institutional investments. The rule will facilitate the statutory Program's purpose of having New York State Urban Development Corporation d/b/a Empire State Development (the "Corporation") make investments in investment entities in order to provide funding in principal amounts equal to or less than five hundred thousand dollars to small businesses, or seven-hundred fifty thousand to biotechnology-related small businesses, with the possibility of additional funding under prescribed circumstances, located within the State, that are engaged in one or more emerging technology fields and demonstrating a potential for substantial growth and job development. These businesses shall be in the pre-revenue, recently established revenue stream phase or not yet in receipt of institutional investments.

2. Compliance Requirements: There are no compliance requirements for local governments in these regulations. Small businesses must comply with the compliance requirements applicable to all participating lending institutions regardless of size. Eligible small businesses receiving funds must use the funds for a business purpose and remain in the State for a period acceptable to the Corporation. Penalties will be imposed for any failure to meet requirements. This is a voluntary program. Entities not wishing to undertake the compliance obligations need not participate.

3. Professional Services: Applicants do not need to obtain professional services to comply with these regulations.

4. Compliance Costs: There are no compliance costs for small businesses and local governments in these regulations.

5. Economic and Technological Feasibility: There are no compliance costs for small businesses and local governments in these regulations so there is no basis for determining the economic and technological feasibility for compliance with the rule by small businesses and local governments.

6. Minimizing Adverse Impact: This rule has no adverse impacts on small businesses or local governments because it is designed to provide funds to investment entities in order to enhance the ability of such organizations to invest in small businesses.

7. Small Business and Local Government Participation: A number of investment entities that provide equity or quasi-equity investing in small businesses were surveyed by the Corporation and were supportive of the Fund and its structure. A number of roundtable discussions were held as part of the 2009 Small Business Task Force as well as Legislature-sponsored sessions, where various stakeholders supported and advocated for such a fund. Creation of such a seed fund was one of the primary recommendations of the 2009 Small Business Task Force.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: Investment entities serving all of the 44 counties defined as rural by the Executive Law § 481(7), are eligible to apply for the Innovate NY Fund (the "Program") assistance pursuant to a State-wide request for proposals.

2. Reporting, Recordkeeping and Other Compliance Requirements and Professional Services: The rule will not impose any new or additional reporting or recordkeeping requirements other than those that would be required of any investment entity receiving similar equity investments, on such matters as financial condition, required matching funds, and utilization of Program funds; no additional acts will be needed to comply other than the said reporting requirements and the making of equity investments in small businesses in the normal course of the business for any investment entity that receives Program assistance; and, it is not anticipated that applicants will have to secure any additional professional services in order to comply with this rule.

3. Costs: The costs to investment entities that participate in the Program would depend on the size of their existing fund and their particular structure for sourcing, evaluating, and monitoring investments. The investment entities will propose a compensation structure for administering the Innovate NY funds, and that structure is likely to include both a management fee and a component of carried interest on capital gains. While industry standard is 20% carried interest in capital gains and a 2.5% yearly management fee that declines over time, we expect that respondents may be more competitive.

4. Minimizing Adverse Impact: The purpose of the Program is to provide funds to investment entities which will invest in seed-stage companies. This rule provides a basis for cooperation between the State and investment entities, including investment entities that serve rural areas of the State, in order to maximize the Program's effectiveness and minimize any negative impacts for such investment entities and the small businesses, including small businesses located in rural areas of the State, that such investment entities serve.

5. Rural Area Participation: This rule maximizes geographic participation by not limiting applicants to those located only in urban areas or only in rural areas.

Job Impact Statement

These regulations will not adversely affect jobs or employment opportunities in New York State. The regulations are intended to improve the economy of New York by providing greater access to capital for small businesses working in one or more emerging technology fields. The Program includes minorities, women and other New Yorkers who have difficulty accessing regular credit markets.

There will be no adverse impact on job opportunities in the state.

Workers' Compensation Board

ERRATUM

A Notice of Adoption, I.D. No. WCB-36-12-00003-A, pertaining to Pharmacy and Durable Medical Equipment Fee Schedules and Requirements for Designated Pharmacies, published in the November 28, 2012 issue of the *State Register* contained the incorrect substance of the final rule. Following is the correct substance of the final rule:

Substance of final rule: Chapter 6 of the Laws of 2007 added Section 13-o to the Workers' Compensation Law ("WCL") mandating the Chair to adopt a pharmaceutical fee schedule. WCL Section 13(a) mandates that the Chair shall establish a schedule for charges and fees for medical care and treatment. Part of the treatment listed under Section 13(a) includes medical supplies and devices that are classified as durable medical

equipment. The proposed rule adopts a pharmaceutical fee schedule and durable medical equipment fee schedule to comply with the mandates. This rule adds a new Part 440 which sets forth the pharmacy fee schedule and procedures and rules for utilization of the pharmacy fee schedule and a new Part 442 which sets forth the durable medical equipment fee schedule.

Section 440.1 sets forth that the pharmacy fee schedule is applicable to prescription drugs or medicines dispensed on or after the most recent effective date of § 440.5 and the reimbursement for drugs dispensed before that is the fee schedule in place on the date dispensed.

Section 440.2 provides the definitions for average wholesale price, brand name drugs, controlled substance, generic drug, independent pharmacy, insurance carrier, pharmacy benefits management, pharmacy benefits manager, pharmacy chain, pharmacy processing agent, remote pharmacy, rural area, self-insured employer and third party payor.

Section 440.3 provides that a carrier or self-insured employer may designate a pharmacy or pharmacy network which an injured worker must use to fill prescriptions for work related injuries. This section sets forth the requirements applicable to pharmacies that are designated as part of a pharmacy network at which an injured worker must fill prescriptions. This section also sets forth the procedures applicable in circumstances under which an injured worker is not required to use a designated pharmacy or pharmacy network.

Section 440.4 sets forth the requirements for notification to the injured worker that the carrier or self-insured employer has designated a pharmacy or pharmacy network that the injured worker must use to fill prescriptions. This section provides the information that must be provided in the notice to the injured worker including time frames for notice and method of delivery as well as notifications of changes in a pharmacy network.

Section 440.5 sets forth the fee schedule for prescription drugs. The fee schedule in uncontroverted cases is average wholesale price minus twelve percent for brand name drugs and average wholesale price minus twenty percent for generic drugs plus a dispensing fee of five dollars for generic drugs and four dollars for brand name drugs, and in controverted cases is twenty-five percent above the fee schedule for uncontroverted claims plus a dispensing fee of seven dollars and fifty cents for generic drugs and six dollars for brand-name drugs. This section also addresses the fee for compounded medications and when a drug is repackaged.

Section 440.6 provides that generic drugs shall be prescribed except as otherwise permitted by law.

Section 440.7 sets forth a transition period for injured workers to transfer prescriptions to a designated pharmacy or pharmacy network. Prescriptions for controlled substances must be transferred when all refills for the prescription are exhausted or after ninety days following notification of a designated pharmacy. Non-controlled substances must be transferred to a designated pharmacy when all refills are exhausted or after 60 days following notification.

Section 440.8 sets forth the procedure for payment of prescription bills or reimbursement. A carrier or self-insured employer is required to pay any undisputed bill or portion of a bill and notify the injured worker, the claimant's representative, the pharmacy or pharmacy benefits manager, or other third party submitting the bill on the same day and within 45 days of receipt of the bill of the reasons why the bill or portion of the bill is not being paid, or request documentation to determine the self-insured employer's or carrier's liability for the bill. If objection to a bill or portion of a bill is not received within 45 days, then the self-insured employer or carrier is deemed to have waived any objection to payment of the bill and must pay the bill. This section also provides that a pharmacy shall not charge an injured worker or third party more than the pharmacy fee schedule when the injured worker pays for prescriptions out-of-pocket, and the worker or third party shall be reimbursed at that rate.

Section 440.9 provides that if an injured worker's primary language is other than English, that notices required under this part must be in the injured worker's primary language.

Section 440.10 provides that the Chair will enforce the rule by exercising his authority pursuant to Workers' Compensation Law § 111 to request documents and may refer matters to appropriate agencies for violations.

Part 442 sets forth the fee schedule for durable medical equipment.

Section 442.1 sets for that the fee schedule is applicable to durable medical goods and medical and surgical supplies dispensed on or after July 11, 2007.

Section 442.2 sets forth the fee schedule for durable medical

equipment as indexed to the New York State Medicaid fee schedule, except the payment for bone growth stimulators shall be made in one payment. This section also provides for the rate of reimbursement when Medicaid has not established a fee payable for a specific item and for orthopedic footwear. This section also provides for adjustments to the fee schedule by the Chair as deemed appropriate in circumstances where the reimbursement amount is grossly inadequate to meet a pharmacies or providers costs and clarifies that hearing aids are not durable medical equipment for purposes of this rule.