

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 2011 Edition of National Institute of Standards and Technology (“NIST”) Handbook 44

I.D. No. AAM-39-11-00003-A

Filing No. 51

Filing Date: 2012-01-24

Effective Date: 2012-02-08

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 2011 edition of National Institute of Standards and Technology (“NIST”) Handbook 44.

Purpose: To incorporate by reference in 1 NYCRR the 2011 edition of NIST Handbook 44.

Text or summary was published in the September 28, 2011 issue of the Register, I.D. No. AAM-39-11-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-03-11-00003-P	January 19, 2011	January 19, 2012

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-12-00001-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Family Assistance under the subheading “Office of Temporary and Disability Assistance,” by adding thereto the position of Chief Information Officer.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Consolidated Regulatory Impact Statement

1. Statutory authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the

competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local government mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Consolidated Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Consolidated Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Consolidated Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-12-00002-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Secretary from 1 to 2.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-12-00003-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the position of Director Mental Health Field Office 1 (1).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-06-12-00004-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by decreasing the number of positions of øAssistant Regional Director of Parole Operations from 7 to 3 and by increasing the number of positions of øRegional Director Parole Operations from 5 to 7.

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-06-12-00005-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Commission on Quality of Care and Advocacy for Persons with Disabilities,” by adding thereto the positions of Client Advocate (CQC) (8).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-06-12-00006-P

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

Proposed Action: Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: Add subheading in exempt and non-competitive classes; classify and delete positions in exempt and non-competitive classes.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by deleting therefrom the position of Counsel and by decreasing the number of positions of Associate Counsel from 6 to 5 and Executive Assistant from 3 to 1; and, by adding thereto the subheading “State Board of Parole,” and the positions of Associate Counsel, Counsel and Executive Assistant (2); and,

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by deleting therefrom the positions of Hearing Officer (Parole Revocations), Preliminary Hearing Officer (Parole Revo-

cation) (9), øPrincipal Hearing Officer (Parole Revocation) (1) and Supervising Hearing Officer (Parole Revocation) (3) and by decreasing the number of positions of øAssistant Counsel from 10 to 5 and øSecretary 2 from 2 to 1; and, by adding thereto the subheading “State Board of Parole,” and the positions of øAssistant Counsel (5), Hearing Officer (Parole Revocation), Preliminary Hearing Officer (Parole Revocation) (9), øPrincipal Hearing Officer (Parole Revocation) (1), øSecretary 2 (1) and Supervising Hearing Officer (Parole Revocation) (3).

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

Data, views or arguments may be submitted to: Mark Worden, Associate Attorney, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: mark.worden@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Orleans Correctional Facility

I.D. No. CCS-48-11-00006-A

Filing No. 50

Filing Date: 2012-01-24

Effective Date: 2012-02-08

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

Action taken: Amendment of section 100.115(c) of Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 73

Subject: Orleans Correctional Facility.

Purpose: To add the function residential treatment facility to the facility classification.

Text or summary was published in the November 30, 2011 issue of the Register, I.D. No. CCS-48-11-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Certified Public Accountants

I.D. No. EDU-45-11-00011-E

Filing No. 48

Filing Date: 2012-01-20

Effective Date: 2012-01-20

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

Action taken: Repeal of sections 29.10(h) and 70.7; addition of new sections 29.10(h) and 70.7; and amendment of section 70.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 7406(2), 7408(3)(b) and (h); and L. 2011, ch. 456

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

Specific reasons underlying the finding of necessity: The proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education are necessary to conform them to the requirements of chapter 456 of the Laws of 2011. Chapter 456 amended sections 7406, 7406-a, and section 7408 of Education Law to provide that a certified public accountant, licensed by another state which the Board of Regents has determined to have substantially equivalent public accountant licensure requirements, or whose individual licensure qualifications are verified by the Department to be substantially equivalent to New York's requirements, and in good standing, may practice public accountancy in this state, if the certified public accountant holds a valid license to practice public accountancy in the other state and practices public accountancy in another state that is his or her principal place of business. The new law also allows a certified public accountant who qualifies for a practice privilege to register a public accounting firm in this state.

The proposed regulations implement the new law and add definitions of unprofessional conduct related to the statutory changes. The Board of Regents approved emergency regulations in October 2011, with an effective date of November 15, 2011, consistent with the effective date of the law. Those regulations have subsequently been revised, based on feedback from interested parties. Emergency action on the amended regulations is necessary for the preservation of the public safety and general welfare in order to maintain in effect the rules and regulations implementing chapter 456 of the Laws of 2011, which became effective on November 15, 2011, during the required public comment period relating to revisions made to the regulations previously adopted.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the March 2012 Regents meeting, after publication in the State Register and expiration of the 30-day public comment period for revised rule makings required under the State Administrative Procedure Act.

Subject: Certified Public Accountants.

Purpose: To implement chapter 456 of the Laws of 2011.

Text of emergency rule: 1. The emergency action taken at the October 17-18, 2011 meeting of the Board of Regents, which repealed subdivision (h) of section 29.10 of the Regents Rules and added a new subdivision (h), repealed section 70.7 of the Commissioner's Regulations and added a new section 70.7, and amended subdivision (a) and paragraph (2) of subdivision (d) of section 70.8 of the Commissioner's Regulations, is repealed, effective January 20, 2012.

2. Subdivision (h) of section 29.10 of the Rules of the Board of Regents is repealed and a new subdivision (h) is added, effective January 20, 2012 to read as follow:

(h) *Practice privilege.*

(1) *Anyone practicing public accountancy under a practice privilege pursuant to subdivision 2 of section 7406 of the Education Law shall be subject to all applicable provisions of the Education Law and of this title relating to professional misconduct as if he or she is licensed to practice in New York.*

(2) *Unprofessional conduct in the practice of public accountancy shall include the failure to provide notice as required by paragraph (6) or paragraph (7) of subdivision (b) of section 70.7 of this title.*

3. Section 70.7 of the Regulations of the Commissioner of Education is

repealed and a new section 70.7 is added, effective January 20, 2012, to read as follows:

§ 70.7 Practice by certain out-of-state individuals and firms.

(a) Practice by certain out-of-state firms.

(1) A firm that holds a valid license, registration, or permit in another state shall register with the Department if the firm offers to engage or engages in the practice of public accountancy pursuant to subdivision 1 or 2 of section 7401 of the Education Law;

(2) A firm that holds a valid license, registration, or permit in another state that is not required to register with the Department pursuant to paragraph (1) of this subdivision, including those out-of-state firms that use the title "certified public accountant" or "certified public accountants" or the designation "CPA" or "CPAs" but do not have an office in New York, may practice in this state without a firm registration with the Department, if the firm's practice is limited to the practice of public accountancy pursuant to subdivision 3 of section 7401 of the Education Law;

(3) A firm may register and perform services pursuant to this subdivision only if:

(i) at least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor is licensed as a certified public accountant engaged within the United States in the practice of public accountancy and is in good standing as a certified public accountant of one or more of the states of the United States;

(ii) the firm complies with the Department's mandatory quality review program pursuant to section 7410 of the Education Law; and

(iii) the services are performed by an individual who is licensed and in good standing as a certified public accountant of one or more states of the United States.

(b) Practice by certain out-of-state individuals.

(1) An individual who holds a certificate or license as a certified public accountant issued by another state, who is in good standing in the state where certified or licensed, and whose principal place of business is not in this state may practice public accountancy in this state without obtaining a license pursuant to section 7404 of the Education Law, if:

(i) the Department has determined that the other state has education, examination, and experience requirements for certification or licensure that are substantially equivalent to or exceed the requirements for licensure in this state; or

(ii) the Department has verified that the individual possesses licensure qualifications that are substantially equivalent to or exceed the requirements for licensure in this state.

(2) Except as otherwise provided in paragraph (6) or (7) of this subdivision, an individual who meets the requirements of paragraph (1) of this subdivision and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the Department. An individual who wishes to practice public accountancy in this state, but does not meet the requirements of paragraph (1) of this subdivision is subject to the full licensing and registration requirements of the education law and of this title.

(3) An individual licensee or individual practicing under this subdivision who signs or authorizes someone to sign the accountant's report on the financial statement on behalf of a firm shall meet the competency requirements set out in the professional standards for such services and as set out in paragraph (13) of subdivision (a) of section 29.10 of this title.

(4) An individual practicing under this section shall practice through a firm that is registered with the Department pursuant to section 7408 of the Education Law if the individual performs any attest or compilation service as defined in section 7401-a of the Education Law.

(5) Each certified public accountant who practices in this state pursuant to this section and each firm that employs such certified public accountant to provide services in New York consent to all of the following as a condition of the exercise of such practice privilege:

(i) to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license and an individual with a practice privilege is a licensee;

(ii) to comply with Article 149 of the Education Law and the provisions of this Title relating to public accountancy; and

(iii) to the appointment of the Secretary of State or other public official acceptable to the Department, in the certified public accountant's state of licensure or the state in which the firm has its principal place of business, as the certified public accountant's or firm's agent upon whom process may be served in any action or proceeding by the Department against such certified public accountant or firm.

(6) In the event the license from the state of the certified public accountant's principal place of business is no longer valid or in good standing, or that the certified public accountant has had any final disciplinary action taken by the licensing or disciplinary authority of any other state

concerning the practice of public accountancy that has resulted in any of the dispositions specified in subparagraphs (i) or (ii) of this paragraph, the certified public accountant shall so notify the Department, on a form prescribed by the Department, and shall immediately cease offering to perform or performing such services in this state individually and on behalf of his or her firm, until he or she has received from the Department written permission to do so:

(i) the suspension or revocation of his or her license; or

(ii) other disciplinary action against his or her license that arises from:

(a) gross negligence, recklessness or intentional wrongdoing relating to the practice of public accountancy; or

(b) fraud or misappropriation of funds relating to the practice of public accountancy; or

(c) preparation, publication, or dissemination of false, fraudulent, or materially incomplete or misleading financial statements, reports or information relating to the practice of public accountancy.

(7) Any certified public accountant who, within the seven years immediately preceding the date on which he or she wishes to practice in New York, has been subject to any of the actions specified in subparagraphs (i), (ii), (iii), or (iv) of this paragraph shall so notify the Department, on a form prescribed by the Department, and shall not practice public accountancy in this state pursuant to Education Law section 7406(2) and this section, until he or she has received from the Department written permission to do so. In determining whether the certified public accountant shall be allowed to practice in this state, the Department shall follow the procedure to determine whether an applicant for licensure is of good moral character. Anyone failing to provide the notice required by this paragraph shall be subject to the personal and subject matter jurisdiction and disciplinary authority of the Board of Regents as if the practice privilege is a license, and an individual with a practice privilege is a licensee, and may be deemed to be practicing in violation of Education Law section 6512:

(i) has been the subject of any final disciplinary action taken against him or her by the licensing or disciplinary authority of any other jurisdiction with respect to any professional license or has any charges of professional misconduct pending against him or her in any other jurisdiction; or

(ii) has had his or her license in another jurisdiction reinstated after a suspension or revocation of said license; or

(iii) has been denied issuance or renewal of a professional license or certificate in any other jurisdiction for any reason other than an inadvertent administrative error; or

(iv) has been convicted of a crime or is subject to pending criminal charges in any jurisdiction.

(8) Notwithstanding paragraph (1) of this subdivision or any other inconsistent law or rule to the contrary, a certified public accountant licensed by another state and in good standing, who otherwise meets the practice privilege requirements under this section and files an application for licensure under Education Law section 7404, may continue to practice under such privilege for a period coterminous with the period during which his or her application for licensure remains pending with the Department, including any period after the certified public accountant establishes a principal place of business in New York, while his or her application is pending.

4. Subdivision (a) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective January 20, 2012, as follows:

(a) Pursuant to the provisions of Education Law section 7408, a firm shall register with the department if:

(1) ...

(2) except as otherwise provided in section 70.7(a)(2) of this Part, the firm uses the title "CPA" or "CPA firm" or the title "PA" or "PA firm."

5. Paragraph (2) of subdivision (d) of section 70.8 of the Regulations of the Commissioner of Education is amended, effective January 20, 2012, as follows:

(2) \$10 for the sole proprietor or each general partner of a partnership or partner of a limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is located in New York [or who is otherwise authorized to practice in New York through a temporary practice permit issued pursuant to section 70.7 of this part] and for each certified public accountant or public accountant licensed in New York State that signs or authorizes someone to sign an engagement on behalf of a New York State client but whose principal place of business is not located in New York State. Any firm that registers with the Department pursuant the provisions of Education Law section 7408, but does not have a sole proprietor or a general partner of a partnership or a partner of a limited liability partnership, or a member of a limited liability company or a shareholder of a professional service whose principal place of business is in NYS, shall pay \$10 for the firm.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-45-11-00011-P, Issue of November 9, 2011. The emergency rule will expire March 19, 2012.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8869, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules in the supervision of the practice of the professions.

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

Chapter 456 of the Laws of 2011 repealed section 7406-a and amended sections 7406 and 7408 of the Education Law.

Subdivision (2) of section 7406 of the Education Law provides that a certified public accountant, licensed by another state which the Board of Regents has determined to have substantially equivalent public accountant licensure requirements, or whose individual licensure qualifications are verified by the Department to be substantially equivalent to New York's requirements, and in good standing, may practice public accountancy in this state, if the certified public accountant holds a valid license to practice public accountancy in the other state and practices public accountancy in another state that is his or her principal place of business.

Section 7408 of the Education Law establishes a registration requirement for public accounting firms that perform attest and/or compilation services and professional services that are incident to attest and/or compilation services or that use the title CPA or CPA firm or the title PA or PA firm, and authorizes the Board of Regents to establish a registration process for public accounting firms. This section also restricts the use of certain titles and designations by non-licensed accountants and establishes reporting requirements for non-licensed accountants issuing financial statements.

2. LEGISLATIVE OBJECTIVES:

The proposed amendments to the Rules of the Board of Regents and to the Regulations of the Commissioner of Education are necessary to implement chapter 456 of the Laws of 2011, which becomes effective on February 1, 2012.

3. NEEDS AND BENEFITS:

The proposed amendments are needed to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

4. COSTS:

(a) Cost to State government: There are no additional costs beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

(b) Cost to local government: There are no costs to local government.

(c) Cost to private regulated parties: There are no additional costs to private regulated parties beyond those imposed by the current regulation.

(d) Costs to the regulatory agency: As stated above in "Costs to State Government," the proposed amendments will not impose any additional costs on SED beyond those imposed by the statute; however, there will be a reduction in the revenue that had been generated by the issuance of temporary practice permits of approximately \$25,000 per year.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendments relate to establishing a practice privilege in public accountancy to permit practice in New York by certain CPAs licensed in other states. The amendments do not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendments will not impose any other paperwork requirement.

7. DUPLICATION:

The proposed amendments do not duplicate any other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendments and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards established in law for the subject matter of the proposed amendments.

10. COMPLIANCE SCHEDULE:

Regulated parties will be required to comply with the regulation as of November 15, 2011, the effective date of the new law. It is anticipated that the proposed rule will be presented for permanent adoption at the March 19-20, 2012 Regents meeting, with an effective date of April 11, 2012.

Regulatory Flexibility Analysis

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education are to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

The amendments do not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments beyond those inherent in the statute, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendments that they do not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendments will affect an estimated 2,743 certified public accountants and public accountants that are located in a rural county in New York State.

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

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. The proposed amendment will not impose any compliance requirements beyond those inherent in chapter 456 and will not require regulated parties, including those that are located in rural areas of the State, to hire professional services to comply.

3. COSTS:

The amendments will not impose any additional costs on licensees, including those that are located in rural areas of the State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendments implement chapter 456 of the Laws of 2011 and make no exception for licensees who live or work in rural areas. Because of the nature of the proposed amendments, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education implement chapter 456 of the Laws of 2011. During the legislative process, the State Education Department solicited comments from the State Board for Public Accountancy and the New York State Society of Certified Public Accountants, both of which include members located in all areas of New York State, including rural areas of the State.

Job Impact Statement

The purpose of the proposed amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education is to implement chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states. Because it is evident from the nature of the rule and regulation that they will have no impact on the

number of jobs and number employment opportunities in public accounting or any other field beyond those inherent in chapter 456, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-06-12-00010-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 Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599 and L. 2008, ch. 311

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2011 (instead of 2010).

Text of proposed rule: Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the Accounting Practices and Procedures Manual as of March [2010] 2011 * (accounting manual) includes a body of accounting guidelines referred to as statements of statutory accounting principles (SSAPs). The accounting manual shall be used in the preparation of quarterly statements and the annual statement for [2010] 2011, which will be filed in [2011] 2012.

The footnote to subdivision (c) of Section 83.2 is amended to read as follows:

* ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2006] 2010. © Copyright 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 by National Association of Insurance Commissioners, in Kansas City, Missouri.

Text of proposed rule and any required statements and analyses may be obtained from: Sam Wachtel, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5269, email: samuel.wachtel@dfs.ny.gov

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

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

Consensus Rule Making Determination

No person is likely to object to the rule because the action is a technical amendment that merely updates a reference to the Accounting Practices and Procedures Manual ("Accounting Manual"), which is incorporated by reference into this regulation. This meets the definition of a consensus rule making as defined by State Administrative Procedure Act Section 102(11).

Job Impact Statement

The Department has no reason to believe that this rule will have any impact on jobs and employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner. The current amendment only changes a reference to a publication incorporated by reference in the regulation.

The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

Department of Motor Vehicles

NOTICE OF ADOPTION

Skills Test Waiver for Commercial Driver's Licenses for Certain Veterans Who Meet Federal Requirements

I.D. No. MTV-48-11-00003-A

Filing No. 47

Filing Date: 2012-01-19

Effective Date: 2012-02-08

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

Action taken: Amendment of section 8.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(4)(b), (f) and 508(1)(4)

Subject: Skills test waiver for commercial driver's licenses for certain veterans who meet federal requirements.

Purpose: To waive the skills test required for a commercial driver's license for certain veterans who meet federal requirements.

Text or summary was published in the November 30, 2011 issue of the Register, I.D. No. MTV-48-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Accident Prevention Course Internet and Other Technologies Pilot Program

I.D. No. MTV-48-11-00009-A

Filing No. 53

Filing Date: 2012-01-24

Effective Date: 2012-02-08

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

Action taken: Amendment of Part 141 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 399-1 and 399-n

Subject: Accident Prevention Course Internet and Other Technologies Pilot Program.

Purpose: To strengthen the Accident Prevention Course Internet and Other Technologies Pilot Program.

Text or summary was published in the November 30, 2011 issue of the Register, I.D. No. MTV-48-11-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

Assessment of Public Comment

Comment: The National Safety Council commented as follows:

"Biometrics: This section has been amended to allow students who fail to have their identity verified by the biometric technique after five (5) attempts shall be excluded from the course. In communications with the DMV, they confirmed that while this change is for all biometric methods used, the primary problem is with the keystroke method of validation. They indicated it was discovered during testing that this method can cause problems even for people trying to legitimately pass. They also indicated that they've had complaints about this method from the students. NSC firmly believes that if the DMV recognizes there is a problem with this biometric method, they should consider removing it as an acceptable biometric method rather than changing the regulation to accommodate the problem."

Response: The Department agrees that the value of the keystroke validation method deserves close scrutiny. However, since this is a pilot program and is intended to evaluate both the efficacy of not only the course methodology, but the controls on that methodology, we believe that this change will provide us important data without inordinately risking the integrity of the individual program. At the end of the five year pilot program, we will re-evaluate all validation techniques.

Comment: The Empire Safety Council offered the following comments, each of which are separately addressed:

(1) The proposed rule provides: The course must be approved as a classroom course pursuant to Article 12-B of the Vehicle and Traffic Law and such course must have been in existence for a minimum of one year, with at least 20 classes conducted, prior to applying for ADM course approval.

The Empire Safety Council believes that a potential 100 students is too small of a population for any studies to be proven.

Response: The course must be approved as a classroom course pursuant to Article 12-B of the Vehicle and Traffic Law. Sections 399-e(1)(a) and § 399-e(1)(f) of such law require the course to have been given for at least two years by the applicant agency or organization prior to the submission of any application, and that the application be submitted with proof of effectiveness, pursuant to section 399-f. It is only after this initial approval that the new sponsor must provide classroom courses for one year, conducting at least 20 classes, before it can then apply for ADM course approval. The Department believes that one year is a sufficient threshold for the new sponsor to establish a credible history and to demonstrate proof of its administrative abilities.

(2) The proposed rule provides: The course may not be delivered via the internet based course, but rather, must involve the use of one or more of the following: DVDs or CDs, pay-per-view television through a cable television provider, or other delivery method approved by the Commissioner.

The Empire Safety Council believes that no proof of effectiveness studies have been conducted and that these delivery methods should not be approved without demonstrated proof that these delivery methods are valid satisfactory education mediums.

Response: The ADM is a legislatively mandated five-year pilot program designed to evaluate utilizing internet and other technologies. The intent of barring new applicants from using the internet based course "is in accordance with the legislative objective of exploring various means and methods of offering the course during the pilot program" Part 147.(a) of the Commissioner's Regulations requires that each sponsor evaluate the effectiveness of their ADM course, and submit the results to the Department no less than 60 business days prior to the end of the pilot program. Additionally, the Department is required to evaluate and report the results of the pilot to the Governor, Senate and Assembly.

(3) Sponsors seeking approval for their IPIRP courses must have a minimum total of seven (7) or more points, using two or more of these techniques, provided, however, that one point must be for content questions. The content questions may be asked at random points throughout the course or at the end of each chapter or unit. Such questions do not need to be in the form of a final exam. Sponsors are free to suggest alternate techniques, although the actual points assigned will be based on a determination by DMV. Depending upon the robustness of the solution offered by the sponsor, DMV reserves the right to increase or decrease the point values above to reflect the quality of a particular sponsor's solution in meeting or exceeding the validation requirements. Participant private information, as defined in the personal identification section shall be encrypted.

The Empire Safety Council believes that it was the original legislative intent for sponsors to include a final exam as well as random (or end of session) quizzes to be included in their IPIRP courses.

Response: Content questions randomly asked throughout the course or at the end of each chapter/unit is sufficient (or a suggested alternative technique) to successfully engage students throughout the program. The intent of this amendment is to keep the student engaged in the content of the program through the use of current technologies. Basing student participation in this program on random questions or a final examination was neither the intent nor a requirement of the original legislation.

(4) Job Impact Statement. "A Job Impact Statement is not submitted with this proposal because it will not have an adverse impact on job development or job creation in the State."

The Empire Safety Council believes that there is increasing evidence that IPIRP courses take business and jobs away from classroom instructors. We believe that hundreds of instructors have seen loss of business, loss of employees or loss of facilities.

Response: The Legislature mandated the development of the five year pilot program to assess the IPIRP course as an alternative delivery method. It was not intended to replace the traditional classroom delivery method, but rather, to expand the types of alternative delivery methods for students

and provide greater delivery options and technologies. In addition, this proposed rule makes minor amendments to the existing IPIRP course and, consequently, does not have a negative or positive impact on job creation.

Comment: The New York Safety Program, Inc., the National Traffic Safety Institute, the National Point and Insurance Reduction Course, Inc., and the American Safety, Inc. expressed concern as follows:

"We are writing in opposition to the proposed regulatory change of Part 141.14 Appendix A. Specifically, we are opposed to the addition of the language "provided, however, that one point must be for content questions. The content questions may be asked at random points throughout the course or at the end of each chapter or unit. Such questions do not need to be in the form of a final exam."

We are requesting that the language be modified to read "Unless the biometric sample is positively authenticated one point must be for content questions. The content questions may be asked at random points throughout the course or at the end of each chapter or unit. Such questions do not need to be in the form of a final exam."

REASONING

The Spirit of Part 141

The spirit of part 141 is to provide the public with an alternative delivery method (ADM) as similar to a classroom course as possible.

By positively authenticating the biometric sample an ADM course can ensure that the actual course taker is in fact the true registered student. In addition, by using techniques identical to the ones used in classrooms an ADM course can also ensure student participation.

To illustrate, these are the steps involved in registering for and successfully completing the classroom PIRP course:

1. Begin Registration: Student signs up for the course either in-person, via telephone or over the Internet. He begins the registration process by providing his personal information (name, address, driver's license number) and payment information. He may get a unique confirmation number to prove enrollment and to present to the instructor.

2. Complete Registration by Positively Authenticating Identity: When the student arrives for class he completes registration by checking in with the instructor and authenticating his identity prior to starting the class. He does this by presenting his driver's license to the instructor who uses it to positively authenticate the student's identity.

3. Validate Identity: During class the instructor looks at each student to ensure that the same person is still in attendance. If a student leaves to go to the restroom, for example, the instructor will look at the student to confirm that the same person has returned to the class.

4. Validate Participation/Engagement: During class the instructor attempts to engage students by requesting their input on certain topics (e.g. How do you feel when a driver cuts you off?). The instructor also scans the classroom to ensure students are paying attention.

In comparison, the following are the steps involved in an ADM course that positively authenticates the biometric sample and uses techniques identical to ones used in classrooms to ensure participation. You will notice it duplicates the classroom model and presents it over the Internet as the IPIRP course:

1. Begin Registration: The IPIRP student will first sign up for the course by providing his personal information (name, address, driver's license number) and payment information either in-person, over the phone or on the Internet. He will then receive an email providing him with a password and another email with his user name. He must use this information to log into the course.

2. Complete Registration by Positively Authenticating Identity: Before starting the course the student submits and positively authenticates his biometric sample. He does this by providing a valid driver's license while submitting the sample to ensure the sample belongs to the registered course taker.

3. Validate Identity: While taking the course the student is prompted to validate his identity against his original biometric sample. Since his original biometric sample has already been positively authenticated, this step confirms that it is, in fact, the registered person who is participating.

4. Validate Participation/Engagement: The student's course participation and engagement is ensured using several methods:

Biometric validation: These will occur at several points throughout the course. This ensures that only the registered student is participating in the course.

Validation response time: When prompted for ID verification, the student must respond within the required time or will be automatically logged out and receive one failure of a validation point. This ensures that the student is actively participating in the course.

Interactive questionnaires: These questionnaires mimic the kinds of questions that an instructor asks in a classroom course. They ask about the student's personal experiences, opinions and point of view in order to help him apply the course lessons to his own life. They must be completed in full before the student is allowed to continue.

Page timers: Timers on each page force the student to stay on a given

page for the predetermined amount of time before proceeding. The student must click on Continue at the end of each page, and is therefore actively participating.

Logged out for inactivity: The student is automatically logged out after a period of inactivity. This ensures that the student is actively participating in the course.

SUMMARY

By positively authenticating the biometric sample and using participation techniques identical to ones used in classrooms an ADM course becomes equivalent to a classroom. Interactive questionnaires, timers on each page, being logged out due to inactivity, and random ID validation points prevent the student from leaving and mandate participation.

Ultimately neither classroom nor ADM can guarantee that every single student is paying attention. However, the fact is, since the student has to be present in both modalities, the vast majority (if not all) will engage and learn.

In closing, a classroom does not have any more ability than an ADM to force student participation. And since classrooms don't have content questions it is unfair to require them of an ADM course that is identical to a classroom."

Response: The original intent of Part 141 is to provide the public with alternate delivery methods (ADM) as a way of disseminating information about traffic safety to a wider audience. It was not meant to replace or replicate classroom training. While we agree that positively authenticating a biometric sample is a portion of validation, we believe it's in the realm of identity validation, not participation validation.

While the items set forth by the commentators (interactive questions, timers on each page, being logged out due to inactivity, etc.) are ways to determine if a person is in front of the computer, we believe that asking content questions is a better measure of participation. In a classroom setting, students are in front of the instructor and the instructor can and should be visually scanning the class to determine student focus. If a student is not engaged, the instructor can refocus the student by various means, including asking questions, walking near the student, etc.

With an I-PIRP course, the student is alone and possibly not paying attention to the information presented on the screen. By having all ADM courses ask content questions, there is a better chance that the student will pay attention, thereby absorbing the traffic safety information presented.

It is important to remember that this is a pilot program. In 2014, a report of the effectiveness of ADMs and the validation methods will be studied. A report on the program will be written and presented to the legislature. At that time, changes can be requested for the permanent program.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-03-10-00006-P	January 20, 2010
PSC-07-10-00011-P	February 17, 2010
PSC-18-11-00016-P	May 4, 2011
PSC-18-11-00017-P	May 4, 2011
PSC-19-11-00003-P	May 11, 2011
PSC-36-11-00004-P	September 7, 2011
PSC-37-11-00008-P	September 14, 2011
PSC-41-11-00012-P	October 12, 2011

NOTICE OF ADOPTION

Waiver of 16 NYCRR sections 894.1 to 894.4

I.D. No. PSC-36-11-00005-A

Filing Date: 2012-01-23

Effective Date: 2012-01-23

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

Action taken: On 1/19/12, the PSC adopted an order approving the Town of Gilboa's petition for a waiver of the rules contained in 16 NYCRR sec-

tions 94.1, 894.2, 894.3 and 894.4 to expedite the cable television franchising with Heart of the Catskills Comm., Inc. d/b/a MTC 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 January 19, 2012 adopted an order approving the Town of Gilboa's (Schoharie County) request for waiver of the rules contained in 16 NYCRR §§ 894.1, 894.2, 894.3, and 894.4 for a cable television franchise with The Heart of the Catskills Communication, Inc. d/b/a MTC 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: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email:leann_ayer@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-V-0311SA1)

NOTICE OF ADOPTION

Denying the Petition for Rehearing Relating to its Failure to Meet the 2010 Reliability Performance Mechanism

I.D. No. PSC-39-11-00017-A

Filing Date: 2012-01-19

Effective Date: 2012-01-19

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

Action taken: On 1/19/12, the PSC adopted an order denying Orange and Rockland Utilities' Petition for Rehearing for an exclusion relating to its failure to meet its 2010 Reliability Performance Mechanism duration target due to a July 19, 2010 storm event.

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

Subject: Denying the Petition for Rehearing relating to its failure to meet the 2010 Reliability Performance Mechanism.

Purpose: To deny the Petition for Rehearing relating to its failure to meet the 2010 Reliability Performance Mechanism.

Substance of final rule: The Commission, on January 19, 2012 adopted an order denying Orange and Rockland Utilities' Petition for Rehearing for an exclusion relating to its failure to meet its 2010 Reliability Performance Mechanism duration target due to a July 19, 2010 storm event.

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

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

Assessment of Public Comment

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

(07-E-0949SA7)

NOTICE OF ADOPTION

Economic Development Plan Filing for 2012

I.D. No. PSC-42-11-00020-A

Filing Date: 2012-01-24

Effective Date: 2012-01-24

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

Action taken: On 1/19/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan filing for 2012 at the \$9.1 million spending level previously approved by an order issued October 24, 2002.

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

Subject: Economic Development Plan filing for 2012.

Purpose: To approve National Grid's Economic Development Plan filing for 2012.

Substance of final rule: The Commission, on January 19, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's Economic Development Plan filing for 2012 at the \$9.1 million spending level previously approved by an order issued October 24, 2002 in Case 01-M-0075, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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.

(10-E-0050SA9)

NOTICE OF ADOPTION

Application for a Waiver of 16 NYCRR sections 86.3(a)(1), (a)(2), (b)(1)(iii) and 86.4(b)

I.D. No. PSC-43-11-00010-A

Filing Date: 2012-01-20

Effective Date: 2012-01-20

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

Action taken: On 1/19/12, the PSC adopted an order granting Rochester Gas and Electric Corp. waivers of the requirements of 16 NYCRR sections 86.3(a)(1), (a)(2), (b)(1)(iii) and 86.4(b) related to application for the construction of the Rochester Area Reliability Project.

Statutory authority: Public Service Law, sections 4, 122(1) and art. VII

Subject: Application for a waiver of 16 NYCRR sections 86.3(a)(1), (a)(2), (b)(1)(iii) and 86.4(b).

Purpose: To approve the application for a waiver of 16 NYCRR sections 86.3(a)(1), (a)(2), (b)(1)(iii) and 86.4(b).

Substance of final rule: The Commission, on January 19, 2012, adopted an order granting Rochester Gas and Electric Corporation waivers of the requirements of 16 NYCRR §§ 86.3(a)(1), (a)(2), (b)(1)(iii), and 86.4(b) related to application for the construction of the "Rochester Area Reliability Project," approximately 23.6 miles of 115 kilovolt transmission lines and 1.9 miles of 345 kilovolt line in the City of Rochester and the Towns of Chili, Gates and Henrietta in Monroe County, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@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-T-0534SA1)

NOTICE OF ADOPTION

Refunding and Issuance of Securities

I.D. No. PSC-43-11-00014-A

Filing Date: 2012-01-20

Effective Date: 2012-01-20

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

Action taken: On 1/19/12, the PSC adopted an order authorizing Consoli-

dated Edison Company of New York, Inc. to issue and sell, in one or more transactions, not later than 12/31/12, up to \$243 million of unsecured debt for the optional refunding of its preferred stock.

Statutory authority: Public Service Law, section 69

Subject: Refunding and issuance of securities.

Purpose: To approve the refunding and issuance of securities.

Substance of final rule: The Commission, on January 19, 2012 adopted an order authorizing Consolidated Edison Company of New York, Inc. to issue and sell, in one or more transactions, not later than December 31, 2012, up to \$243 million of unsecured debt for the optional refunding of its preferred stock, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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.

(08-M-1244SA3)

NOTICE OF ADOPTION

Residential Time-of-Use Service

I.D. No. PSC-46-11-00004-A

Filing Date: 2012-01-19

Effective Date: 2012-01-19

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

Action taken: On 1/19/12, the PSC allowed Central Hudson Gas and Electric Corporation's amendments to PSC No. 15—Electricity, to establish residential time-of-use rates in Service Class No. 6—Residential Time-of-Use Service, to become effective on February 2, 2012.

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

Subject: Residential Time-of-Use Service.

Purpose: To approve amendments to PSC No. 15—Electricity, to establish residential time-of-use rates, to become effective on 2/2/12.

Substance of final rule: The Commission, on January 19, 2012 allowed Central Hudson Gas and Electric Corporation's amendments to PSC No. 15—Electricity, to establish residential time-of-use rates in Service Class No. 6—Residential Time-of-Use Service, to become effective on February 2, 2012 without further action.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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-0583SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Electric Submetering Regulations

I.D. No. PSC-06-12-00007-P

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

Proposed Action: Amendment of Part 96 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1), 30-53, 65 and 66

Subject: Residential electric submetering regulations.

Purpose: Reviewing and amending electric submetering regulations for multi-unit residential premises.

Substance of proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Commission is proposing to revise the rules relating to electric submetering in multi-unit residential dwellings, 16 NYCRR Part 96, which were originally adopted in 1988 with minor amendments in 1996. The purpose of the revision is to include in Commission regulations the statutory change, in 2003, of the application of the Home Energy Fair Practices Act (HEFPA) (Public Service Law §§ 30-52) to submeterers through Public Service Law § 53. In addition, the Commission has issued numerous orders clarifying and modifying the obligations of submeterers in an effort to balance the need for energy efficiency and consumer protections. It is necessary to update the electric submetering regulations to reflect the changes made by Commission orders and the extension of HEFPA to submetered tenants, as well as streamlining the Department of Public Service's review of routine submetering petitions. A summary of the more significant changes in the draft revisions to the submetering regulations can be found in the Regulatory Impact Statement.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Authority for the proposed revisions to 16 NYCRR Part 96 is contained in Public Service Law (PSL) § 66(12), which gives the Public Service Commission (Commission, PSC) broad authority over electric utility tariffs; PSL § 65, which requires the Commission to ensure that electric service is safe and adequate and that electric rates are just and reasonable; and PSL § 4(1), which assigns the PSC "all powers necessary or proper" to carry out these mandates. Through utility tariffs, the Commission has governed the manner in which electricity is provided to master-metered buildings that submeter. Specifically, in 1951, the Commission prohibited submetering, a decision upheld upon judicial review (*Matter of Campo Corp. v. Feinberg*, 279 A.D. 302 (1952) aff'd 303 N.Y. 995). The court relied on the Commission's authority to regulate "reasonable classifications, regulations and practices under which a utility. . . renders service." In 1976, in Case 26998, the Commission required individual metering in new construction to encourage energy conservation; in 1988, the Commission adopted submetering regulations. Pursuant to those regulations, the Public Service Commission has approved petitions to submeter on a case-by-case basis. Through these unchallenged orders, the Commission has, among other things, adopted generic submetering standards with particular attention to premises with electric heat and in which tenants who receive housing assistance reside.

In 2003, the Public Service Law was amended to extend application of the Home Energy Fair Practices Act (HEFPA, PSL Article 2) to "any entity that. . . sells or facilitates the sale. . . of. . . electricity to residential customers." In a 2006 New York Supreme Court decision, PSL § 53 was held to apply to submeterers, thus requiring them to provide tenants all HEFPA protections (*Matter of Waterside Plaza, LLC, v. Pub. Serv. Comm. of State of N.Y.*, Slip Opinion (July 3, 2006, Ferradino, J.).

Legislative Objectives:

None.

Current Requirements:

The current residential electric submetering regulations were adopted in 1988 with minor amendments in 1996. In 2003, the legislature extended the application of HEFPA (PSL §§ 30-53) to submeterers. Commission determinations approving individual submetering petitions, some with generic application to all submeterers, as well as judicial decisions, have further defined the obligations of submeterers.

Needs and Benefits:

It is necessary to update the electric submetering regulations to reflect Commission orders, the extension of HEFPA to submeterers, and to streamline the Department's review of routine submetering petitions. The proposed regulations are consistent with these prior determinations and, for the most part, simply implement their requirements.

Between 2005 and 2011 the Department convened meetings with stakeholders to discuss modifications to the submetering regulations and also invited written comments.

Support for Direct Metering in New Construction

The most significant stakeholder concern is the proposal to require direct metering in new or renovated buildings. Department Staff proposed the requirement to direct meter because of difficulties enforcing submeterer compliance with HEFPA and submetering requirements in general.

A utility customer enjoys experienced utility consumer complaint handling which a submetered customer does not. Based on Staff's experience, submeterers are often unresponsive to DPS consumer complaint personnel. Moreover, while the Public Service Law provides undisputable Commission authority to regulate direct metered services, PSC authority over submetering has been shaped by case law, tariff enforcement, Commission orders, and 30 years of past practice. By some accounts, the cost to install direct meters may be more than the cost to install submeters. This cost differential, while asserted, has not been fully explained nor supported; neither have any cost offsets, such as the utility's provision of direct meters at no cost to developers. The Commission is assessing whether such cost differential outweighs the customer protections and regulatory efficiency provided by direct metering.

Stakeholders indicated that requiring direct metering in all new construction would, among other things, prohibit the integration of the most advanced technology and environmentally-friendly construction designs. Given the City of New York's policy to encourage on-site cogeneration and achieve demand reduction during peak load periods, DPS developed a compromise result in which submetering in new and renovated buildings may be authorized if a petition demonstrates that the building will employ advanced energy efficiency technology, such as on-site co-generation equipment and/or participate in demand response programs or alternative energy efficiency initiatives. While submeterers may prefer a complete removal of the direct metering requirement in new and renovated buildings, many master-metered buildings exist that still may be converted to submetering. Therefore, the strongest impact on the submetering industry will only occur as every building in New York City is replaced or completely overhauled without these reliability and energy efficiency measures in place. Moreover, the requirement of direct metering may incentivize developers and landlords to build the most advanced energy efficient buildings possible to obtain authorization to submeter. Finally, allowing submetering only in buildings with advanced energy efficiency measures balances the need for in-City reliability with the statutory protections afforded direct metered customers.

Condominium and Cooperative Submetering

The proposed regulations require that submetering in condominiums/cooperatives (condo/coop) receive Commission approval. Since 1988, DPS has relied upon the legal agreements between condo/coop owners and management in any transition to submetering in existing buildings, while submetering of newly built condo/coops has required Commission approval. The need to require condo/coops to follow the abbreviated Notice of Conversion procedure in the proposed regulations is to protect submetered residents. Because submetered condo/coop residents now enjoy the same HEFPA protections as submetered rental tenants, DPS can enforce the rights of condo/coop residents, and ensure notification of those rights, only if the Commission is aware that a condo/coop has converted to submetering. Requiring the simpler Notice of Conversion procedure is the least burdensome way to accomplish this goal.

Termination of Electric Service

The proposed regulations require that submetering equipment be capable of terminating electric service to individual units. HEFPA provides service termination as the ultimate remedy available to service providers for unpaid bills. Moreover, submeters that allow individual service shut-off are available and are being used by submeterers. The alternative to individual service termination is tenant evictions for non-payment of electric charges, which consumer advocates have long opposed. Further, not requiring service shut-off capability could be misinterpreted as a PSC endorsement of eviction as an acceptable remedy for non-payment of electric charges. For these reasons, the proposed regulations require submeterers to install equipment that is capable of service termination to individual units.

COSTS

Costs to Private Regulated Parties:

Submeterers may be concerned that the proposed regulations will increase their costs; however, building owners retain the margin between what the landlord charges tenants for submetered electric service and what the landlord pays the utility. Moreover, other benefits may exist for submetered buildings such as landlords (1) participating in demand-response programs, by which submeterers may curtail usage in common areas during peak periods and obtain a monetary benefit for such curtailment; (2) avoiding costly investment in capacity expanding equipment to accommodate increasing electrical usage; (3) avoiding the burden of absorbing increasing electric costs in rent; and/or (4) enlisting in programs that provide financial support to offset the cost of submeter installation and energy efficiency measures. Balanced against these landlord concerns is the benefit submetering provides, not only in encouraging energy conservation but in rewarding energy conserving tenants who, without submetering, pay averaged electric costs rather than costs that reflect their reduced usage.

Special Considerations for Electric Heat

In some instances, such as when electric heat will be submetered, additional consumer protections are necessary to protect submetered tenants. That is, because electric heat is so expensive, the proposed regulations require that an owner of an electrically heated building must provide in its petition either a forecast based on one year of apartment-level shadow billing or a study of actual submetered data from comparably situated buildings to demonstrate that, when submetering is introduced, more than 60% of residents are expected to pay . . . less for the submetered electricity during the first 12 months of electric service, than the amount of rent reduction they will receive.” Whether a petitioner elects to shadow bill or provide a study of actual submetered data, petitioners will incur additional costs. Costs are minimized by providing a study but are nonetheless necessary to protect tenants.

Other parties commented that submetering of electric heat should be banned altogether. An outright ban on submetering in buildings that use electric heat, however, could remove significant opportunity for energy efficiency. The safeguards in the draft regulations balance the need to protect tenants in electric heated buildings while not losing altogether the energy efficiency opportunity that price signals provide to encourage conservation.

Submeters Must Comply with 16 NYCRR Parts 92 and 93

The proposed regulations require that submeters meet the regulatory standards defined in 16 NYCRR Parts 92 and 93, which is required of utility meters. Submeterers must also conduct routine meter testing, also required of electric utilities. Some stakeholders indicated that these requirements would be expensive to implement and that routine testing would be difficult where meters are located within individual dwelling units. The regulations provide submetered tenants the same accuracy protections as electric utility customers, particularly since any HEFPA billing complaints will have to be verified with reliable data. Any added costs are recoverable from the rate margin between the bulk rate the utility will charge the submeterer and the residential rate that the submeterer may charge the tenant.

Refrigerator Replacements

The proposed regulations require that any proposal to submeter submitted to the Commission provide documentation sufficient to establish that refrigerators in all rental dwelling units are no more than ten years old or meet the most recently adopted federal energy efficiency standards for such appliances. Refrigerators are one of the highest energy users in most homes. Most appliances can be used less to save energy, but not refrigerators. In rental units, the refrigerator is owned by the landlord; therefore, tenants likely will not replace a refrigerator but must nonetheless bear the cost of its operation. Replacing refrigerators that are more than ten years old will result in additional expenses to landlords. This cost may be offset, however, if landlords purchase refrigerators in bulk and seek available rebates for refrigerator replacements.

Costs to Local Government:

None.

Costs to the Public Service Commission or the Department of Public Service:

None.

Costs to Other State Agencies:

None.

Local Government Mandates:

The proposed revisions impose no new programs, services, duties or responsibilities upon any county, city, town village, school district, fire district or other special district.

Paperwork:

The proposed revisions streamline filing and processing requirements except in rare circumstances. The proposed revisions eliminate the need for assisted and senior living facilities to petition for a waiver of individual metering requirements.

Duplication:

No relevant State regulations duplicate, overlap or conflict with the proposed revisions.

Alternatives:

No suitable alternative has been identified.

Federal Standards:

The proposed revisions are not impacted by any standards of the Federal government.

Compliance Schedule:

The proposed revisions will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

There will be no impact on local governments.

The proposed revisions to the electric submetering regulations, 16NYCRR Part 96, will impact multi-unit residential property owners who elect to convert electric service to individual owners and tenants at the premises from either direct utility meters or master-metered systems

into submetered service. It will also affect construction of new or substantially renovated multi-family buildings.

Compliance Requirements:

The proposed revisions to the existing electric submetering regulations will continue to apply to all property owners who provide submetered electric service at multi-unit residential buildings. Assisted living and senior living facilities will no longer be required to obtain a waiver to be able to provide master-metered electric service. The proposed revisions will streamline the Department of Public Service’s review of requests to submeter; clarify the obligations of submeterers to act consistently with their submetering plans and Commission orders approving those plans; specify consumer protections and notification requirements as well as energy efficiency goals; and require the use of utility-grade meters.

Professional Services:

There will be no additional professional services required as a result of the proposed revisions.

Compliance Costs:

Some submeterers have claimed that the requirement to install utility-grade meters and annual testing of submetering equipment will add costs to their operations. However, many current submeterers already use utility-grade meters. Moreover, the use of utility-grade meters and the cost to randomly test submeters annually protect end-users. Finally, because the regulations allow submeterers to charge end-users up to the higher residential rate when submeterers pay a lower master-metered rate, some of the costs may be recouped.

Economic and Technological Feasibility:

The economic feasibility is achieved through the allowed rate cap differential, described above as well as possible participation in demand-response programs that offer financial incentives. The required use of accurate submeter technology is necessary to provide end-users with accurate electric usage measurements.

Minimizing Adverse Impact:

A review has been conducted to consider other approaches to mitigate adverse economic impact as suggested in the State Administrative Procedure Act Section 202-b(1). For instance, the Department of Public Service has added the simplified Notice of Conversion to Submeter, which we expect will expedite review and approval of the majority of requests to submeter. In response to informal comments, the Department also required that customers only receive more than one free annual meter test if it is made as part of an actual consumer complaint to avoid repeated requests by a customer to test the submeter.

Small Business and Local Government Participation:

Proposed revisions have been discussed with submeterers and their representatives on various occasions. For example, the Department of Public Service sponsored a technical conference on January 20, 2009 and accepted informal written comments.

(IF APPLICABLE) For Rules That Either Establish or Modify a Violation or Penalties:

The proposed revisions would not impose an automatic penalty. However, in addition to the Commission’s current statutory authority to address submetering violations, the regulations specify that rescission or suspension of a submeterer’s authorization to submeter may be imposed upon submeterers who are not in compliance with either their submetering plan, the regulations, the Commission order approving the submetering plan or other Commission orders. Moreover, if Department Staff identifies a submeterer’s failure to abide by the regulations or order approving submetering (which may be cured by the submeterer within 30 days), Staff may adjust the submeterer’s rate cap downward, to 60% of the residential rate, a finding that is appealable to the Commission. Any submeterer failure to abide by the submetering plan, regulations, or Commission order that results in rescission, suspension or other Commission action in response may also be cured within a 30-day period before the Commission may act.

Rural Area Flexibility Analysis

A rural flexibility analysis is not required because this rulemaking will not impose any adverse economic impacts on rural areas or on any reporting, recording keeping or other compliance requirements on public or private entities in rural areas. This proposal amends the Commission’s residential electric submetering regulations in multi-unit dwellings, which are located primarily in urban, not rural, areas.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The proposal amends the Commission’s residential submetering regulations.

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

Petition for Clarification

I.D. No. PSC-06-12-00008-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 4615 East Coast LLC.

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 clarification.

Purpose: To consider the petition for clarification from 4615 East Coast 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 4615 East Coast LLC seeking clarification that tenants residing at 4615 Center Boulevard, Long Island City, 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 apartments.

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

(10-E-0430SP2)

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

Petition for the Submetering of Electricity

I.D. No. PSC-06-12-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, 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 CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, 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 by CityStation South, LLC to submeter electricity at 124 Ferry Street, Troy, 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.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.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-0021SP1)

Department of State

NOTICE OF ADOPTION

Do-Not-Call

I.D. No. DOS-44-11-00004-A

Filing No. 52

Filing Date: 2012-01-24

Effective Date: 2012-02-08

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

Action taken: Amendment of section 400.8 of Title 19 NYCRR; and amendment of sections 4602.1, 4602.2 and sections 4603.1-4603.4 of Title 21 NYCRR.

Statutory authority: Executive Law, section 94-a; and General Business Law, section 399-z

Subject: Do-Not-Call.

Purpose: The rule carries out the intent of the December 2010 amendments to the Do-Not-Call Law.

Text or summary was published in the November 2, 2011 issue of the Register, I.D. No. DOS-44-11-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa R. Harris, Esq., Department of State, 99 Washington Avenue, Suite 650, Albany NY 12231, (518) 486-3933, email: lisa.harris@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

ERRATUM

A Notice of Emergency Rule Making, I.D. No. UDC-05-12-00003-E, with the heading of Innovative NY Fund, published in the February 1, 2012 issue of the *State Register* contained an incorrect heading, subject and purpose. The correct heading, subject and purpose are as follows:

Capital Access Program

Subject: Capital Access Program.

Purpose: Provide the basis for administration of the Capital Access Program.