

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

Sale of Sliced Cheese at Farmers' Markets

I.D. No. AAM-42-11-00024-A
Filing No. 1379
Filing Date: 2011-12-20
Effective Date: 2012-01-04

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

Action taken: Amendment of section 276.4 of Title 1 NYCRR.
Statutory authority: Agriculture and Markets Law, sections 16, 18, 214-b, 251-z-4 and 251-z-9
Subject: Sale of sliced cheese at farmers' markets.
Purpose: To exempt persons who slice cheese at farmers' markets for sale to consumers from having to obtain a food processing license.
Text or summary was published in the October 19, 2011 issue of the Register, I.D. No. AAM-42-11-00024-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Mr. Stephen D. Stich, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: stephen.stich@agriculture.ny.gov

Assessment of Public Comment

The Department received one comment on this proposed rule. The Farmers' Market Federation of New York (Federation) extended its support, noting that the proposal would help build a stronger relationship be-

tween the market and the consumer. This affords the consumer a fresh and wholesome product while ensuring that markets are able to realize growth in cheese sales. The Federation also applauded the proposed food safety requirements since the Federation members believe such requirements would be appropriate in providing consumers a safe product.
The Department agrees with the sum and substance of this comment.

Office of Children and Family Services

NOTICE OF ADOPTION

Multi-Year Contracts

I.D. No. CFS-43-11-00005-A
Filing No. 1370
Filing Date: 2011-12-16
Effective Date: 2012-01-04

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

Action taken: Amendment of sections 405.3(e), 405.4(b)(2) and (c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(2)(b), (3)(d), 34(3)(f) and 20-c

Subject: Multi-Year Contracts.

Purpose: Provide greater flexibility in multi-year contracts.

Text or summary was published in the October 26, 2011 issue of the Register, I.D. No. CFS-43-11-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Designation of Two County Officials to be Emergency Contacts When a Youth is Remanded to an Out-of-County Detention Facility

I.D. No. CFS-43-11-00015-A
Filing No. 1371
Filing Date: 2011-12-16
Effective Date: 2012-01-04

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

Action taken: Amendment of section 180.7(c)(1) of Title 9 NYCRR.

Statutory authority: Executive Law, section 501(3)

Subject: Designation of two county officials to be emergency contacts when a youth is remanded to an out-of-county detention facility.

Purpose: To allow each county to designate just one public official as the emergency contact for detention instead of two officials.

Text or summary was published in the October 26, 2011 issue of the Register, I.D. No. CFS-43-11-00015-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

EMERGENCY RULE MAKING

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

I.D. No. CVS-50-11-00005-E

Filing No. 1372

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

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

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

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

Specific reasons underlying the finding of necessity: This amendment is being re-adopted as an emergency measure because time is of the essence. The amendment conforms Sections 73.3(b) and 73.12 of Title 4 NYCRR with Chapter 491 of the Laws of 2011, which implements the terms of a collective bargaining agreement covering members of the Administrative Services Unit, the Institutional Services Unit, and Operational Services Unit, and the Division of Military and Naval Affairs Unit represented by the Civil Service Employees Association (CSEA). The Chapter also establishes terms and conditions of employment for employees designated as Management/Confidential (M/C) and other unrepresented employees. The Chapter provides that modified state cost of premium or subscription charges for health insurance coverage may be extended to M/C and other unrepresented employees and retirees. The Chapter also provides M/C and other unrepresented employees with compensation increases, payments, and benefits comparable to negotiated increases and benefits for represented employees. This emergency rule ensures that upon approval by the Director of the Budget, the President implements these essential benefits and provisions in a timely fashion for M/C and other unrepresented employees and retirees in the manner required by Chapter and in accordance with the State's obligations. Accordingly, this amendment must be re-adopted as an emergency rule in accordance with Section 202(6) of the State Administrative Procedure Act.

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

Purpose: To conform 4 NYCRR 73.3(b) and 73.12 with Chapter 491 of the Laws of 2011.

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

73.3(b) Rate of contribution

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

pendent coverage; provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. For employees employed in a title allocated or equated to salary grade 10 or above, the State's rate of contribution for such employees and their dependents enrolled in the Empire Plan or a Health Maintenance Organization shall be 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan. Effective October 1, 2011, the rate of contribution on account of the coverage of post retirees shall be as follows:

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

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

(iii) for employees retiring on or after January 1, 2012, from a title allocated or equated to salary grade 10 or above, New York State shall contribute 84 percent of the charge on account of individual coverage and 69 percent of the charge on account of dependent coverage, provided, however, that for hospital/medical/mental health and substance abuse coverage provided under a Health Maintenance Organization, the State's rate of contribution shall not exceed 100 percent of its dollar contribution for such coverage under the Empire Plan.

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

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

The provisions of this Chapter, insofar as they apply to employees

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt 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. CVS-50-11-00005-P, Issue of December 14, 2011. The emergency rule will expire February 13, 2012.

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

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

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

3. Needs and Benefits: Chapter 491 of the Laws of 2011 implements the terms of a collective bargaining agreement covering members of the Administrative Services Unit, the Institutional Services Unit, and Operational Services Unit, and the Division of Military and Naval Affairs Unit represented by the Civil Service Employees Association (CSEA). The Chapter also establishes terms and conditions of employment for employees designated as Management/Confidential (M/C) and other unrepresented employees. The Chapter provides that modified state cost of premium or subscription charges for health insurance coverage may be extended to M/C and other unrepresented employees and retirees. The Chapter also provides M/C and other unrepresented employees with compensation increases, payments, and benefits comparable to negotiated increases and benefits for represented employees. This emergency rule ensures that the President implements these essential benefits and provisions in a timely fashion for M/C and other unrepresented employees and retirees in the manner required by the Chapter and in accordance with the State's obligations.

4. Costs:

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

By modifying Title 4 NYCRR to provide for essential health plan benefits for certain M/C and other unrepresented employees and retirees, this emergency rule will positively impact jobs or employment opportunities for covered employees, as set forth in Section 201-a (2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by Section 201-a of such Act.

Education Department

NOTICE OF ADOPTION

Collaborative Drug Therapy Management

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

Filing No. 1376

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

Action taken: Amendment of section 63.7; and addition of section 63.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6508(1), 6801-a, 6827(4); and L. 2011, ch. 21

Subject: Collaborative Drug Therapy Management.

Purpose: Establish requirements to implement the collaborative drug management therapy demonstration program.

Text or summary was published in the October 5, 2011 issue of the Register, I.D. No. EDU-40-11-00001-EP.

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

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 138, 89 Washington Avenue, Albany, NY 12234, (518) 473-2183, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regents Diploma With Advanced Designation

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

Filing No. 1377

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

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

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided) and 3204(3)

Subject: Regents diploma with advanced designation.

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

Text or summary was published in the October 12, 2011 issue of the Register, I.D. No. EDU-41-11-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Random Selection Process for Charter School Student Admissions

I.D. No. EDU-42-11-00016-A

Filing No. 1380

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

Action taken: Addition of section 119.5 to Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 214 (not subdivided), 215 (not subdivided), 305(1), (2) and (20) and 2854(2); and L. 2010, ch. 101

Subject: Random selection process for Charter School student admissions.

Purpose: To establish procedures for the random selection process required under Education Law, section 2854(2).

Text of final rule: Section 119.5 of the Regulations of the Commissioner of Education is added, effective January 4, 2012, as follows:

§ 119.5 *Random Selection Process for Charter School Student Applicants.* If the number of timely submitted applications of eligible students for admission to a charter school exceeds the capacity of the grade level of a charter school (or building if the school does not distinguish between grades), students shall be accepted for admission from among such applicants by a random selection process (lottery) pursuant to the requirements of this section.

(a) *Preferences.* (1) Notwithstanding the provisions of this section, a charter school shall provide an enrollment preference to:

(i) pupils returning to the charter school in the second or any subsequent year of operation;

(ii) pupils residing in the school district in which the charter school is located, or in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and

(iii) siblings of pupils already enrolled in the charter school.

(2) Establishment of specific school design. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners.

(b) *Notice.* The charter school shall provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104.

(c) *Procedures for conducting lottery.*

(1) The person(s) conducting the selection of lottery applicants or acting as an impartial observer of the selection of lottery applicants shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school.

(2) The lottery shall be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104. Nothing herein shall be construed to require or exclude attendance at the lottery by parents, persons in parental relationships, guardians and/or students participating in the admissions process.

(3) A charter school may structure the actual lottery process in any manner consistent with its approved admissions policy and this section.

(4) The random process used in the lottery may be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

(d) *Records.* The charter school shall document the lottery process, and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 119.5(a)(2), (c)(2) and (3).

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) 474-8857, email: legal@mail.nysed.gov

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on October 19, 2011, nonsubstantial revisions were made to the rule as follows:

Section 119.5(a)(2) was revised to clarify that a charter school's establishment of a single-sex charter school or establishment of enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners must be consistent with the requirements of federal law, in addition to being consistent with the school design described in the school's charter.

Section 119.5(c)(2) was revised to clarify that the lottery be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees.

Section 119.5(c)(3) was revised to clarify that the actual lottery process must be structured consistent with the provisions of the proposed rule, in addition to being consistent with the charter school's approved admissions policy.

The above revisions require that the Local Government Mandates section of the previously published Regulatory Impact Statement be revised to read as follows:

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to establish procedures for the conduct of the random selection process for charter school admissions required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010. Consistent with Education Law section 2854(2), the proposed rule:

1. requires charter schools to provide an enrollment preference to: (i) pupils returning to the charter school in the second or any subsequent year of operation; (ii) pupils residing in the school district in which the charter school is located or, in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and (iii) siblings of pupils already enrolled in the charter school. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners;

2. requires charter schools to provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104;

3. requires that:

- person(s) conducting the selection of lottery applicants or acting as an impartial observer of such selection shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school;

- the lottery be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104;

4. permits a charter school to structure the actual lottery process in any manner consistent with its approved admissions policy and the proposed rule; and

5. permits the random process used in the lottery to be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results.

In addition, the Statutory Authority section of the previously published Regulatory Impact Statement is inadequate or incomplete in that it inadvertently omitted reference to Education Law sections 214 and 215, and therefore is revised to read as follows:

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Board of Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 206 authorizes the Regents, any committee thereof, the Commissioner, the deputy and any associate and assistant commissioner of education and the counsel of the State Education Department to take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

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

Education Law section 214 provides that the institutions of the University of the State of New York shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this State, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the University.

Education Law section 215 authorizes the Board of Regents to visit, examine into and inspect, any institution in the University of the State of New York and any school or institution under the educational supervision of the State, and to require reports therefrom giving such information and in such form as the Regents or the Commissioner shall prescribe.

Education Law section 305(1) provides that the Commissioner is the chief executive officer of the State system of education and of the Board of Regents, and charged with the enforcement of all general and special laws relating to the educational system of the State and the execution of all educational policies determined by Regents. Section 305(2) provides that the Commissioner shall have general supervision over all schools and

institutions subject to the Education Law or any statute relating to education. Section 305(20) provides that the Commissioner shall have and execute such further powers and duties as he shall be charged with by the Regents.

Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010, provides that if the number of timely submitted applications of eligible students for admission to a charter school exceeds the capacity of the grade level or building of a charter school, students shall be accepted for admission from among such applicants by a random selection process, and directs the Commissioner to establish regulations to require that the random selection process be performed in a transparent and equitable manner and to require that the time and place of the random selection process be publicized consistent with Public Officers Law section 104.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 19, 2011, nonsubstantial revisions were made to the rule as described in the Revised Regulatory Impact Statement published herewith.

The above revisions require that the Compliance Requirements section of the previously published Regulatory Flexibility Analysis for Small Businesses and Local Government be revised to read as follows:

COMPLIANCE REQUIREMENTS: The proposed rule is necessary to establish procedures for the conduct of the random selection process for charter school admissions required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010. Consistent with Education Law section 2854(2), the proposed rule:

1. requires charter schools to provide an enrollment preference to: (i) pupils returning to the charter school in the second or any subsequent year of operation; (ii) pupils residing in the school district in which the charter school is located or, in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and (iii) siblings of pupils already enrolled in the charter school. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners;

2. requires charter schools to provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104;

3. requires that:

- person(s) conducting the selection of lottery applicants or acting as an impartial observer of such selection shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school;

- the lottery be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104;

4. permits a charter school to structure the actual lottery process in any manner consistent with its approved admissions policy and the proposed rule; and

5. permits the random process used in the lottery to be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results; and

6. requires charter schools to document the lottery process, and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 19, 2011, nonsubstantial revisions were made to the rule as described in the Revised Regulatory Impact Statement published herewith.

The above revisions require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

The proposed rule is necessary to establish procedures for the conduct of the random selection process for charter school admissions required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010. Consistent with Education Law section 2854(2), the proposed rule:

1. requires charter schools to provide an enrollment preference to: (i) pupils returning to the charter school in the second or any subsequent year of operation; (ii) pupils residing in the school district in which the charter school is located or, in the case of the City School District of the City of New York, pupils residing in the community school district in which the charter school is located; and (iii) siblings of pupils already enrolled in the charter school. Consistent with the requirements of federal law and with the school design described in the school's charter, a charter school may also establish a single-sex charter school and/or establish enrollment preferences for students at-risk of academic failure, students with disabilities and English language learners;

2. requires charter schools to provide public notice of the date, time and place of the lottery, consistent with Public Officers Law section 104;

3. requires that:

- person(s) conducting the selection of lottery applicants or acting as an impartial observer of such selection shall not be a board member or employee of the school, or a parent, person in parental relationship, grandparent, sibling, aunt, uncle or first cousin of any applicant to the school or of any pupil enrolled in the school;

- the lottery be held in a space that is open and accessible to the public and capable of accommodating the reasonably anticipated number of attendees. If the reasonably anticipated attendance exceeds capacity, separate grade level lotteries may be held in separate locations provided that each lottery is publicized in a manner consistent with the requirements of Public Officers Law section 104;

4. permits a charter school to structure the actual lottery process in any manner consistent with its approved admissions policy and the proposed rule; and

5. permits the random process used in the lottery to be generated by any traditional lottery ball system, technology-based software, paper ticket process or other methodology which generates random results; and

6. requires charter schools to document the lottery process, and make such records available to the Department and/or the charter authorizing entity upon request. Records shall be sufficiently detailed to enable the reviewer to identify the process used, compare the process used to the lottery procedures contained in the charter school's charter, and determine that the procedures used were consistent with those set forth in the charter.

The proposed rule does not impose any additional professional services requirements on charter schools.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on October 19, 2011, nonsubstantial revision have been made to the proposed rule as described in the Revised Regulatory Impact Statement published herewith. The proposed rule, as revised, applies to charter schools, and will establish procedures for the conduct of the random selection process for charter school admissions, as required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010. The proposed revised rule will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on October 19, 2011, the State Education Department received the following comments.

1. COMMENT:

Support was expressed for the proposed rule in that it will effectively carry out the intent and letter of Education Law section 2854(2)(b) and ensure the credibility of charter school lotteries and create necessary documentation to investigate any allegations of impropriety in the lottery process. At the same time, the proposed rule is properly limited to the topics referenced in the statute, and neither creates undue burden for charter school operators, nor re-create the critical oversight duties that reside with the State's charter school authorizing entities.

DEPARTMENT RESPONSE:

The Department acknowledges and appreciates the support for the proposed rule.

2. COMMENT:

The provisions in section 119.5(c)(2), that the lottery be held in a space that is open and accessible to the public and capable of accommodating the anticipated number of attendees and that if anticipated attendance exceeds capacity separate grade level lotteries may be held in separate locations provided each lottery is publicized in a manner consistent with Public Officers Law section 104, is not feasible for large charter management organizations (CMOs), which may have as much as 10,000 to 13,000 or more applications. The proposed rule's reference to "anticipated number of attendees" may unreasonably impose a burden on schools to

reach out to applicants to ascertain whether they will be attending the lotteries. In addition, the logistics involved for a CMO to seek, receive and manage 13,000 R.S.V.P.s and accommodate the attendees would be staggering and effectively impossible. Holding separate grade level lotteries would not address the issue, as even with separate grade level lotteries (which would impose additional and unreasonable logistical and financial burdens), there would still be a tremendous number of applications per grade level. Requiring a CMO to accommodate such large numbers of applicants and their families to observe the lotteries serves little or no purpose since, even if they could be accommodated, they would not receive the results the day of the lotteries because it is not possible to logistically present individual results of such large numbers on the spot.

DEPARTMENT RESPONSE:

The Department acknowledges that in some instances it may be difficult for a CMO or charter school to estimate the number of potential attendees for the lotteries and that if they are required to anticipate that parents and families of all applicants would be attendance, the logistics of locating and paying for space large enough to accommodate that many people would be unreasonably burdensome. However, the provision in the proposed rule that the lottery be held in a space "capable of accommodating the anticipated number of attendees" is merely intended to require charter schools to provide a space capable of accommodating the number of attendees the charter school reasonably anticipates will attend, and is not intended to require charter schools to provide a space capable of accommodating all individuals who actually appear for the lottery, or to require charter schools to take extra measures to reach out to applicants to ascertain whether they will be attending. Consistent with this intent, the Department has added language to clarify that the space in which the lottery is conducted must be capable of accommodating the reasonably anticipated number of attendees (emphasis added), and thereby allow CMOs and charter schools to determine for themselves, based on past experience or other factors, how many attendees can reasonably be expected to attend the lottery and to locate and acquire space for the lottery(ies) accordingly.

3. COMMENT:

Section 119.5(c)(2) potentially imposes the burden on charter schools to make records documenting the lottery process available to the Department, irrespective of whether the Department is the chartering entity. Nothing in the cited statutory authority requires charter schools authorized by a particular entity to make lottery records available to any entity beyond the charter authorizing entity. The additional reporting requirement imposes significant and unreasonable staffing costs and paperwork burdens on charter schools beyond those inherent in Education Law.

DEPARTMENT RESPONSE:

The proposed rule is consistent with the Department's oversight authority under Education Law section 215 to examine into, inspect, and require reports and information from institutions that are chartered by the Board of Regents and included as institutions in the University of the State of New York pursuant to Education Law section 214. Furthermore, the proposed rule merely requires that such records be made available to the Department, and does not require charter schools to submit such records to the Department in all instances when a lottery is conducted.

4. COMMENT:

The proposed rule should be revised to clarify the manner in which geographic preference is awarded to charter school applicants living in temporary housing, to ensure that student admissions regulations are consistent with previous Department guidance on this subject. The proposed rule should also be revised to address the information that charter schools may request to establish an enrollment preference, the ways that information may be used, and the ways in which the admissions process may be conducted at schools that choose to give an enrollment preference to students at-risk of academic failure, students with disabilities and English Language Learners.

DEPARTMENT RESPONSE:

The proposed revisions are beyond the scope of the proposed rule making, which is intended to carry out the Commissioner's responsibilities under Education Law section 2854(2)(b) to establish regulations requiring that the random selection process be performed in a transparent and equitable manner and that the time and place of the random selection process be publicized in a manner consistent with the requirements of Public Officers Law section 104 and be open to the public. Issues regarding the admissions process and the awarding of preferences to applicants who are living in temporary housing or who are students at-risk, raise issues beyond merely ensuring transparency and equitability in the conduct of the random selection process and thus are beyond the scope of this rule making. The Department believes that these concerns are more appropriately addressed in further guidance to be issued by the Department.

NOTICE OF ADOPTION

Mandatory Continuing Education for Veterinarians and Veterinary Technicians

I.D. No. EDU-42-11-00025-A

Filing No. 1382

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

Action taken: Amendment of section 62.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 6504, 6506, 6507(2)(a), 6704-a and 6711-b; and L. 2010, ch. 328

Subject: Mandatory continuing education for veterinarians and veterinary technicians.

Purpose: To implement statutory authority requiring continuing education for licensed veterinarians and veterinary technicians.

Text or summary was published in the October 19, 2011 issue of the Register, I.D. No. EDU-42-11-00025-P.

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

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) 474-8857, email: legal@mail.nysed.gov

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the October 19, 2011 State Register, the State Education Department received three comments raising the following issues:

Comment

The commenters expressed concern about the \$900 fee required of sponsors of continuing education for veterinarians. The commenters indicated that veterinarians working in research laboratories and those working in other specialized areas of practice often obtain specialized continuing education from national organizations that focus on laboratory animal medicine. They expressed concern that these organizations are unlikely to pay the \$900 fee to become continuing education sponsors in New York State. The commenters write that as a result of this fee being imposed on such national organizations, who will elect not to participate, they will likely be required to participate in more generalized continuing education in veterinary medicine provided by State approved sponsors in addition to participating in continuing education relevant to their specialty areas of practice. They maintain that this will be cost and time prohibitive to the individual licensees and the government funded and not-for-profit institutions for which many of them work. The commenters recommend that the State Board for Veterinary Medicine accept, without fee, continuing education credits obtained from certain, specified veterinary continuing education programs.

Response

Section 6704-a(2) of the Education Law requires applicants for re-registration as a veterinarian to complete 45 hours of acceptable formal continuing education. Section 6704-a(4) provides that “acceptable formal continuing education” is to be “offered by sponsors of veterinary continuing education approved by the department in consultation with the state board for veterinary medicine.” Subdivision (4) further provides that “sponsors of veterinary medicine continuing education shall file an application with the department and pay a fee of nine hundred dollars.” Based on these statutory provisions, neither the Department nor the State Board for Veterinary Medicine has the discretion to waive the \$900 sponsor fee, which is required by law without exception. That does not, however, prevent a group providing veterinary medicine continuing education from working with an approved sponsor to make their programs available and eligible for continuing education credit in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Preschool and School-Age Individual Evaluations

I.D. No. EDU-01-12-00006-P

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

Proposed Action: Amendment of sections 200.4 and 200.16 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 4402(1), 4403(3) and 4410(13)

Subject: Preschool and School-Age Individual Evaluations.

Purpose: Amend timeline for completion of preschool evaluations; repeal requirement of psychologist written determination for psychological assessment in reevaluation; clarify 60 day timeline for initial evaluations.

Text of proposed rule: 1. Paragraphs (1) and (2) of subdivision (b) of section 200.4 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(b) Individual evaluation and reevaluation. (1) Unless a referral for an evaluation submitted by a parent or a school district is withdrawn pursuant to paragraph (a)(7) or (9) of this section, after parental consent has been obtained or a parental refusal to consent is overridden, an individual evaluation of the referred student shall be initiated by a committee on special education. The *initial* individual evaluation shall be completed within 60 days of receipt of consent unless extended by mutual agreement of the student’s parents and the CSE pursuant to subparagraph (7)(i) and paragraph (j)(1) of this subdivision. The individual evaluation shall include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional, developmental and academic information about the student that may assist in determining whether the student is a student with a disability and the content of the student’s individualized education program, including information related to enabling the student to participate and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities). The individual evaluation must be at no cost to the parent, and the initial evaluation must include at least:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

(2) A determination by a school psychologist of the need to administer an individual psychological evaluation to a student of school age pursuant to Education Law, section 4402(1)(b)(3)(a) and section 200.1(aa) and (bb) of this Part, shall be based upon an assessment conducted by the school psychologist to substantiate his or her determination. Whenever a school psychologist determines that a psychological evaluation is unnecessary *as a component of the initial evaluation*, the psychologist shall prepare a written report of such assessment, including a statement of the reasons such evaluation is unnecessary, which shall be reviewed by the committee.

2. Paragraph (2) of subdivision (c) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(2) *Except as provided in section 200.4(b)(7) of this Part, [The] the initial individual evaluation shall be completed within 60 days of receipt of consent to evaluate and* conducted in accordance with section 200.4(b) of this Part. The summary report shall include a detailed statement of the preschool student’s individual needs, if any. The summary report shall not include a recommendation as to the general type, frequency, location and duration of special education services and programs that should be provided; shall not address the manner in which the preschool student can be provided with instruction or related services in the least restrictive environment; and shall not make reference to any specific provider of special services or programs. Reports of the assessment and/or evaluation and a summary portion of the evaluation shall be provided to the members of the committee on preschool special education and to the person designated by the municipality in which the preschool student resides [so as to allow for a recommendation by the committee to be made to the board within thirty school days of the receipt of consent]. An approved evaluator shall provide the parent with a copy of the statement and recommendation provided to the committee. Such statement and recommendation including the summary evaluation shall be provided in English and when necessary, in the native language of the parent or other mode of communication used by the parent unless it is not feasible to do so.

3. Paragraph (1) of subdivision (e) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(e) Recommendation. (1) The committee on preschool special education shall [provide a] *meet to review the results of the initial evaluation and develop a recommendation* [to the board of education] within [30 school days] *60 calendar days* of the date of the receipt of consent to evaluate.

4. Paragraph (1) of subdivision (f) of section 200.16 of the Regulations of the Commissioner of Education is amended, effective April 11, 2012, as follows:

(f) Provision of services for preschool students with disabilities. (1) Upon receipt of the recommendation of the committee, the board of education shall arrange for the preschool student with a disability to receive such programs and services commencing with the July, September or January starting date for the approved program, unless such services are recommended by the committee less than 30 school days prior to, or after, such appropriate starting date selected for such preschool student, in which case, such services shall be provided as soon as possible following development of the IEP, but no later than 30 school days from the recommendation of the committee *and within 60 school days from receipt of consent to evaluate*. If the board disagrees with the recommendation of the committee, it shall send the recommendation back to the committee with notice to the parent and the committee including a statement of the board of education's reasons and that the recommendation will be sent back to the committee with notice of the need to schedule a timely meeting to review the board's concerns and to revise the IEP as deemed appropriate.

Text of proposed 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) 474-8857, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James P. DeLorenzo, Statewide Coordinator for Special Ed, State Education Department, Office of P-12 Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Education Law section 4402 establishes school district duties for the education of students with disabilities.

Education Law section 4403 establishes Department and school district responsibilities concerning education programs and services to students with disabilities. Section 4403(3) authorizes the Department to adopt rules and regulations as the Commissioner deems in their best interests.

Education Law section 4410 establishes requirements for education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to ensure that students with disabilities are provided a free appropriate public education consistent with federal law and regulations.

3. NEEDS AND BENEFITS:

The proposed amendment provides mandate relief relating to special education requirements. The proposed amendment would change the timeline for the required completion of preschool evaluations; repeal the requirement that a psychologist prepare a written report of his/her determination as to whether each student with a disability needs a psychological assessment as part of his or her reevaluation; and clarifies that the 60-day timeline applies to initial individual evaluations to determine a student's eligibility for special education.

4. COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.

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

The proposed amendment provides mandate relief relating to special education requirements and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment provides mandate relief relating to special education requirements, and does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Section 200.4, as amended, repeals the requirement that a psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation to a school-age student with a disability as part of a student's three-year reevaluation; and makes a technical amendment to clarify that the 60-day timeline to complete an evaluation pertains to an initial evaluation of a student suspected of having a disability.

Section 200.16, as amended, provides that the initial individual evaluation to determine if a preschool child has a disability and the meeting to discuss the evaluation must occur within 60 calendar days of receipt of parental consent to evaluate, provided that, consistent with current requirements, the school district must arrange for the appropriate special education programs and services to be provided to a preschool student with a disability within 60 school days from receipt of the parent's consent to evaluate.

6. PAPERWORK:

The proposed amendment provides mandate relief relating to special education requirements, and does not impose any additional paperwork requirements. The proposed repeal of the written report requirement of the need to administer a psychological evaluation for a reevaluation based on an assessment is intended to result in a reduction of paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The Department considered federal regulatory requirements that would otherwise ensure that there would not be adverse impact on the education of students with disabilities. To ensure that each student suspected of having a disability is comprehensively evaluated, the regulations retain the requirement that the initial evaluation include a psychological evaluation, except when the school psychologist has determined that a psychological evaluation is not necessary and only repeal the requirement that the psychologist would need to prepare a written report of his/her determination of a student's need for a psychological evaluation as part of a student's reevaluation.

The proposed rule to change the timeline to complete an initial evaluation of a preschool child from 30 school days to 60 calendar days provides additional time for schools to arrange for the evaluation, but does not extend the statutory timeline by which the preschool child must receive his/her recommended special education services. Therefore, the proposed amendment would allow school districts additional time to complete preschool initial evaluations while continuing to ensure the timely provision of programs and services.

9. FEDERAL STANDARDS:

The proposed amendment does not add any requirements that would exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment provides mandate relief relating to special education requirements and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

The proposed amendment applies to all public school districts, State agency operated and approved private schools in the State that have Committee on Preschool Special Education and/or Committee on Special Education responsibilities.

1. COMPLIANCE REQUIREMENTS:

The proposed amendment provides mandate relief relating to special education requirements and does not impose any additional compliance requirements beyond those imposed by federal statutes and regulations and State law.

Section 200.4, as amended, repeals the requirement that a psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation to a school-age student with a disability as part of a student's three-year reevaluation; and makes a technical amendment to clarify that the 60-day timeline to complete an evaluation pertains to an initial evaluation of a student suspected of having a disability.

Section 200.16, as amended, provides that the initial individual evaluation to determine if a preschool child has a disability and the meeting to discuss the evaluation must occur within 60 calendar days of receipt of parental consent to evaluate, provided that, consistent with current requirements, the school district must arrange for the appropriate special education programs and services to be provided to a preschool student with a disability within 60 school days from receipt of consent to evaluate.

2. PROFESSIONAL SERVICES:

The proposed amendment provides mandate relief relating to special education requirements and does not impose any additional professional service requirements on local governments.

3. COMPLIANCE COSTS:

The proposed amendment provides mandate relief and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

4. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

5. MINIMIZING ADVERSE IMPACT:

The proposed rule provides mandate relief of certain special education requirements and therefore would have no adverse impact on the regulated parties.

6. LOCAL GOVERNMENT PARTICIPATION:

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, boards of cooperative educational services (BOCES), State-operated and State-supported schools and approved private schools in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

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

The proposed amendment provides mandate relief relating to special education requirements and does not impose any additional compliance requirements or professional service requirements on entities in rural areas.

Section 200.4, as amended, repeals the requirement that a psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation to a school-age student with a disability as part of a student's three-year reevaluation; and makes a technical amendment to clarify that the 60-day timeline to complete an evaluation pertains to an initial evaluation of a student suspected of having a disability.

Section 200.16, as amended, provides that the initial individual evaluation to determine if a preschool child has a disability and the meeting to discuss the evaluation results must occur within 60 calendar days of receipt of parental consent to evaluate; provided that, consistent with current requirements, the school district arrange for the appropriate special education programs and services to be provided to a preschool student with a disability within 60 school days from receipt of the parent's consent to evaluate.

3. COSTS:

The proposed amendment provides mandate relief and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule provides mandate relief of certain special education requirements and therefore would have no adverse impact on the regulated parties. Since these requirements apply to all local and State educational agencies in the State, it is not possible to adopt different standards for school districts in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment would change the timeline for the required completion of preschool evaluations; repeal the requirement that a

psychologist prepare a written report of his/her determination as to whether each student with a disability needs a psychological assessment as part of his or her reevaluation; and makes certain technical amendments. The rule will not have a substantial adverse effect on jobs and employment opportunities, including those for school psychologists, because the proposed rule would provide school districts greater flexibility to utilize the skills and expertise of school psychologists and provide school psychologists additional time to provide other services, including direct services to students. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Suitability in Annuity Transactions

I.D. No. DFS-01-12-00003-E

Filing No. 1368

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

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

Statutory authority: Financial Services Law, sections 202, 301 and 302; and Insurance Law, sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525 and art. 24

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

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

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

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

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

Subject: Suitability in Annuity Transactions.

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

Text of emergency rule:

Section 224.0 Purpose.

The purpose of this Part is to require insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. These standards and procedures are substantially similar to the National Associa-

tion of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. To date, more than 30 states have implemented the NAIC Model, while NASD Rule 2310 has applied nationwide for nearly 20 years. Accordingly, this Part intends to bring these national standards for annuity contract sales to New York.

Section 224.1 Applicability.

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

Section 224.2 Exemptions.

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

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

(b) a contract used to fund:

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

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

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

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

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

Section 224.3 Definitions.

For the purposes of this Part:

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

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

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

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

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

(1) age;

(2) annual income;

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

(4) financial experience;

(5) financial objectives;

(6) intended use of the annuity;

(7) financial time horizon;

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

(9) liquidity needs;

(10) liquid net worth;

(11) risk tolerance; and

(12) tax status.

Section 224.4 Duties of Insurers and Insurance Producers.

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

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

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

(3) the particular annuity contract as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or replace-

ment of the annuity contract, and riders and similar product enhancements, if any, are suitable (and in the case of a replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

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

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

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

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

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

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

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

(i) no recommendation is made;

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

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

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

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

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

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

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

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

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

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

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

(i) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

(1) truthfully responding to an insurer's request for confirmation of suitability information;

(2) filing a complaint with the superintendent; or

(3) cooperating with the investigation of a complaint.

Section 224.5 Insurer Responsibility.

The insurer shall take appropriate corrective action for any consumer harmed by a violation of this Part by the insurer, the insurance producer, or any third party that the insurer contracts with pursuant to subdivision (f) of section 224.4 of this Part. In determining any penalty or other disciplinary action against the insurer, the superintendent may consider as mitigation any appropriate corrective action taken by the insurer, or whether the violation was part of a pattern or practice on the part of the insurer.

Section 224.6 Recordkeeping.

All records required or maintained under this Part, whether by an insurance producer, an insurer, or other person shall be maintained in accordance with Part 243 of this Title (Insurance Regulation 152).

Section 224.7 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, except where such act or practice shall be a defined violation, as defined in section 2402(b) of the Insurance Law, and in either such case shall be a violation of section 2403 of the Insurance Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 14, 2012.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202, 301, and 302 of the Financial Services Law ("FSL") and sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525, and Article 24 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 301 establishes the powers of the Superintendent generally. FSL section 302 and section 301 of the Insurance Law, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 308 authorizes the Superintendent to address to any authorized insurer or its officers any inquiry relating to its transactions or condition or any matter connected therewith.

Insurance Law section 309 authorizes the Superintendent to make examinations into the affairs of entities doing or authorized to do insurance business in this state as often as the Superintendent deems it expedient.

Insurance Law section 2110 provides grounds for the Superintendent to refuse to renew, revoke or suspend the license of an insurance producer if, after notice and hearing the licensee has violated any insurance laws or regulations.

Insurance Law section 2123 prohibits an agent or representative of an insurer from making misrepresentations, misleading statements and incomplete comparisons.

Insurance Law section 2208 provides that an officer or employee of a licensed insurer or a savings bank who has been certified pursuant to Insurance Law Article 22 is subject to section 2123 of the Insurance Law.

Insurance Law section 3209 mandates disclosure requirements in the sale of life insurance, annuities, and funding agreements.

Insurance Law section 4226 prohibits an authorized life, or accident and health insurer from making misrepresentations, misleading statements, and incomplete comparisons.

Insurance Law section 4525 applies Articles 2, 3, and 24 of the Insurance Law, and Insurance Law section 2110(a), (b), and (d) through (f), and sections 2123, 3209, and 4226 to authorized fraternal benefit societies.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

2. Legislative objectives: The Legislature has long been concerned with the issue of suitability in sales of life insurance and annuities. Chapter 616 of the Laws of 1997, which, in part, amended Insurance Law § 308, required the Superintendent to report to the Governor, Speaker of the Assembly, and the majority leader of the Senate on the advisability of adopting a law that would prohibit an agent from recommending the purchase or replacement of any individual life insurance policy, annuity contract or funding agreement without reasonable grounds to believe that the recommendation is not unsuitable for the applicant (the "Report"). The Legislature set forth four criteria that an agent would consider in selling products, including: a consumer's financial position, the consumer's need for new or additional insurance, the goal of the consumer and the value, benefits and costs of any existing insurance.

In drafting the Report, the Department considered the legislative changes set forth in Chapter 616 of the Laws of 1997, and the Department's subsequent regulatory requirements that were designed to improve the disclosure requirements to consumers that purchased or replaced life insurance policies and annuity products. It was the Department's determination in the Report that additional time was needed to assess the efficacy of those changes.

Since the Department's Report, the purchase of annuities have become complex financial transactions resulting in a greater need for consumers to

rely on professional advice and assistance in understanding available annuities and making purchase decisions. While the Financial Industry Regulatory Authority ("FINRA") regulation and standards for the sale of certain variable annuities have existed nationwide for some time, the National Association of Insurance Commissioners ("NAIC") adopted, in 2003 (and further revised in 2010), the Suitability in Annuity Transactions Model Regulation (the "NAIC Model") for all annuity transactions. To date, more than 30 states have implemented the NAIC Model. Accordingly, this Part is intended to bring these national standards for annuity contract sales to New York. In addition, in light of a low interest rate environment that encourages unsuitable annuity sales, and federal incentives to impose suitability standards, the minimum suitability standards are critical.

3. Needs and benefits: This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. It regulates the activities of insurers and producers who make recommendations to consumers to purchase or replace annuity contracts to ensure that insurers and producers make suitable recommendations based on relevant information obtained from the consumers.

As a result of a low interest rate environment, unsuitable annuities have been aggressively marketed to this state's most vulnerable residents, particularly senior citizens. In New York alone, life insurance companies wrote \$17 billion in annuity premiums in 2009. The increased complexity of annuities, including the significant investment risk assumed by purchasers of some annuity products, requires the immediate adoption of this Part, which provides critical consumer protections in all annuity sales transactions. In fact, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act") places such a high level of importance on state regulation of the suitability of annuities that, in an effort to provide incentives to states to adopt suitability requirements, the Act offers state agencies that promulgate suitability regulations federal grants of between \$100,000 to \$600,000 towards enhanced protection of seniors in connection with the sale and marketing of financial products.

4. Costs: Section 224.4(f) of New York Comp. Codes R. & Reg., tit. 11, Part 224 ("Insurance Regulation 187") requires an insurer to establish a supervision system designed to ensure an insurer's and its insurance producers' compliance with the provisions of Insurance Regulation 187. Additionally, § 224.4(g) requires an insurer to be responsible for ensuring that every insurance producer recommending the insurer's annuity contracts is adequately trained to make the recommendation.

As previously stated, the standards and procedures required by this rule are substantially similar to the standards and procedures set forth in the NAIC Model and the NASD Rule 2310. Thus, insurers selling variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers who sell fixed annuities in states where the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers should incur minimal additional costs in order to comply with the requirements of this rule.

The rule does not impose additional costs to the Department of Financial Services or other state government agencies or local governments.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule requires an insurance producer or an insurer to document: any recommendation subject to § 224.4(a) of Insurance Regulation 187; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation. Additionally, all records required or maintained in accordance with this rule must be maintained in accordance with Part 243 (Insurance Regulation 152).

The documentation required in this rule is substantially similar to the requirements of the aforementioned NAIC Model and NASD Rule 2310. As the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the similar provisions in other jurisdictions. As a result, minimal additional paperwork is expected to be required of most insurers in order to comply with the requirements of this rule.

7. Duplication: Sales of insurance products that are securities under federal law, such as variable annuities, are required to meet the suitability standards and procedures in the NASD Rule 2310. However, there currently exists no state or federal rule that specifically requires application of suitability standards in the sales of all annuities to New York consumers.

8. Alternatives: This rule is a modified version of the NAIC Model.

NAIC Model provisions detailing the procedures and standards of the supervision system required to be established by an insurer and the insurance producer training requirements were not included in this rule.

In 2009, the Department held four public hearings throughout the state to gather information about suitability in order to ascertain whether additional oversight and regulation was needed to protect consumers when they are considering the purchase of life insurance and annuities in New York State and if so, the scope and form of such regulation. Testimony at the public hearings by the life insurance industry and agent trade associations supported adoption of a regulation setting forth standards and procedures for recommendations to consumers that was consistent with the NAIC Model.

An outreach draft of this regulation was posted on the Department's website for public comment. In addition to submitted written comments, the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors – New York State (NAIFA- New York State), an agent trade association, met with Department representatives to discuss the draft. Some revisions were made to the draft based on these comments and discussions. NAIFA-New York State remains concerned about producer education and training provisions in the regulation and supports the NAIC Model provisions, which permit an insurance producer to rely on insurer-provided product-specific training standards and materials to comply with the regulation.

9. Federal standards: While NASD Rule 2310 requires suitability standards to be met in the sale of insurance products which are securities under federal law, there are no minimum federal standards for the sale of fixed annuity products.

10. Compliance schedule: The standards included in this rule were previously adopted on an emergency basis and have applied to any recommendation to purchase or replace an annuity contract made to a consumer on or after June 30, 2011 by an insurance producer or an insurer and therefore, insurance producers and insurers have been required to comply with the requirements of the rule since such time. Therefore, this rule will be implemented upon its permanent adoption.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

This rule is directed to insurers and insurance producers. Most of insurance producers are small businesses within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

This rule should not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at the entities allowed to sell annuity contracts, none of which are local governments.

2. Compliance requirements: The affected parties are required to make suitable recommendations for the purchase or replacement of annuity contracts based on relevant information obtained from the consumers. The rule requires an insurance producer to document: any recommendation subject to Section 224.4(a) of this Part, the consumer's refusal to provide suitability information, if any, and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's recommendation. Furthermore, all records required under this rule are to be maintained in accordance with Part 243 of this Title.

3. Professional services: None is required to meet the requirements of this rule.

4. Compliance costs: Minimum additional costs are anticipated to be incurred by regulated parties. While there may be costs associated with the compliance of this rule, these costs should be minimal.

5. Economic and technological feasibility: Although there may be minimal additional costs associated with the new rule, compliance is economically feasible for small businesses.

6. Minimizing adverse impact: There is little if no adverse economic impact on small businesses. The compliance, documentation and record-keeping requirements of this rule should have little impact on small businesses. Differing compliance or reporting requirements or timetables for small businesses were not necessary.

7. Small business and local government participation: Affected small businesses had the opportunity to comment at suitability public hearings held by the Department of Financial Services in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and insurance producers covered by this rule do business in every county in this state,

including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule requires an insurance producer or an insurer to document: any recommendation subject to section 224.4(a) of this Part; the consumer's refusal to provide suitability information, if any; and that an annuity purchase or replacement is not recommended if a consumer decides to enter into an annuity purchase or replacement that is not based on the insurance producer's or insurer's recommendation.

All records required or maintained under this Part shall be maintained in accordance with Part 243 (Insurance Regulation 152).

3. Costs: The standards and procedures required by this rule are substantially similar to the National Association of Insurance Commissioners' "Suitability in Annuity Transactions" Model Regulation ("NAIC Model") for annuities, and the Financial Industry Regulatory Authority's current National Association of Securities Dealers ("NASD") Rule 2310 for securities. Accordingly, insurers that currently sell variable annuities will likely already have in place the required supervisory system and training procedures to comply with NASD Rule 2310 and this rule. Similarly, insurers that sell fixed annuities in states in which the NAIC Model previously has been adopted will likely have in place the required supervisory system and training procedures to comply with the requirements of the NAIC Model and this rule. As a result, most insurers will incur minimal additional costs in order to comply with the requirements of this rule.

4. Minimizing adverse impact: This rule applies to insurers and insurance producers that do business throughout New York State. As previously stated, the standards and procedures required by this rule are substantially similar to the NAIC Model for annuities and the NASD Rule 2310 for securities. Since the NAIC Model has been implemented in many other states and NASD Rule 2310 is imposed nationwide, many companies are already complying with the provisions contained in this rule.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment at suitability public hearings held by the Department of Financial Services in 2009 and on the outreach draft of the rule, which was posted on the Department website for a two-week comment period.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

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

EMERGENCY RULE MAKING

Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities

I.D. No. DFS-01-12-00004-E

Filing No. 1369

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: Addition of Part 225 (Regulation 199) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; and Insurance Law, sections 301, 2103, 2104, 2110, 2403 and 4525

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

Specific reasons underlying the finding of necessity: This Part sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance policy or annuity contract. The Part prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into thinking that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

Seniors are often misled and harmed by the use of senior-specific certifications and designations by insurance producers that imply the exist-

tence of a level of expertise and knowledge in senior matters that in fact does not exist. Misleading certifications and professional designations such as “certified elder planning specialist” and “certified senior advisor” are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients, resulting in the loss of seniors’ savings, by insurance producers utilizing misleading senior-specific certifications or designations. Legislators and regulators, both federal and state, responding to such reports, have proposed and/or adopted prohibitions on the use of senior-specific designations in a misleading manner. In 2008, the National Association of Insurance Commissioners adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (“the NAIC Model”). The standards and procedures in this rule are substantially the same as those already adopted by the NAIC Model. While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides this consumer protection by prohibiting the use of misleading senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities.

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

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

Subject: Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities.

Purpose: To protect consumers from misleading use of senior-specific certifications and designations in the sale of life insurance or annuities.

Text of emergency rule: Section 225.0 Purpose.

The purpose of this Part is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract.

Section 225.1 Applicability.

This Part shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract by an insurance producer.

Section 225.2 Prohibited uses of senior-specific certifications and professional designations.

(a)(1) No insurance producer shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or providing services to seniors in connection with the solicitation, sale or purchase of a life insurance policy or annuity contract or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance policy or annuity contract, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance policy or annuity contract.

(2) The prohibited use of senior-specific certifications or professional designations includes use of:

(i) a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) a non-existent or self-conferred certification or professional designation;

(iii) a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(iv) a certification or professional designation that was obtained from a certifying or designating organization that:

(a) is primarily engaged in the business of instruction in sales or marketing;

(b) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(c) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(d) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(b) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision (a)(2)(iv) of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(1) The American National Standards Institute (ANSI);

(2) The National Commission for Certifying Agencies; or

(3) any organization that is on the U.S. Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes.”

(c) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or providing services to seniors, factors to be considered shall include:

(1) use of one or more words such as “senior,” “retirement,” “elder,” or like words combined with one or more words such as “certified,” “registered,” “chartered,” “advisor,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

(d)(1) For purposes of this Part, a job title held by an insurance producer within an organization or other entity that is licensed or registered by a state or federal financial services regulatory agency shall not be deemed a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization or other entity; or

(ii) specifies an individual’s area of specialization within the organization or other entity.

(2) For purposes of this subdivision, financial services regulatory agency includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

Section 225.3 Violations.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law and shall be a violation of section 2403 of the Insurance Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 14, 2012.

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent’s authority for promulgation of this rule derives from sections 202, 301, and 302 of the Financial Services Law (“FSL”) and sections 301, 2103, 2104, 2403, 2110, and 4525 the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 301 establishes the powers of the Superintendent generally. FSL section 302 and section 301 of the Insurance Law, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Sections 2103 and 2104 of the Insurance Law provide the Superintendent with licensing authority over insurance agents and brokers.

Section 2110 of the Insurance Law authorizes the Superintendent to investigate and discipline those licensees.

Section 2403 of the Insurance Law prohibits any person from engaging in this state in any trade practice constituting a defined violation or a determined violation as defined in Insurance Law Article 24.

Section 4525 of the Insurance Law specifically subjects fraternal benefit societies to certain provisions of Insurance Law Article 21, as well as to any other section that specifically applies to fraternal benefit societies.

2. Legislative objectives: Various sections of the Insurance Law address advertisements, statements and representations of licensees used in the solicitation of insurance. These sections seek to protect consumers and insurers in New York by establishing prohibitions and uniform standards governing the dissemination of such information to the public. Although this regulation is directed to certain practices involving the sale of life insurance and annuity contracts, many of the provisions of the law pursuant to which this regulation is promulgated apply equally to other kinds of insurers. In addition, certain other Insurance Law provisions and regulations promulgated thereunder may have corresponding applicability to other kinds of insurance. In any case, the focus of this regulation to life insurance and annuity contracts should not be construed to imply that similar prohibitions do not apply to, or that corrective action should not be implemented for, other types of insurers or other kinds of insurance.

Further, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act") places a high level of importance on state regulation of the appropriate use of certifications and professional designations in the sale of insurance products. To encourage state regulation, the Act offers those state agencies with such regulations in effect federal grants to fund specified regulatory activities that provide enhanced protection of seniors in connection with the sale and marketing of financial products.

This rule sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract. It prohibits the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into believing that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

3. Needs and benefits: Seniors are often misled and harmed by insurance producers' use of senior-specific certifications and designations, which wrongly imply the existence of expertise and knowledge of senior matters. Misleading certifications and professional designations such as "certified elder planning specialist" and "certified senior advisor" are used by insurance producers to gain the confidence of seniors by creating an impression of expertise and knowledge. However, many of these designations are obtained by insurance producers in a manner that requires little more than the payment of a fee.

In recent years, the media has reported cases of unsuitable sales to elderly clients by insurance producers who utilized misleading senior-specific certifications or designations, which resulted in the loss of seniors' savings. Federal and state legislators and regulators, in responding to such reports, have proposed and adopted prohibitions on the misleading use of senior-specific designations. In 2008, the National Association of Insurance Commissioners ("NAIC") adopted a new Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities ("the NAIC Model"). While more than 15 states have implemented some form of the NAIC Model, New York has no statute or regulation that specifically provides a consumer protection that prohibits the misleading use of senior-specific certifications or professional designations by an insurance producer in the sale of life insurance and annuities. In recognition of the need to provide such consumer protection, the Department of Financial Services is adopting the NAIC Model, with minimal modifications, as Part 225 to Title 11 NYCRR (Insurance Regulation 199). The modifications from the NAIC Model conformed terminology and formatting to New York standards as well as added the violations section of the regulation.

4. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

The rule does not impose additional costs on the Department of Financial Services or other state government agencies or local governments.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule does not impose any reporting or recordkeeping requirements on affected insurance producers.

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

8. Alternatives: The Department of Financial Services considered not implementing the NAIC Model and proceeding under the Department's more general enforcement authority under Insurance Law Article 24. However, because of the misleading and fraudulent marketing practices

reported in recent years, the Department determined that a regulation would be the best way to address the situation.

An outreach draft of the regulation was posted on the Department's website on October 5, 2010 for a 14-day comment period. Interested parties, such as the Life Insurance Council of New York (LICONY), a life insurance industry trade association, and the National Association of Insurance and Financial Advisors – New York State (NAIFA- New York State), an agent trade association, supported the adoption of this Part in written comments and/or discussions with the Department of Financial Services.

9. Federal standards: There are no minimum standards imposed by the federal government for the same or similar subject area.

10. Compliance schedule: Insurance producers who currently make appropriate use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract should not need to change their sales practices. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting or recordkeeping requirements or compliance costs on small businesses.

This rule is substantially the same as the National Association of Insurance Commissioners' ("NAIC") Model regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities and is directed at licensed insurance producers within New York State. The acts prohibited by the rule comport with those prohibited by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations. The rule does not impose any additional compliance requirements on insurance producers.

2. Local governments: The Department of Financial Services finds that this rule will not impose any adverse compliance requirements or adverse impacts on local governments. The basis for this finding is that this rule is directed at insurance producers, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurance producers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: The rule prohibits the misuse of senior-specific certifications and professional designations by insurance producers in connection with solicitation or sale of, or advice made in connection with, a life insurance policy or annuity contract.

The rule does not impose any reporting, recordkeeping, or professional services requirements on affected insurance producers.

3. Costs: Insurance producers should not incur additional costs to comply with this rule. The acts prohibited by the rule comport with those prohibited directly by Insurance Law Article 24. The rule clarifies the prohibitions without imposing new obligations.

4. Minimizing adverse impact: This rule should not result in an adverse impact on rural areas.

5. Rural area participation: Affected parties doing business in rural areas of the State had the opportunity to comment on the draft of the rule posted on the Department website during the two-week comment period that commenced on October 5, 2010.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule sets forth standards to protect consumers from misleading and fraudulent sales practices with respect to the use of senior-specific certifications and professional designations by insurance producers in the solicitation, sale, or purchase of, or advice made in connection with, life insurance policies and annuity contracts.

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

NOTICE OF ADOPTION

Exempt Organizations; Subsidiaries of Exempt Organizations; Exempt Mortgage Product

I.D. No. BNK-35-11-00001-A

Filing No. 1366

Filing Date: 2011-12-14

Effective Date: 2012-01-04

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

Action taken: Amendment of Part 39 of Title 3 NYCRR.

Statutory authority: Banking Law, section 14 and art. 12-D

Subject: Exempt Organizations; Subsidiaries of Exempt Organizations; Exempt Mortgage Product.

Purpose: To provide for state licensing and registration for mortgage bankers and brokers that are consolidated subsidiaries of exempt organizations and to eliminate or modify exemptions that apply to mortgage bankers or brokers dealing in certain loan products.

Text of final rule: Section 39.1 Purpose.

The purpose of this Part is to define the entities engaged in the business of soliciting, negotiating, placing, processing or making mortgage loans secured by a first or junior lien [which] that will be exempt from the registration or licensing requirements of [article] Article 12-D of the Banking Law, and to define mortgage loan products, the brokering or funding of which do not require registration or licensing as a mortgage banker or mortgage broker under [article] Article 12-D.

39.2 Definitions.

As used in this Part:

(a) The term exempt organization shall mean any insurance company, banking organization, foreign banking corporation licensed by the [superintendent] Superintendent or the Comptroller of the Currency to transact business in this State, national bank, Federal savings bank, Federal savings and loan association, Federal credit union, any bank, trust company, savings bank, savings and loan association, and credit union organized under the laws of any other state; any instrumentality created by the United States or any state with the power to make mortgage loans and any entities exempt pursuant to [sections] Section 39.4 of this Part. [The term does not include any nonbanking subsidiary of a bank holding company. However, an exempt organization shall not be relieved of the advertising, solicitation, application and commitment procedures and disclosure requirements or penalties set forth in article 12-D of the Banking Law and Part 38 of this Title.]

[(b) The term bank holding company shall mean a business corporation which is deemed to be a bank holding company, savings bank holding company, or savings and loan holding company for purposes of Federal or any State law. The term bank holding company shall not include a bank holding company which is a banking organization.]

[(c) The term consolidated subsidiary shall mean a subsidiary of an insurance company, banking organization, foreign banking corporation licensed by the superintendent or the Comptroller of the Currency to transact business in this State, national bank, Federal savings bank, Federal savings and loan association, Federal credit union, or of any bank, trust company, savings bank, savings and loan association, or credit union organized under the laws of any other state; or any instrumentality created by the United States or any state with the power to make mortgage loans as to which consolidated financial statements are issued with its parent pursuant to title 26 of the United States Code.]

[(d) The term credit line mortgage shall mean any mortgage or deed of trust, other than a mortgage or deed of trust made pursuant to a building loan contract as defined in subdivision 13 of section 2 of the Lien Law, which states that it secures indebtedness under a note, credit agreement or other financing agreement that reflects the fact that the parties reasonably contemplate entering into a series of advances, or advances, payments and readvances, and that limits the aggregate amount at any time outstanding to a maximum amount specified in such mortgage or deed of trust.]

[(e)](b) The term exempt products shall mean any mortgage loan products meeting the requirements of section 39.5 of this Part. The brokering or funding of such products shall not be a business activity requiring registration or licensing pursuant to [article] Article 12-D, nor shall such products be subject to the advertising, solicitation, application and commitment procedures, disclosure requirements or penalty provisions set forth in article 12-D of the Banking Law and Part 38 of this Title.

[(f) The term home improvement loan shall mean a loan made pursuant to subdivision 4 of section 108 of the Banking Law.]

[(g) The term installment loan shall mean a loan made pursuant to subdivision 4 of section 108 of the Banking Law.]

[(h)](c) As used in this Part, terms defined in [General Regulation section 38.1 of this Title] Section 38.1 of the General Regulations of the Banking Board shall have the same meaning as prescribed therein.

39.3 General provisions.

(a) An entity not exempt by *New York law* [statute] which shall otherwise not establish its exempt status in accordance with this Part shall become licensed or registered in accordance with the procedures described in Part 410 of this Title prior to April 1, 1988. *Entities exempt under a prior version of this Part that are no longer exempt shall file an application to become licensed or registered prior to April 3, 2012 and shall become licensed or registered by July 2, 2012, or such later date as the Superintendent may approve for good cause.*

(b) *An exempt organization shall not be relieved of the advertising, so-*

licitation, application and commitment procedures and disclosure requirements set forth in Article 12-D of the Banking Law and Part 38 of this Title or the penalties for violations of such requirements set forth in the Banking Law. An [Entities] entity exempt from [registration or] licensing or registration as a mortgage banker or mortgage broker shall not be subject to periodic examination by the [Banking] Department but may at any time become subject to special investigation. Accordingly, consistent with section 597 of the Banking Law, each such [entities] entity shall keep [their] its books and records in a manner which will allow the Superintendent to determine whether such [exempt organization] entity is complying with the advertising, solicitation, application and commitment procedures and disclosure requirements prescribed in Part 38 of this Title, except for books and records relating to exempt products. Information and forms regarding recordkeeping can be obtained at: [Banking] Department of Financial Services, Mortgage Banking [Division] unit at the address set forth in section 1.1 of Supervisory Policy G 1. Books and records shall be available for inspection by the Superintendent in accordance with Superintendent's Regulation Part 410 of this Title.

39.4 [Exempt organizations] *Organizations Exempt from Licensing or Registration*; conditions precedent to exemptions from registration or licensing requirements of [article] Article 12-D.

[(a) Consolidated subsidiaries.]

[(1) Prior to commencing business in this State, a consolidated subsidiary shall file an undertaking to the superintendent containing the following provisions:]

[(i) that the consolidated subsidiary shall maintain its books and records relating to the making of mortgage loans for a three-year period in a manner permitting inspection by the superintendent;]

[(ii) that the superintendent shall be authorized to inspect such books and records upon reasonable notice;]

[(iii) that the consolidated subsidiary shall bear all the costs and expenses relating to the inspection; and]

[(iv) that in the case of a consolidated subsidiary of an out-of-state exempt organization, it designated the superintendent as agent for service of process in connection with any transaction subject to the requirements of the Banking Law and regulations.]

[(2) Prior to commencing business in this State, the consolidated subsidiary shall provide the superintendent with an undertaking affirming that the advertising, solicitation, application and commitment procedures and disclosure requirements of article 12-D of the Banking Law and Part 38 of this Title shall be applied to all mortgage loans secured by real property located in New York State except for exempt products offered by the subsidiary.]

[(3) When so required by the superintendent, the consolidated subsidiary shall furnish copies of its mortgage loan forms and other documents to the Banking Department for review.]

[(4) Only consolidated subsidiaries shall be eligible for exemption from licensing or registration. Wholly owned subsidiaries shall be deemed to be consolidated subsidiaries.]

In addition to the entities defined as exempt organizations in Part 39.2 above, the following are exempt from licensing or registration as a mortgage banker or mortgage broker under Article 12-D of the Banking Law or the rules and regulations promulgated thereunder:

[(b)](a) Loan [servicers and] investors. Persons who [act as servicers for mortgage loans, or persons who] acquire [such] mortgage loans from lenders for investment but who do not make mortgage loans [shall not be subject to the registration or licensing requirement of article 12-D of the Banking Law or the rules and regulations promulgated thereunder].

[(c)] (b) Licensed real estate brokers. Licensed real estate brokers who or which do not accept a separate fee (in addition to any earned real estate brokerage fee), directly or indirectly, for services performed in connection with the brokering of a mortgage loan [shall not be required to be registered as a mortgage broker].

[(d)](c) Mortgage bankers engaged in mortgage brokerage activities. Section 590 of the Banking Law provides that a license to engage in the business of making mortgage loans shall be deemed to include the authority to engage in the business of soliciting, processing, placing and negotiating mortgage loans. No additional registration with the [d]Department shall be required to engage in the mortgage brokerage business, nor shall additional registration fees be required of any mortgage banker. [Nothing in either of this Part or Part 38 of this Title or article 12-D of the Banking Law shall require the employees of an exempt organization to obtain a license or registration certificate when assisting the exempt organization in the performance of business activities of the type described in article 12-D.]

[(e)](d) Entities offering mortgage loan products [which are] exempt under section 39.5 of this Part. Entities offering only mortgage loan products [which] that are exempt products pursuant to section 39.5 of this Part [are exempt from the registration and licensing requirements of article 12-D of the Banking Law and Part 410 of this Title].

[(f)](e) Not-for-profit organizations. Not-for-profit organizations may be eligible for exemption [from the registration and licensing requirements of article 12-D of the Banking Law]. Such organizations which seek exemption may submit a letter application to the [mortgage banking division] *Mortgage Banking unit of the Department at the address set forth in section 1.1 of Supervisory Policy G 1*, together with such information as may be prescribed by the [superintendents] *Superintendent*.

39.5 Exempt products.

The following loan products are exempt *products* [from all of the requirements of article 12-D of the Banking Law and Part 38 of this Title]:

(a) purchase money mortgages extended by a seller [or an organization controlled by a seller of residential real property] to buyers thereof[.], where the seller is an individual, estate or trust that sells not more than three properties in any 12-month period, provided that the seller has not constructed or acted as a contractor for the construction of a residence being sold. [Included within this exemption are loans made by sponsors of cooperative and condominium developments to unit purchasers, and loans made by organizations controlled by sponsors of cooperative and condominium developments to unit purchasers;]

(b) construction loan mortgages;

(c) relocation mortgage loans. A mortgage loan made by an applicant's employer if the purpose of the loan is to assist the employee to relocate;

(d) any product offered as a mortgage loan by an instrumentality created by the United States or any state; and

[(e) credit line mortgages, installment loans and home improvement loans; and]

[(f)](e) such other loan products [which] as may be specifically exempted upon application to the [superintendants] *Superintendent*.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 39.2(b), 39.3(b), 39.4 and 39.5.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

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

The changes made to the last published rule update certain references to reflect the consolidation of the former Banking Department into the Department of Financial Services and make minor language clarifications.

Such changes do not affect the accuracy of the above impact statements as attached to the Notice of Proposed Rule Making.

Assessment of Public Comment

One comment was received from an industry association of credit unions in the state. The commenter acknowledged that recent federal legislation gives the Department authority to regulate credit union service organizations (CUSOs) which are subsidiaries of federally chartered as well as state chartered credit unions. However, the commenter felt that the state should not exercise this authority to apply state registration and licensing requirements to CUSOs which engage in mortgage banking or mortgage brokerage.

The commenter noted that under the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act") and the more recent Dodd-Frank Act, employees of federally regulated financial institutions and their subsidiaries (including CUSOs) who engage in residential mortgage loan origination are required to be registered in the Nationwide Mortgage Licensing System and Registry ("NMLS"). The commenter stated that the state-level licensing of these employees will add little value to this regulatory regime.

The Department notes that the regulation being amended deals with the registration or licensing and regulation of entities that are financial institution subsidiaries. The Department believes that regulation of mortgage bankers and mortgage brokers, including CUSOs, provides public benefits beyond those provided by registration and regulation of their individual mortgage loan originator employees.

The Banking Law provisions requiring licensing of individual employees as mortgage loan originators (Article 12-E) are separate from the provisions requiring registration or licensing of mortgage bankers and mortgage brokers (Article 12-D), and the regulations thereunder do utilize the NMLS.

The Department continues to believe that state supervision of all mortgage bankers and brokers, including those that are subsidiaries of federally regulated banking organizations, is necessary at the present time for the protection of residents of the state.

Indeed, the Department notes that the federal credit union supervisor has stated that it does not have direct regulatory oversight or enforcement authority with respect to CUSOs. National Credit Union Administration Legal Opinion Letter 08-0843 (October 8, 2008).

Finally, the commenter stated that if the Department determines nonetheless to apply the state's mortgage banker and mortgage broker regula-

tory regime to CUSOs, in light of the expense that many CUSOs have already incurred as a result of the SAFE Act registration requirements, the Department should either "waive" the proposed date by which compliance is required or defer it by an additional three months.

The Department believes that CUSOs and other subsidiaries of regulated banking organizations have had substantial prior notice of the proposal's requirements and an ample opportunity to commence compliance planning. The language of the proposed regulation was approved for public comment by the former Banking Board in May of 2011, the proposal was formally issued in August and the final regulation will become effective in late December at the earliest. Under the final regulation, affected institutions will have until late March, 2012 to file their applications.

Department of Health

EMERGENCY RULE MAKING

NYS Medical Indemnity Fund

I.D. No. HLT-01-12-00001-E

Filing No. 1365

Filing Date: 2011-12-14

Effective Date: 2011-12-14

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

Action taken: Amendment of Part 69 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

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

Specific reasons underlying the finding of necessity: These regulations are being promulgated on an emergency basis because of the need for the Fund to be operational as of October 1, 2011. Authority for emergency promulgation was specifically provided in section 111 of Article VII of the New York State 2011-2012 Budget.

Subject: NYS Medical Indemnity Fund.

Purpose: To provide the structure within which the NYS Medical Indemnity Fund will operate.

Substance of emergency rule: As required by new section 2999-j(15) of the Public Health Law (PHL), the New York State Commissioner of Health, in consultation with the Superintendent of Insurance, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the process will be for reviews of prior approval, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of a completed application form, a signed release form, and a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury is all that is required for actual enrollment in the Fund. Prior to coverage being provided, the parent or other person authorized to act on behalf of a qualified plaintiff must provide the Fund with documentation regarding the nature and degree of the plaintiff's birth related neurological injuries, including diagnoses and impact on the applicant's activities of daily living and instrumental activities of daily living. In addition, the parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, that such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care

costs are defined as broadly as defined by the statute. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a hearing before a Department of Health hearing officer. The hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for urgent situations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 12, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Section 2999-j (15) of the Public Health Law (PHL) specifically states that the Commissioner of Health, in consultation with the Superintendent of Financial Services (the Superintendent of Insurance until October 3, 2011), “ shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title.”

Legislative Objectives:

The Legislature delegated the details of the Fund’s operation to the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund’s operations. Those two agencies are the Department of Health and the Insurance Department (the Insurance Department will merge with into a new agency, the New York State Department of Financial Services, on October 3, 2011). These proposed regulations reflect the collaboration of both agencies in providing the administrative details for the manner in which the Fund will operate.

Needs and Benefits:

The regulations have the goal of establishing a process to provide that persons who have obtained a settlement or a judgment based on having sustained a birth-related neurological injury as the result of medical malpractice will have lifetime medical coverage.

Costs:

Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments:

Costs associated with the Fund will be covered by applicable appropriations. The Department of Health will also seek Federal Financial Participation for the health care costs of qualified plaintiffs that otherwise would be covered by Medicaid. No costs are expected to local governments.

Local Government Mandates:

None.

Paperwork:

The proposed regulations impose no reporting requirements on any regulated parties.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Al-

though some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that are available to qualified plaintiffs through commercial insurance coverage they may have or through other State or Federal programs such as the Early Intervention Program or as part of an Individualized Education Plan will not be covered by the Fund.

Alternatives:

Given the statute’s directive, there are no alternatives to promulgating the proposed regulations.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

The Fund must be operational by October 1, 2011.

Regulatory Flexibility Analysis

Effect of Rule:

For 2009, of the 135 general hospitals in New York State that provided maternity services, only ten had less than two hundred deliveries that year.

Compliance Requirements:

The regulations impose no new reporting or recordkeeping obligations.

Professional Services:

None.

Compliance Costs:

There are no costs imposed by these regulations on regulated businesses or local governments.

Economic and Technological Feasibility:

The proposed regulations should not create any economic or technological issues for any hospitals or other health care providers. Manual billing will be permitted for those providers that do not have electronic billing capacity.

Minimizing Adverse Impact:

There will be no adverse impact on small businesses and local governments.

Small Business and Local Government Participation:

For purposes of the regulation drafting process, input was sought from hospital associations, provider associations and advocacy organizations throughout the State as well as the Consumer Advisory Committee required by the statute.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

The New York State Medical Indemnity Fund being implemented by these regulations will cover future medical expenses for all qualified plaintiffs throughout New York State who have obtained a judgment or a settlement based on a birth-related neurological impairment on or after April 1, 2011.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

No reporting, recordkeeping, other compliance requirement or professional services other than the submission of claims are required by the regulations.

Costs:

There are no costs to rural areas associated with these regulations.

Minimizing Adverse Impact:

There will be no adverse impact on rural areas as a result of the proposed regulations.

Rural Area Participations:

For purposes of the regulation drafting process, input was sought from hospital associations, provider associations and advocacy organizations throughout the State as well as the Consumer Advisory Committee required by the statute.

Job Impact Statement

Nature of Impact:

The regulations should have no substantial impact on jobs and employment opportunities.

Categories and Numbers Affected:
None.
Regions of Adverse Impact:
None.
Minimizing Adverse Impact:
None.
Self-Employment Opportunities:
None.

NOTICE OF ADOPTION

July 2011 Ambulatory Patient Groups (APGs) Payment Methodology

I.D. No. HLT-39-11-00019-A

Filing No. 1378

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

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

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

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

Purpose: To refine the APG payment methodology.

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

86-8.2 – Definitions

The proposed amendment to section 86-8.2 of Title 10 (Health) NYCRR removes subdivision (r), which defined ambulatory surgery permissible procedures.

86-8.7 – APGs and relative weights

The proposed revision to section 86-8.7 of Title 10 (Health) NYCRR repeals all of section 86-8.7 effective July 1, 2011 and replaces it with a new section 86-8.7 that includes revised APG weights, procedure-based weights, and APG fee schedule fees.

86-8.9 Diagnostic coding and rate computation

The proposed revisions to section 86-8.9 of Title 10 (Health) NYCRR removes subdivision (c), which references ambulatory surgery permissible procedures. Additionally, a new subdivision (c) is added to allow for a reduction of reimbursement for drugs purchased through the 340B drug benefit program. Subdivision (d) is amended to add APG 451 Smoking Cessation Treatment.

86-8.10 Exclusions from payment

The proposed revisions to section 86-8.10 of Title 10 (Health) NYCRR amends subdivision (h) to add APG 465 Class XIII Combined Chemotherapy and Pharmacotherapy and subdivision (i) to add APG 490 Incidental to Medical, Significant Procedure or Therapy Visit to the if stand alone do not pay list.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 86-8.10(i).

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

We have reviewed the comments dated November 14, 2011 from the NYC DOHMH relative to the APG regulatory revision (HLT-39-11-00019-P) and we concur that the smoking cessation APG should be a payable stand alone APG. We will revise the regulation and the policy manual accordingly. Specifically, we will add to the policy manual a section that states that tobacco cessation is billable for all Medicaid enrollees. We thank NYC DOHMH for bringing this issue to our attention.

Higher Education Services Corporation

NOTICE OF ADOPTION

Participation in the Tuition Assistance Program (TAP)

I.D. No. ESC-43-11-00020-A

Filing No. 1383

Filing Date: 2011-12-20

Effective Date: 2012-01-04

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

Action taken: Addition of Parts 2400-2411 to Title 8 NYCRR.

Statutory authority: Education Law, sections 655(4) and 661(4)

Subject: Participation in the Tuition Assistance Program (TAP).

Purpose: To implement part Z of chapter 58 of the Laws of 2011.

Substance of final rule: I. Subchapter A. Administration.

A. Part 2400. General Purposes and Definitions.

Section 2400.1. General Purpose. This section sets forth the New York State Higher Education Services Corporation's (Corporation) statutory purpose, which includes awarding Tuition Assistance Program (TAP) awards consistent with Education Law § § 661(4)(b) and 661(4)(b-1).

Section 2400.2. Definitions. This section sets forth the meanings of various terms used in new Chapter XXII.

B. Part 2401. Public Access to Records.

Section 2401.1. Duties of Records Access Officer. This section states that the records access officer shall have all the duties defined in Section 2002.2 of Subchapter A of Chapter XX of Title 8 of the NYCRR.

Section 2401.2. Availability of Records.

This section sets forth the process by which the public may request public records of the Corporation consistent with the Freedom of Information Law.

Section 2401.3. Appeals.

This section sets forth the process by which a person denied access to records may appeal such decision consistent with the Freedom of Information Law.

Section 2401.4. Personal Privacy Protection.

This section sets forth the requirements regarding the maintenance of personal records by the Corporation and the process by which a person may access or correct his or her record consistent with the Personal Privacy Protection Law.

C. Part 2402. Procedures for Declaratory Ruling.

Section 2402.1. Petition for Declaratory Ruling.

This section sets forth the process for obtaining a declaratory ruling from the Corporation regarding the statutes, rules, and regulations enforced by the Corporation.

D. Part 2403. Hearing Procedures.

Section 2403.1. Hearings.

This section sets forth the manner in which parties are notified of hearings in connection with adjudicatory proceedings.

Section 2403.2. Record.

This section sets forth the contents of the record in an adjudicatory proceeding.

Section 2403.3. Presiding Officers.

This section sets forth who can be designated as a presiding officer to conduct hearings in adjudicatory proceedings.

Section 2403.4. Powers of Presiding Officer.

This section sets forth the powers of the presiding officers.

Section 2403.5. Disclosure.

This section authorizes the presiding officer to provide for discovery in a manner appropriate to the proceeding.

Section 2403.6. Evidence.

This section sets forth the scope of the rules of evidence to be used during an adjudicatory proceeding.

Section 2403.7. Decisions, Determinations and Orders.

This section sets forth the content and delivery of decisions, determinations and orders upon conclusion of an adjudicatory proceeding.

Section 2403.8. Representation.

This section sets forth the right of a person appearing before the corporation to be accompanied by counsel or other representation.

E. Part 2404. Suspension and Limitation of Awards Participation.

Section 2404.1. Possible Sanctions.

This section sets forth the penalties which may be imposed as a result of a violation of applicable laws, regulations or agreements.

Section 2404.2. Procedures.

This section sets forth both informal and formal procedures for addressing suspected violations of applicable laws, regulations, agreements or limitations.

Section 2404.3. Application for Reinstatement.

This section sets forth the process for requesting reinstatement of eligibility to participate in the award program after a final adverse decision has been issued by the corporation.

Section 2404.4. Causes for Formal Sanctions.

This section sets forth the grounds for the limitation, suspension or termination of an educational institution's eligibility to participate in the award program.

F. Part 2405. Recovery of Refunds and Overpayments.

Section 2405.1. Remedies.

This section sets forth the different repayment arrangements available in connection with a refund and/or overpayment owed from a student or educational institution.

Section 2405.2. Grounds for Recovery.

This section sets forth the circumstances under which a student and an educational institution would owe a refund or overpayment.

Section 2405.3. Procedures.

This section sets forth the procedures for notifying a student and an educational institution that a refund or overpayment is owed to the corporation, including the right to dispute the demand and the right to a hearing on the matter.

G. Part 2406. Special Administrative Relief Provisions.

Section 2406.1. Eligibility for Further Financial Aid After Default.

This section mirrors section 2008.1 of Subchapter A of Chapter XX of Title 8 of the NYCRR regarding what is required of an applicant in order to receive TAP if that applicant is in default on a student loan, TAP overpayment or is out of compliance with the terms and conditions of any other State award.

II. Subchapter B. Tuition Assistance Awards for Additional Participants.

A. Part 2407. Student Eligibility Criteria.

Section 2407.1. Student Eligibility Criteria.

This section sets forth the specific criteria a student must satisfy in order to be eligible for an award as contained in sections 661(4)(b-1) of the Education Law. This section also sets forth the general criteria a student must satisfy in order to be eligible for an award.

B. Part 2408. Tuition Assistance Program Awards.

Section 2408.1. Eligibility Criteria and Award Limitations.

This section sets forth the award limitations based on the applicant's income.

Section 2408.2. Adjustments to Income.

This section sets forth the adjustments to the income information reported that may be made based on certain specified criteria.

Section 2408.3. Financial Independence of Applicants.

This section sets forth the criteria that must be established in order for an applicant to demonstrate financial independence and exclude the income of his/her parents in the computation of an award.

Section 2408.4. Exclusion of Income of Parent or Spouse.

This section sets forth the criteria that must be established for a dependent applicant to exclude the income of a parent or spouse in the computation of an award.

Section 2408.5. Tax Dependents.

This section sets forth when an applicant shall be considered to have tax dependents for purposes of determining the schedule under which an applicant shall be paid.

Section 2408.6. Full Time Study.

This section sets forth the period of attendance that constitutes full time study.

Section 2408.7. Academic Requirements; Program Pursuit and Academic Progress.

This section sets forth the academic requirements required to receive an award.

Section 2408.8. Registration of Postsecondary Curricula.

This section requires that every curricula be registered subject to the requirements of the Corporation.

Section 2408.9. Standards for the Registration of Curricula.

This section provides that the standards for the registration of curricula be established by the Corporation.

Section 2408.10. Procedures on Denial of Reregistration.

This section sets forth the procedures for an educational institution to appeal a decision denying its registration of an existing curriculum.

Section 2408.11. Procedures on Denial of Initial Registration.

This section sets forth the procedures for an educational institution to appeal a decision denying its registration of a proposed curriculum.

Section 2408.12. Information to be Provided.

This section sets forth the information an educational institution is required to provide students regarding financial assistance, and other related aspects of the educational institution, available to them.

Section 2408.13. Approved Programs for Tuition Assistance Awards.

This section establishes the approved programs for the award program.

Section 2408.14. Matriculated Status.

This section sets forth the requirements to achieve a matriculated status, which is required to receive an award.

Section 2408.15. In-State Study.

This section sets forth the requirements for in-state study and the criteria that must be satisfied in order to be eligible for an award when studying outside the State.

Section 2408.16. Educational Fees.

This section sets forth the specific fees considered educational fees for purposes of student aid.

Section 2408.17. Limitation of Amount of Award.

This section sets forth other assistance considered duplicative, and therefore would result in a limitation, of an award pursuant to sections 661(4)(b) and 661(4)(b-1) of the Education Law.

Section 2408.18. Administration of Ability-to-Benefit Tests for Purposes of Eligibility for Awards.

This section sets forth the requirements in connection with ability-to-benefit tests in order to be eligible for an award.

C. Part 2409. Duration of Eligibility.

Section 2409.1. Duration of Eligibility.

This section sets forth the number of years a recipient is eligible to receive an award based on his/her program of study.

Section 2409.2. Partial Payments.

This section sets forth the circumstances under which a partial payment would be made.

D. Part 2410. Applicant, Institutional, and Accrediting Agency Responsibilities.

Section 2410.1. Generally.

This section provides that the applicant and the institution are responsible for the accuracy of the information provided to, and relied upon by, the corporation.

Section 2410.2. Applicant Responsibility.

This section sets forth the information the applicant must provide to the corporation.

Section 2410.3. Institutional Eligibility and Responsibility.

This section sets forth specific criteria an educational institution must satisfy in order to be eligible for an award as contained in sections 661(4)(b) of the Education Law. This section also sets forth the information the educational institution must provide to the corporation. This section also requires educational institutions to enter into a participation agreement with the corporation. This section also sets forth the educational institution's responsibilities under the award program.

Section 2410.4. Accrediting Agency Responsibility.

This section sets forth that the accrediting agency must comply with all laws and regulations governing the award program. This section also sets forth the information the accrediting agency must provide to the corporation.

Section 2410.5. Audit.

This section sets forth the comptroller's authority to audit institutional adherence to the statutes, rules and regulations governing the award program.

E. Part 2411. Payment of Awards.

Section 2411.1. Payment.

This section sets forth the methods of payment.

Section 2411.2. Payment Terms.

This section sets forth the terms of study under which payment will be made.

Section 2411.3. Methods of Payment.

This section details each method of payment.

Final rule as compared with last published rule: Nonsubstantial changes were made sections 2400.1(c), 2400.2(v), 2405.2(a)(4), 2407.1(a)(7), 2408.6(a), 2408.7, 2408.12(d)(5), 2408.13(b)(1), (2), 2408.15, 2408.18(a), (c)(1), (2), 2410.5 and 2411.2(b).

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, Higher Education Services Corporation, 99 Washington Ave., Rm. 1315, Albany, NY 12255, (518) 474-5592, email: regcomments@hesc.org

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA, and JIS.

Assessment of Public Comment

The New York State Higher Education Services Corporation (HESC) is authorized, pursuant to New York State Education Law § 655(4) and

§ 661(4), to adopt rules and regulations implementing changes to the Tuition Assistance Program (TAP).

HESC received comments following the October 26, 2011 publication of the 'Notice of Proposed Rulemaking' in the State Register. All comments received are considered and discussed below.

1. General Purposes [8 NYCRR § 2400.1(c)]

Comment: The regulation provides that students who are enrolled in a program registered by the commissioner pursuant to part 52 of this Title shall not be eligible for awards under this Chapter. Since this requirement is not contained in the statute, this provision of the regulation goes beyond the statute regarding the new TAP program. Therefore, the language of the regulation should be changed to comport with the law.

Response: HESC will amend the regulation to specify that such students are ineligible for awards under this Chapter unless such program is ineligible for tuition assistance program awards under the regulations of the commissioner.

2. General Purposes [8 NYCRR § 2400.1(c)]

Comment: This section makes reference to Part 52 of the Commissioner's regulations. Part 52.2(e)(6) requires schools to maintain a permanent, complete, accurate, and up-to-date transcript of student achievement at the institution. This requirement is important because the student transcript is the basis for measuring compliance with the full-time study, good academic standing, approved program, etc. requirements of the law and regulations.

Because it is not clear whether the requirements of Part 52 apply to section 661(4)(b) schools, we recommend that the requirement to maintain a permanent, complete, accurate, and up-to-date transcript of student achievement expressly be made to apply to 661(4)(b) schools pursuant to Section 2408.9 of the regulations.

Response: Section 2408.9 of the regulation provides that the standards for the registration of curricula shall be established by the corporation. HESC will include the requirement that the schools maintain a permanent, complete, accurate, and up-to-date transcript of student achievement at the institution. No change to the regulation is necessary.

3. Definitions [8 NYCRR § 2400.2(v)]

Comment: This provision contains a typographical error; it repeats the phrase "shall mean."

Response: HESC will correct the error.

4. Grounds for Recovery [8 NYCRR § 2405.2(a)(4)]

Comment: This section addresses student and institutional responsibility for refunding certain awards to the State. Because it appears to assign greater financial responsibility for refunds to students receiving funding under Chapter XXII than to students receiving funding under Chapter XX, we suggest that HESC consider including only "and 2407.1(a)(5)" in section 2405.2(a)(4) in order to remove the apparent disparity.

Response: HESC will make the change.

5. Full-Time Study [8 NYCRR § 2408.6(a)]

Comment: This section defines full-time study as enrollment in 12 semester hours or the equivalent. SED's Memorandum to Chief Executive Officers No. 86-17 states that: "basic to the payment of State student aid is the requirement that courses that make up a student's minimum course load be creditable toward the degree, diploma or certificate program in which the student is enrolled."

Since section 661(4)(b) schools do not appear to be subject to SED Memorandum to Chief Executive Officers No. 86-17, not to mention other requirements set forth in guidance issued by SED, Section 2408.6(a) needs to be amended to provide that full-time students must enroll in at least 12 semester credits that are creditable toward the student's degree. We also recommend the following language: "However, courses taken solely to meet teacher certification, licensing, or other external requirements, as well as courses not creditable toward the student's program of study, shall not contribute to full-time study."

Response: HESC will make the change.

6. Academic Requirements; Program Pursuit and Academic Progress [8 NYCRR § 2408.7]

Comment: This section addresses Academic Requirements; Program Pursuit and Academic Progress. We have several suggested amendments to this section.

First, the provisions contained in this section do not appear to flow logically. To correct this, we suggest moving the requirements for Program Pursuit [2408.7(b)] and Satisfactory Academic Progress [2408.7(c)] ahead of the definition for loss of good academic standing [2408.7(a)(1) and 2408.7(a)(2)].

Then, since subdivision 2408.7(a) sets forth the requirements for "good academic standing," we suggest that its opening language be changed from "Full-time academic study requirements" to "Good academic standing requirements."

Finally, we suggest that Section 2408.7(a)(2)(i) be deleted and replaced with Section 2408.7(f), in order to clarify how a student can regain TAP eligibility. As currently written, Section 2408.7(a)(2)(i) may lead a reader

to believe that a student who has lost good academic standing in a fall term because his or her cumulative grade point average was too low, merely has to enroll in the following spring term and bring his or her cumulative grade point average up to the required level to be restored to good academic standing.

Response: HESC will make these changes.

7. Information to be Provided [8 NYCRR § 2408.12(d)(5)]

Comment: The regulation provides that schools shall provide information about faculty listed by rank with the degree held. It will be difficult for some of the eligible schools to "rank" faculty members because of the different backgrounds and schooling of the instructors. In addition, all members of the faculty have credentials, but not all have degrees that are recognized by the State Education Department. Therefore, the text should be changed to enable all eligible schools to comply with this requirement.

Response: HESC will make this change.

8. Approved Programs for Tuition Assistance Program Awards [8 NYCRR § 2408.13(b)(1)]

Comment: The regulation provides that approved programs are defined as collegiate programs, registered by the corporation, leading to a degree or diploma fully creditable towards a degree in an institution authorized to grant degrees. As written, it can easily be interpreted to mean that only those institutions authorized to grant degrees by the State Education Department can participate in these programs, whereas the clear intent of the legislature was that schools authorized by a national accrediting agency recognized by the United States Department of Education to grant degrees shall participate. The wording needs to be changed to clarify this important point.

Response: HESC will make this change.

9. Approved Programs for Tuition Assistance Program Awards [8 NYCRR § 2408.13(b)(2)]

Comment: The regulation provides that approved diploma programs shall be of at least one academic year's duration. The enabling statute, as well as other sections of the regulation, provides that the educational institution must provide a program of instruction lasting at least three years.

Response: HESC has amended this provision to reflect that approved diploma programs shall be of at least three academic years' duration.

10. In-State Study and Study Abroad [8 NYCRR § 2408.15]

Comment: The majority of students who will be eligible for awards under Chapter XXII choose to study abroad for at least one year and many for two years. In addition, many of these students who go abroad attend institutions that do not as yet have formal arrangements with a NYS institution, many do not necessarily return to the NY school they originally enrolled, and many of them do not even return to NY to complete their education here. Under the current language, a large number of foreign schools will formally affiliate with NY schools and a large percentage of the new TAP funding would go to students studying abroad. This was not the intent of the legislation and therefore the regulation should be amended to ensure that only already existing, well established, formal study abroad programs that are directly connected to, and an integral part of, NY schools are eligible for TAP.

Response: HESC, through its administration of the program, and the Office of the State Comptroller, through its audits, will ensure that students enrolled in study abroad programs meet all the requisite requirements for TAP awards under this Chapter. HESC will amend the regulation to authorize the corporation to establish standards to ensure such requirements are met.

11. Administration of Ability-to-Benefit Tests for Purposes of Eligibility for Awards [8 NYCRR § 2408.18(a)]

Comment: The regulation provides that this section establishes the criteria the Commissioner will utilize to determine whether an approved ability-to-benefit test is independently administered. Other sections of the regulation, as well as other subdivisions of this section, provide that HESC's President will establish such criteria.

Response: HESC has amended this provision to reflect that the President, rather than the Commissioner, will establish the criteria to be utilized to determine whether an approved ability-to-benefit test is independently administered and evaluated.

12. Administration of Ability-to-Benefit Tests for Purposes of Eligibility for Awards [8 NYCRR § 2408.18(e)(1)(ii)(c)]

Comment: This section addresses the verification of student identity when taking ability-to-benefit tests. We recommend that HESC establish a practice that requires schools to retain the sign-in records.

Response: HESC will include this requirement in connection with the administration of ability-to-benefit tests. No change to the regulation is necessary.

13. Institutional Eligibility and Responsibility [8 NYCRR § 2410.3(g)(iv)]

Comment: This provision would in effect allow the schools to each establish the length of time it intends to maintain the records that demon-

strate the eligibility of its TAP award recipients. Since schools may establish time frames that are adverse to our audit interests, we suggest that HESC establish a standard minimum record retention period with respect to these records. It is our understanding that HESC currently has a practice of requiring schools to retain these records for a minimum of 7 years. We suggest that HESC be consistent and apply this practice to 661(4)(b) schools as well.

Response: HESC will include this requirement consistent with current practice. No change to the regulation is necessary.

14. Audit [8 NYCRR § 2410.5]

Comment: This provision concerns OSC’s role with respect to auditing these schools’ compliance with the TAP laws, rules and regulations to which they would become subject upon their participation in the Program.

As presently drafted, the provision does not recognize OSC’s express statutory audit responsibility with respect to TAP payments. The Comptroller is required to audit schools’ compliance with the requirements of TAP pursuant to Education Law § 665(3)(b). We therefore recommend that the proposed regulations track the statutory language which is set forth below:

“The comptroller shall audit institutional adherence to the statutes, rules and regulations governing general and academic performance awards and shall be responsible for determining the amount, if any, owed to the state by an institution which amount represents overpayment to the institution on a student’s behalf. The comptroller shall report cases of suspected willful and knowing institutional violation of such statutes, rules or regulations to the district attorney in the county in which such institution is located.”

Response: HESC will make the change.

15. Education Law - Section 661(4)(f)

Comment: This section of law requires TAP recipients to be either high school graduates, have the equivalent or successfully pass an approved ability to benefit test.

HESC’s website states that: “To be acceptable, the certificate of graduation or high school diploma must be from a secondary school that is recognized, authorized or approved by the state educational entity having jurisdiction.” In September 2011, SED advised an OSC audit team that a diploma from a nonregistered high school cannot be viewed as a high school diploma for TAP eligibility unless the school district superintendent indicates that the nonregistered school program is equivalent to that of the registered schools. This requirement however, is not contained in law or regulation.

Based upon the foregoing HESC and SED guidance, OSC auditors now require evidence of a determination that nonregistered high schools from which TAP recipients have graduated are equivalent to registered high schools in order to conclude that the graduation standard has been met.

Because students in section 661(4)(b) schools may be graduates of non-registered high schools, we recommend that the proposed regulations or other HESC guidance clarify the requirements with respect to this issue. Absent such clarification, schools may be unaware of this requirement and as a result could face significant audit disallowances.

Response: HESC will amend sections 2407.1(a)(7), 2408.18(c)(1), and 2408.18(c)(2) of the regulation to provide that the certificate or diploma of graduation must be satisfactory to the president.

16. Payment Terms [8 NYCRR § 2411.2(b)]

Comment: It is required that an academic year be a minimum of 30 weeks. This provision should clarify this requirement.

Response: HESC will make the change.

Text of proposed rule: A new Part 553 is added to Title 14 NYCRR to read as follows:

PART 553

VISITATION AND INSPECTION OF FACILITIES

(Statutory Authority: Mental Hygiene Law §§ 7.09, 31.02, 31.04, 31.05, 31.07, 31.08, 31.09, 31.11, 31.13, 31.19)

§ 553.1 Introduction.

(a) All facilities under the jurisdiction of the Office of Mental Health will be visited and inspected by reviewers designated by the Commissioner in accordance with the provisions of this Part. Unless otherwise specifically stated in this Part, reviewers shall be personnel of the Office who are competent and qualified to conduct such inspections.

(b) This Part supersedes and replaces Part 71 of this Title with respect to facilities under the jurisdiction of the Office of Mental Health.

§ 553.2 Legal base.

(a) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Subdivisions (a) and (b) of Section 7.15 of the Mental Hygiene Law authorize the Commissioner of Mental Health to evaluate programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for persons with mental illness, and permits such activities to be undertaken in cooperation and agreement with other offices of the department and with other departments or agencies of the state, local or federal government, or with other organizations and individuals.

(c) Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

(d) Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of operating certificates.

(e) Section 31.07 of the Mental Hygiene law gives the Commissioner of Mental Health the power to conduct periodic investigations into the operations of providers of services which are required by Article 31 of such law to have an operating certificate and to make inspections and examine records, including, but not limited to, medical service and financial records, to determine whether such providers are complying with applicable provisions of the Mental Hygiene Law and applicable laws, rules and regulations.

(f) Section 31.08 of the Mental Hygiene Law authorizes the Commissioner of Mental Health to exempt a ward, wing, unit or other part of a hospital as defined in Article 28 of the Public Health Law, which provides services for persons with mental illness pursuant to an operating certificate issued by the Commissioner of Mental Health, from the annual inspection and visitations requirements established in Section 31.07 of the Mental Hygiene Law, under certain specified circumstances.

(g) Section 31.09 of the Mental Hygiene Law gives the Commissioner of Mental Health or his/ her authorized representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary in order to carry out his/her responsibilities under Article 31 of such law. Further, all such investigations and inspections shall be made by persons competent to conduct them, and information obtained by the Commissioner or his/her authorized representative shall be kept confidential in accordance with the provisions of applicable law.

(h) Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner in any inspection or investigation, permitting the Commissioner to inspect its facility, books and records, including records of persons receiving services, and making such reports, uniform and otherwise, as are required by the Commissioner.

(i) Sections 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner or his or her representatives to examine and inspect such programs to determine their suitability and proper operation.

(j) Paragraphs (1) and (8) of subdivision (a) of Section 41.13 of the Mental Hygiene Law direct local governmental units to review services and local facilities for persons with mental disabilities of the area which it serves and their relationship to local need; and to make policy for and exercise general supervisory authority over or administer local services and facilities provided or supervised by it whether directly or through agreements, including responsibility for the proper performance of the services provided by other facilities of local government and by voluntary

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Visitation and Inspection of Facilities

I.D. No. OMH-01-12-00002-P

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

Proposed Action: Addition of Part 553 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02, 31.04, 31.05, 31.07, 31.08, 31.09, 31.11, 31.13 and 31.19

Subject: Visitation and Inspection of Facilities.

Purpose: To create a new updated Part which reflects the agency’s expectations regarding visitation and inspection of facilities.

and private facilities which have been incorporated into its comprehensive program.

§ 553.3 Scope of reviews and inspections.

(a) Prior to visiting a facility, the reviewer will study reports of previous reviews and inspections and the following information submitted by the facility:

- (1) clinical and statistical data, and
- (2) the policies of the facility.

(b) The onsite review and inspection shall include, as appropriate:

- (1) review of program operation in comparison to programs authorized;
- (2) private conversation with any person receiving mental health services or employee who so desires;
- (3) review of case records of persons currently or previously served;
- (4) review of the legal admission documents of persons receiving services and the conformity of the facility's admission procedures with the law and regulations;
- (5) review of the records of restraint and seclusion;
- (6) review of the qualifications of the staff and the staffing pattern in comparison to those authorized;
- (7) inspection of the records and storage of medications and procedures for prescription and dispensing of medications;
- (8) review of the minutes of meetings of the governing body;
- (9) inspection of the physical plant and equipment, and review of protective procedures in relation to structural and fire hazards;
- (10) identification of any construction or improvements to the premises completed since the last visit; and
- (11) review of written reports by local inspectors and other authorized inspection, certifying, or accrediting agencies, and review of conditions about which any recommendations for improvement have been made.

§ 553.4 Reports.

(a) Unless otherwise provided in subdivision (b) of this Section, a written report of each review and inspection shall be developed and sent to the facility by the Office and shall include, as indicated, significant findings of merit or opportunities for improvement with regard to any aspects of the facility. When required, the facility shall respond with an action plan addressing the Office's findings.

(b) For hospitals that have been granted deemed status pursuant to Section 553.5 of this Part, such hospital, or The Joint Commission or other approved accreditation agency, will provide the Office with a copy of the final accreditation report. When required, the facility shall respond to The Joint Commission and the Office with an action plan addressing The Joint Commission's findings.

(c) The Office shall make available copies of reports that it has developed and sent to facilities in accordance with subdivision (a) of this Section to the local governmental unit for facilities within such local government's jurisdiction, provided, however, for hospitals which have been granted deemed status under Section 553.5 of this Chapter, such hospitals shall provide a copy of the final report developed by The Joint Commission to the local governmental unit, upon its request.

§ 553.5 Deemed status.

(a) *Applicability.* For purposes of this Section, the term "hospital" shall mean a psychiatric unit of a general hospital that is certified under Article 31 of the Mental Hygiene Law and under Article 28 of the Public Health Law operating in accordance with Part 580 of this Chapter. The provisions of this section shall apply to such hospitals.

(b) Notwithstanding the provisions of Section 553.1 of this Part, reviews conducted pursuant to this Section of hospitals that have sought and obtained deemed status shall be made by personnel of a nationally accredited review organization, who possess the necessary skills and competencies in behavioral health to conduct inspections.

(c) Hospitals must comply with the operational standards set forth in Part 580 of this Title. As evidence of compliance with such Part, the Commissioner may accept accreditation by The Joint Commission or an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deemed status and which the Commissioner has determined has accrediting standards sufficient to assure the Commissioner that hospitals so accredited are in compliance with such operational standards, a list of which shall be made available on the public website of the Office, provided that:

- (1) the hospital has a history of compliance with applicable laws, rules, and regulations and a record of providing care of good quality, as determined by the Commissioner;
- (2) a copy of the survey report and the certificate of accreditation of The Joint Commission or other approved accrediting organization is submitted by the accrediting body to the Commissioner, within 7 days of issuance to the hospital;

(3) The Joint Commission or other approved accrediting organization has agreed to, and does, evaluate, as part of its accreditation survey, any minimal operational standards established by the Commissioner which are in addition to the minimal operational standards of accreditation of The Joint Commission or other approved accrediting organization;

(4) there are no constraints placed upon access by the Commissioner to The Joint Commission or other approved accreditation organization's survey reports, plans of correction, interim self-evaluation reports, notices of noncompliance, progress reports on correction of areas of noncompliance, or any other related reports, information, communications, or materials regarding such hospital;

(5) the hospital at all times shall remain subject to inspection and visitation by the Commissioner to determine compliance with applicable law, regulations, standards, or conditions as determined to be necessary by the Commissioner; and

(6) the hospital at all times shall remain subject to the full range of licensing enforcement authority of the Commissioner.

(d) Any hospital that is under deemed status pursuant to this Section must immediately provide written notice to the Commissioner of any of the following:

(1) receipt of notice of failure to be accredited, re-accredited or the loss of accreditation by the accreditation organization;

(2) any communication the hospital has received that indicates that the accrediting organization will be recommending that such hospital not be accredited, not have its accreditation renewed, or have its accreditation terminated;

(3) receipt of notice or other communication from the Centers for Medicare and Medicaid Services regarding a determination that the hospital will be terminated from participation in the Medicare program because it is not in compliance with one or more conditions of participation in such program, or has deficiencies that either individually, or in combination with others, jeopardizes the health and safety of persons receiving services, or are of such nature as to seriously compromise the provider's ability to render adequate care;

(4) a change of the hospital's accreditation organization; or

(5) a decision by the hospital to terminate its agreement with its accrediting organization.

(e) Failure to adhere to the requirements set forth in subdivisions (c) and (d) of this Section may be grounds for revocation of deemed status.

(f) In the event that the Commissioner determines that a hospital's deemed status must be denied or revoked, the hospital may request an informal administrative review of such decision.

(1) The hospital must request such review in writing within 15 days of the date it receives notice of the denial or revocation of its deemed status by the Commissioner or designee. The request shall state specific reasons why the hospital considers the denial or revocation of deemed status incorrect and shall be accompanied by any supporting evidence or arguments.

(2) The Commissioner or designee shall notify the hospital, in writing, of the results of the informal administrative review within 20 days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the denial or revocation of deemed status.

(3) The Commissioner's determination after informal administrative review shall be final and not subject to further administrative review.

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

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

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

Regulatory Impact Statement

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

Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of operating certificates.

Section 31.07 of the Mental Hygiene law gives the Commissioner of Mental Health the power to conduct periodic investigations into the opera-

tions of providers of services which are required by Article 31 of such law to have an operating certificate and to make inspections and examine records, including, but not limited to, medical service and financial records, to determine whether such providers are complying with applicable provisions of the Mental Hygiene Law and applicable laws, rules and regulations.

Section 31.08 of the Mental Hygiene Law authorizes the Commissioner of Mental Health to exempt a ward, wing, unit or other part of a hospital as defined in Article 28 of the Public Health Law, which provides services for persons with mental illness pursuant to an operating certificate issued by the Commissioner of Mental Health, from the annual inspection and visitations requirements established in Section 31.07 of the Mental Hygiene Law, under certain specified circumstances.

Section 31.09 of the Mental Hygiene Law gives the Commissioner of Mental Health or his/ her authorized representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary in order to carry out his/her responsibilities under Article 31 of such law. Further, all such investigations and inspections shall be made by persons competent to conduct them, and information obtained by the Commissioner or his/her authorized representative shall be kept confidential in accordance with the provisions of applicable law.

Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner in any inspection or investigation, permitting the Commissioner to inspect its facility, books and records, including records of persons receiving services, and making such reports, uniform and otherwise, as are required by the Commissioner.

Sections 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner or his or her representatives to examine and inspect such programs to determine their suitability and proper operation.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. Chapter 59 (Part H, section 55) of the Laws of 2011 created a new Section 31.08 of the Mental Hygiene Law which provides for deemed status authority. In creating Section 31.08, the Legislature intended to provide authority for the Commissioner of Mental Health to accept accreditation by The Joint Commission or an accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status and which the Commissioner has determined has accrediting standards sufficient to assure him/her that hospitals so accredited are in compliance with such operational standards, within certain parameters.

3. Needs and Benefits: The Office is required by the Mental Hygiene Law to conduct inspections of psychiatric units in general hospitals licensed under Article 28 of the Public Health Law. This authority was amended through the addition of a new Section 31.08 of the Mental Hygiene Law, which authorizes the Commissioner to exempt a ward, wing, unit or other part of a hospital licensed pursuant to Article 28 of the Public Health Law, which provides services for persons with mental illness pursuant to an operating certificate issued by the Office, from the annual inspection and visitations requirements established in Section 31.07 of the Mental Hygiene Law, under certain specified circumstances.

Current regulations do not provide for the use of secondary agents to conduct inspections on behalf of the Office. This rulemaking is therefore necessary in order to implement the authority established in Mental Hygiene Law Section 31.08. As such, it will allow the Office the flexibility to utilize the findings of nationally-recognized review organizations in lieu of the Office conducting its own inspections of psychiatric units of general hospitals in accordance with 14 NYCRR Part 580. This process is known as "deemed status."

The Office may enter into an agreement(s) with a nationally recognized accreditation organization (e.g., The Joint Commission) to conduct, as part of a hospital's regular accreditation review, a comprehensive review of the Office's licensed psychiatric inpatient units. By utilizing a review organization that already surveys a hospital, a substantial burden will be eased for those hospitals which currently must prepare for multiple reviews. In the past, the Office's on-site inspections at general hospitals took two staff two full days (on average). Inspections are very demanding on hospitals as they must ensure that key personnel from a variety of departments (medical records, nursing, maintenance, etc.) are readily available. In addition, surveys of psychiatric inpatient services conducted as part of the hospital's regularly scheduled accreditation visit should reduce redundancy and the number of disruptions that hospitals currently experience. With the elimination of the Office's survey, the amount of paperwork to be completed by hospitals would be reduced. The above-noted benefits are expected to assist hospital staff in attending to the needs of individuals receiving mental health services with limited interruption.

Lastly, deemed status will allow the Office to better utilize its limited

agency resources by freeing staff to focus on quality improvement initiatives and by allowing staff additional time to work with programs that are not performing up to minimal standards. It should be noted that the amendment does not mandate deemed status. Hospitals will have the option of participating under the deemed status provision of the regulations. The Office will continue to survey hospitals that choose not to participate in the deemed status option or have compliance issues that preclude them from participating.

There are no new requirements placed on facilities as a result of this rulemaking. It is necessary to implement the new statutory authority and accurately conveys contemporary expectations of the Office regarding visitation and inspection of facilities.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

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

(c) cost to regulated parties: These regulatory amendments may result in an additional cost of approximately \$1,000 annually paid by the hospitals to the accreditation review organization. It is anticipated that this expense will be offset by savings achieved through the reduction in costs associated with multiple reviews conducted by several surveyors. In addition, as mentioned above, deemed status participation is voluntary and is not required for licensing by the Office.

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

6. Paperwork: By allowing nationally recognized accreditation review organizations to conduct inspections, this rule should result in reduced paperwork for hospitals.

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

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. Since the amendment updates outdated regulations, allows for a more streamlined inspection and review process, reduces redundancy, eases the burden on hospitals, and should ultimately assist hospital staff in attending to the needs of individuals receiving mental health services with limited interruption, that alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendments are effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the rule making will not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments. The proposed rule creates a new, up-to-date 14 NYCRR Part 553 that accurately reflects the expectations of the Office of Mental Health regarding visitation and inspection of facilities, and implements the statutory authority established in Mental Hygiene Law Section 31.08. There will be no adverse economic impact on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the purpose of the rulemaking is to create a new Part 553 which accurately reflects the expectations of the Office of Mental Health and implements the statutory authority established in Mental Hygiene Law Section 31.08. This regulation will not impose any adverse economic impact on rural areas. Further, it will ease the burden on hospitals that currently experience multiple inspections of their facilities and should assist hospital staff in attending to the needs of individuals receiving mental health services with limited interruption.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because its purpose is to create a new, up-to-date-Part 553 that accurately reflects the expectations of the Office of Mental Health regarding visitation and inspection of facilities. In addition, the rule making implements the statutory authority established in Mental Hygiene Law Section 31.08. There will not be a negative impact on jobs and employment opportunities as a result of this rulemaking.

Niagara Falls Water Board

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Adoption of a Schedule of Rates, Fees and Charges

I.D. No. NFW-01-12-00005-EP

Filing No. 1373

Filing Date: 2011-12-19

Effective Date: 2011-12-19

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

Proposed Action: Amendment of sections 1950.15 and 1950.20 of Title 21 NYCRR.

Statutory authority: Public Authority Law, section 1230-j

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

Specific reasons underlying the finding of necessity: It is necessary for the preservation of the public health, safety and general welfare and that compliance with the requirements of subdivision one of section 202 would be contrary to the public interest. The Board regulations include a schedule of rates, fees and charges imposed upon all persons served by the system. The Board recently considered estimates for its expenses and revenues for the fiscal year 2012 commencing January 1, 2012 and ending on December 31, 2012. As part of this consideration, the Board recognized an increase in expenses of operations and a projection of revenues from its existing rate payers in the City of Niagara Falls and related service area. In addition, the Board considered its debt service and its covenants with its bondholders with respect to bonds that were issued as of the acquisition date. In order to maintain the Board on a sound financial status with sufficient resources to provide necessary water and wastewater services to all persons who sue the System, the Board adopted an increase in the schedule of rates, fees and charges.”

Subject: Adoption of a schedule of rates, fees and charges.

Purpose: To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders.

Text of emergency/proposed rule: Section 1950.15. Charges for fire protection.

(a) Except where fire flows are metered together with normal water service to a water customer, no charge shall be made for the actual use of water for fire protection purposes. Availability charges for fire protection shall be as hereinafter set forth.

(b) The availability charge for each public fire hydrant inside the city boundary shall be [\$25.00] \$103.00 per year, payable by the city fire department to the water board.

(c) the availability charge for each public fire hydrant located outside the city boundary shall be \$150 per year, payable in advance to the water board.

(d) The availability charge for service to private fire protection services inside the city boundary shall be the annual amounts as identified in the board schedule of rates, payable in advance, based on the nominal diameter of each service at its point of connection to the water board main.

(e) The availability charge for service to private fire protection services located outside the city boundary shall be 200 percent of the fee chargeable for similar service inside the city boundary.

(f) The requirement that meters shall be installed on all service branches shall be waived in the case of service branches intended for fire protection only. However, a detector check valve is required on fire protection lines.

(g) Water may not be used from service that has a detector check valve, except for fire protection.

(h) A detector check valve to indicate when water has been used shall be installed on all fire services in a building with 10 or more rooms rented or hired out to be occupied for sleeping purposes.

(i) Plans for fire protection installations in multiple dwellings must be approved by the city building inspector and the city fire department before approval by the director.

(j) All fire protection branches must be provided with a valve between the street main and the building or private fire line supplied with water.

(k) The water board shall place its seal upon any opening or valve connected with or to any fire protection service branch to seal such valve either open or closed.

(l) When a water board seal is broken, either accidentally or in order to obtain water for fire protection, the director must be notified immediately by the person breaking the seal or by any employee of the water board having knowledge thereof. A new seal will then be set and so recorded.

Section 1950.20. Schedule of rates, fees and charges.

(a) This schedule sets forth the rates, fees and other charges applicable to the provision of water supply, wastewater and related services by the Niagara Falls Water Board to all property owners, users and other persons as of January 1, 2012. All property owners, users and other persons who receive services from the water board shall pay to the water board the rates, fees and charges set forth in this schedule.

(b) the following rates shall be charged and collected for the use of water within the city, supplied by the water board as hereby fixed and established:

First 20,000 cu. ft. per quarter, [\$2.85] \$2.88 per 100 cu. ft.

Next succeeding 60,000 cu. ft. per quarter, [\$2.47] \$2.49 per 100 cu. ft.

Next succeeding 120,000 cu. ft. per quarter, [\$2.09] \$2.11 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$1.73] \$1.75 per 100 cu. ft.

The minimum charge for water consumed in any premises within the city for any quarter or portion thereof shall not be less than [\$37.00] \$37.44.

(c) The following rates shall be charged and collected for the use of water outside the city for residential and commercial purposes supplied by the water board as hereby fixed and established:

First 20,000 cu. ft. per quarter, [\$7.62] \$7.70 per 100 cu. ft.

Next 60,000 cu. ft. per quarter, [\$6.65] \$6.72 per 100 cu. ft.

Next succeeding 120,000 cu. ft. per quarter, [\$5.54] \$5.60 per 100 cu. ft.

Over 200,000 cu. ft. per quarter, [\$4.66] \$4.71 per 100 cu. ft.

The minimum charge for water consumed in any premises located outside the city for domestic purposes for any quarter or portion thereof shall not be less than [\$99.06] \$100.10.

(d) Water used for testing fire hoses, filling tanks, swimming pools, testing sprinkler systems, and like use shall be billed at the highest residential unit rate enumerated in subdivision (b) of this section. The amount used may be either estimated in accordance with the size of the pipe through which taken at the pressure furnished, or determined by the use of a temporary meter rented to the user by the water board. The use of the latter method shall be at the discretion of the director and may require a refundable deposit.

(e) Use of hydrant for any purpose whatsoever shall be subject to a rental charge of \$1.50 per day or partial day.

(f) The cost of hydrant use will include a fee of \$35.00 for backflow device certification, payable at the time of hydrant use application. In addition, daily hydrant and meter rental rates and security deposit amounts shall be established by the director based upon the real cost to the water board.

(g) In addition to the above schedule rates for water consumed there shall be assessed a demand charge for each user's meter as set forth below.

Size and Type	Charge Per quarter
Under 1" Disc	[\$2.86] \$3.70
1" Disc	[\$7.13] \$25.00
1½" Disc	\$30.00
2" Disc	[\$10.27] \$40.00
2" Compound	[\$17.13] \$40.00
3" Compound	[\$32.81] \$50.00
4" Compound	[\$48.51] \$100.00
6" Compound	[\$80.18] \$220.00
8" Compound	[\$95.88] \$250.00
10" Compound	[\$111.57] \$275.00
12" Compound	[\$128.69] \$400.00

(h) The rates set forth in this section, however, shall not apply to any user of water with whom there is now outstanding a valid and binding contract with the city and/or water board to supply water at a rate different than the rates stated in this schedule, or to users obtaining water service from the Village of LaSalle prior to May 4, 1927.

(i) In the event the water board or the director terminates water supply service to any property owner or user, such property owner, user or users located at such property shall pay a reactivation fee in the amount of \$75.00 to the water board prior to the supply of water.

(j) There shall be small meter testing charge of \$100.00 for the bench testing of any meter less than two inches in size.

(k) An account reactivation charge of \$100.00 shall be applied whenever a meter is re-installed and an account reactivated.

(l) The water board shall charge a \$25.00 final read fee for all owner requested meter reads.

(m) A hydrant flow test charge shall be applied whenever an owner, user or his agent requests a hydrant flow test.

(n) The annual availability charge for private fire protection service shall be:

Diameter of Service Connection	Annual Fee
2" or less	\$66.00
3"	\$95.00
4"	\$168.00
6"	\$380.00
8"	\$670.00
10"	\$1,050.00
12"	\$1,510.00

(o) A backflow submittal fee of \$25.00 shall be charged for all backflow plans submitted to the water board for approval and forwarding to the State Health Department.

(p) There shall be a [\$50.00] \$120.00 inspection fee for each request for a cross-connection inspection.

(q) There shall be a [\$30.00] \$60.00 availability charge applied on a quarterly basis to all accounts inactivated pursuant to section 1950.8(m) of this Part.

(r) In addition to the above rates, fees and charges, the following rates shall apply to all users with respect to sewer or wastewater services prescribed in the water board's wastewater regulations in Part 1960 of this Title. There shall be two user classes as provided in Part 1960 of this title, to wit: commercial/small industrial/residential users (CSIRU) and significant industrial users (SIU).

(l) CSIRU. Sewer rates for the CSIRU class are determined by total metered water consumption in each quarter. The schedule of quarterly charges for the CSIRU class shall be as follows:

SCHEDULE I

Minimum charge per quarter	[\$46.50] \$46.91 with a usage allowance of up to 1,300 cubic feet
Additional usage in excess of 1,300	[\$3.79] \$3.83 per 100 cubic feet

The following rates shall be charged and collected for the use of sewer outside the city for residential and commercial purposes as determined by total metered water consumption per quarter. The schedule of quarterly charges for the users outside the city shall be as follows:

Minimum charge per quarter	\$125.25 with a usage allowance of up to 1,300 cubic feet
Additional usage in excess of 1,300	\$10.22 per 100 cubic feet

(2) SIU.

(i) Conventional pollutant parameter charges. Sewer rates for the SIU class each quarter are based on measured quantities of the actual discharge parameters: flow, suspended solids and soluble organic carbon. Such determination shall be made by the water board and shall be based upon five representative 24-hour composite samples taken quarterly, at such locations as are adequate to provide proper representation. The schedule of charges for conventional pollutant parameters shall be as follows:

SCHEDULE II

Pollutant Parameters	Rate
Flow	\$2,678.83 per million gallons
Suspended Solids	\$0.89 per pound
Soluble Organic Carbon	\$1.53 per pound

(ii) Substances of concern parameter charges. SIU's, who have wastewater discharge permits which limit any substance of concern listed in Schedule III contained in this subparagraph, will be billed for discharge of these substances based on the unit rates shown in Schedule III. Discharge loading for billing purposes shall be determined by arithmetic average of the last six acceptable self-monitoring results. At the option of the SIU, increased self-monitoring can be performed. For billing purposes, when six or more acceptable results are obtained over the three month bill-

ing period, all such results shall be used in the computation of the arithmetic average, with a requirement that there be at least two sample results for each month. Average discharge loadings will then be multiplied by the corresponding unit rates from Schedule III to obtain total charges per quarter for each substance of concern listed in the SIU's wastewater discharge permit. All substances of concern charges will be added to the charges for conventional parameters, as specified in subparagraph (i) of this paragraph, to compute the total quarterly sewer rate.

SCHEDULE III

SUBSTANCES OF CONCERN UNIT CHARGES

Parameters	Unit Rate
Benzene	\$303.60 per pound
Chloroform	\$54.06 per pound
Dichloroethylenes	\$330.33 per pound
Toluene	\$14.64 per pound
Trichloroethanes	\$68.65 per pound
Trichloroethylene	\$87.62 per pound
Vinyl Chloride	\$43.86 per pound
Monochlorotoluenes	\$2.96 per pound
Tetrachloroethylene	\$40.90 per pound
Total Phenols	\$6.68 per pound

(iii) Billing. SIU charges shall be billed on a monthly basis by the water board. The first and second monthly billings in each quarter shall be estimated and shall be one-third of the total billing in the immediately preceding quarter. The third monthly bill in each quarter shall be based upon actual discharge quantities for that quarter and shall reflect adjustments for the estimated billings in that quarter.

(s) Unless the context specifically indicates otherwise, all terms contained herein shall have the meanings set forth in the regulations adopted by the water board in this Part and Part 1960 of this Title, as applicable.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 17, 2012.

Text of rule and any required statements and analyses may be obtained from: John J. Ottaviano, Niagara Falls Water Board, 172 East Avenue, Lockport, New York 14094, (716) 438-0488, email: jottaviano@harrisbeach.com

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

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

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

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

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

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

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: Revision in rates for Village of Marathon.

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

Subject: Rates for the sale of power and energy.

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

Text or summary was published in the October 12, 2011 issue of the Register, I.D. No. PAS-41-11-00026-P.

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

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

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

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

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: Decrease production rates.

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

Subject: Rates for the sale of power and energy.

Purpose: To align rates and costs.

Text or summary was published in the October 12, 2011 issue of the Register, I.D. No. PAS-41-11-00028-P.

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

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

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

NOTICE OF ADOPTION

Rates and Billing for the Sale of Power and Energy

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

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: Withdrawal of the proposal to increase the Fixed Costs component of the production rates and make corrections to the tariff provision concerning production minimum billing.

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

Subject: Rates and billing for the sale of power and energy.

Purpose: To correct the minimum bill provision to provide for recovery of fixed costs based on cost-causation principles.

Substance of final rule: The Power Authority's Notice of Proposed Rulemaking published October 12, 2011 proposed to increase the Fixed Costs component of the production rate for New York City Governmental Customers ("Customers"). The proposal also included corrections to the production minimum billing provision of the Customers' tariff, effective January 2012.

A public forum was held on November 17, 2011 and comments were received from Customers. Based on customer comments and staff's analysis, the Authority withdrew the original Fixed Costs increase and approved the tariff corrections to clarify the minimum demand bill provision. The corrections will be effective commencing with the January 2012 billing period.

Final rule as compared with last published rule: Substantial revisions were made in first part.

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

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

Public Service Commission

NOTICE OF ADOPTION

Deferral of 2008 Transmission and Distribution Investment Costs

I.D. No. PSC-20-09-00015-A

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: On 12/15/11, the PSC adopted an order approving a joint proposal concerning Niagara Mohawk Power Corporation d/b/a National

Grid's petition to defer 50% of the revenue requirement impact associated with its 2008 Transmission and Distribution Investment costs.

Statutory authority: Public Service Law, sections 65(1) and 66(1)

Subject: Deferral of 2008 Transmission and Distribution Investment costs.

Purpose: To approve a joint proposal regarding the deferral of 2008 Transmission and Distribution Investment costs.

Substance of final rule: The Commission, on December 15, 2011, adopted an order approving a joint proposal regarding Niagara Mohawk Power Corporation d/b/a National Grid's petition to defer 50% of the revenue requirement impact associated with its 2008 Transmission and Distribution Investment costs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-1533SA2)

NOTICE OF ADOPTION

Permit the Ritz Line of 600V Metering Class Instrument Transformers

I.D. No. PSC-26-11-00008-A

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: On 12/15/11, the PSC adopted an order approving the application of Ritz Instrument Transformers Inc. to permit the Ritz line of 600V metering class instrument transformers for use in commercial and industrial applications.

Statutory authority: Public Service Law, section 67(1)

Subject: Permit the Ritz line of 600V metering class instrument transformers.

Purpose: To permit the Ritz line of 600V metering class instrument transformers for use in commercial and industrial applications.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Ritz Instrument Transformers Inc.'s application to permit the Ritz line of 600V metering class instrument transformers for use in commercial and industrial applications.

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-0303SA1)

NOTICE OF ADOPTION

Approving a Lightened Regulatory Regime and Financing for Stony Creek Energy LLC

I.D. No. PSC-30-11-00007-A

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving the peti-

tion of Stony Creek Energy LLC for a lightened regulatory regime to construct a wind energy facility and financing approval up to a maximum amount of \$240,000.00.

Statutory authority: Public Service Law, sections 4(1), 66(1) and 69

Subject: Approving a lightened regulatory regime and financing for Stony Creek Energy LLC.

Purpose: To approve a lightened regulatory regime and financing for Stony Creek Energy LLC.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving the petition of Stony Creek Energy LLC for a lightened regulatory regime to construct a wind energy facility with a generating capacity of up to 94.4 Megawatts (MW) in the Town of Orangeville, Wyoming County and financing approval up to a maximum amount of \$240,000.00, 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-E-0351SA1)

NOTICE OF ADOPTION

Establish Two New Riders, Rider F - Demand Response and Rider G - Customer Sited Supply Pilot Programs

I.D. No. PSC-33-11-00008-A

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: On 12/15/11, the PSC adopted an order, with modifications, Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 4 - Steam, to establish 2 new riders, Rider F - Demand Response and Rider G - Customer Sited Supply Pilot Programs.

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

Subject: Establish two new riders, Rider F - Demand Response and Rider G - Customer Sited Supply Pilot Programs.

Purpose: To establish two new riders, Rider F - Demand Response and Rider G - Customer Sited Supply Pilot Programs.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 4 - Steam, to establish two new riders, Rider F - Demand Response (DR) Pilot Programs and Rider G - Customer Sited Supply (CSS) Pilot Program, 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.

(09-S-0794SA3)

NOTICE OF ADOPTION

Competitive Transition Charge

I.D. No. PSC-34-11-00009-A

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: On 12/15/11, the PSC adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 214 and 220 — Electricity, effective 1/1/12, in compliance with the Commission's 1/24/11 Order.

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

Subject: Competitive Transition Charge.

Purpose: To approve amendments to PSC No. 214 and 220 — Electricity, eff. 1/1/12 in compliance with the Order of 1/24/11.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving, with modification, Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 214 and 220 — Electricity, effective January 1, 2012, in compliance with the Commission's January 24, 2011 Order to remove Competitive Transition Charges, 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-0050SA5)

NOTICE OF ADOPTION

Deferral of the Revenue Requirement Associated With its 2008-2010 Transmission and Distribution Investment Costs

I.D. No. PSC-34-11-00013-A

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: On 12/15/11, the PSC adopted an order approving a joint proposal regarding Niagara Mohawk Power Corporation d/b/a National Grid's petition to defer 50% of the revenue requirement associated with its 2008-2010 Transmission and Distribution Investment Costs.

Statutory authority: Public Service Law, sections 65(1) and 66(1)

Subject: Deferral of the revenue requirement associated with its 2008-2010 Transmission and Distribution Investment Costs.

Purpose: To approve a joint proposal regarding deferral of the revenue requirement associated with its 2008-10 T & D Investment Costs.

Substance of final rule: The Commission, on December 15, 2011, adopted an order approving a joint proposal regarding Niagara Mohawk Power Corporation d/b/a National Grid's petition to defer 50% of the revenue requirement associated with its 2008-2010 Transmission and Distribution Investment Costs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-1533SA3)

NOTICE OF ADOPTION

Verizon New York Inc.'s Petition to Retain Property Tax Refund for the 1992 Through 2002 Tax Years

I.D. No. PSC-40-11-00008-A

Filing Date: 2011-12-16

Effective Date: 2011-12-16

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

Action taken: On 12/15/11, the PSC adopted an order granting the petition of Verizon New York Inc. to retain \$1.0 million, the intrastate portion of a \$1.6 million property tax refund received from the Town of North Hempstead for the 1992 through 2002 tax years.

Statutory authority: Public Service Law, section 113(2)

Subject: Verizon New York Inc.'s petition to retain property tax refund for the 1992 through 2002 tax years.

Purpose: To approve Verizon New York Inc.'s petition to retain property tax refund for the 1992 through 2002 tax years.

Substance of final rule: The Commission, on December 15, 2011 adopted an order granting the petition of Verizon New York Inc. to retain \$1.0 million, the intrastate portion of a \$1.6 million property tax refund received from the Town of North Hempstead for the 1992 through 2002 tax years, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-C-0479SA1)

NOTICE OF ADOPTION

Voluntary Time-Of-Use Program

I.D. No. PSC-41-11-00008-A

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective June 1, 2012, to comply with the Commission's June 21, 2011 Order.

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

Subject: Voluntary Time-Of-Use Program.

Purpose: To approve amendments to PSC No. 220—Electricity, eff. 6/1/12 to comply with the Commission's Order of 6/21/11.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220 – Electricity, effective June 1, 2012, in compliance with the Commissions June 21, 2011 Order to effectuate a voluntary time of use (V-TOU) program for Service Classification No. 2 - Non-Demand Customers, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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-0050SA6)

NOTICE OF ADOPTION

Amendments to PSC No. 220—Electricity, Eff. 1/1/12 for Revisions to Its Service Classification No. 4

I.D. No. PSC-41-11-00009-A

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No.220—Electricity, effective 1/1/12, for revisions to its SC No. 4 for customers taking power from New York Power Authority projects.

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

Subject: Amendments to PSC No. 220—Electricity, eff. 1/1/12 for revisions to its Service Classification No. 4.

Purpose: To approve amendments to PSC No. 220—Electricity, eff. 1/1/12 for revisions to its Service Classification No. 4.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (Company) amendments to PSC No.220—Electricity, effective January 1, 2012, for revisions to its Service Classification No. 4 which would allow the Company to deliver Preservation Power to certain eligible customers taking power from projects of the New York Power Authority.

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-0520SA1)

NOTICE OF ADOPTION

Voluntary Hourly Pricing Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective January 1, 2012, in compliance with the Commission's June 21, 2011 Order.

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

Subject: Voluntary Hourly Pricing Program.

Purpose: To approve amendments to PSC No. 220—Electricity, eff. 1/1/12 in compliance with the Order of 6/21/11.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective January 1, 2012, in compliance with the Commission's June 21, 2011 Order establishing a voluntary hourly pricing program for Service Classification No. 2 - Demand and Service Classification No. 3 - Customers with demand Less than 250 kW, 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-0050SA7)

NOTICE OF ADOPTION

Amendments to PSC No. 15—Electricity, Effective 1/1/12 to Effectuate the On-Bill Recovery Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 15—Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0450SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 15—Electricity, Effective 1/1/12 to Effectuate the On-Bill Recovery Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 15—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0454SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 9—Electricity Effective 1/1/12 to Effectuate the On-Bill Recovery Program**I.D. No.** PSC-41-11-00014-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 9—electricity effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 9—electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9 – Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0452SA1)

NOTICE OF ADOPTION

Approval of a Financing**I.D. No.** PSC-41-11-00016-A**Filing Date:** 2011-12-19**Effective Date:** 2011-12-19

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

Action taken: On 12/15/11, the PSC adopted an order approving Inergy Pipeline East LLC's request for authorization to enter into credit facilities up to a max. amount of \$3.0 billion before Inergy Midstream LLC issues its initial public offering and \$1.5 billion afterwards.

Statutory authority: Public Service Law, section 69

Subject: Approval of a financing.

Purpose: To approve financing up to the maximum amount of \$1.5 billion.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Inergy Pipeline East LLC's request for authorization to enter into credit facilities up to a maximum amount of \$3.0 billion before Inergy Midstream LLC issues its initial public offering and \$1.5 billion afterwards, 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-G-0510SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 220—Electricity, Effective 1/1/12 to Effectuate the On-Bill Recovery Program**I.D. No.** PSC-41-11-00017-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 220—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 220—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0456SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 19—Electricity, Effective 1/1/12 to Effectuate the On-Bill Recovery Program**I.D. No.** PSC-41-11-00018-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 19—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 19—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0458SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 119—Electricity, Effective 1/1/12 to Effectuate the On-Bill Recovery Program****I.D. No.** PSC-41-11-00019-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119—Electricity, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 119—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 119—Electricity, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119—Electricity, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0460SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 9—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program****I.D. No.** PSC-41-11-00020-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 9—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 9—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-G-0453SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 12—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program****I.D. No.** PSC-41-11-00021-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Central Hudson Gas and Electric Corporation's amendments to PSC No. 12—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 12—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 12—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Central Hudson Gas and Electric Corporation's amendments to PSC No. 12—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-G-0455SA1)

NOTICE OF ADOPTION**Amendments to PSC No. 219—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program****I.D. No.** PSC-41-11-00022-A**Filing Date:** 2011-12-15**Effective Date:** 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 219—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 219—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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,

sion, 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-G-0457SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 16—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 16—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 16—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 16—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 16—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-G-0459SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 90—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 90—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 90—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 90—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 90—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green

Job/Green New York loan installments, 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-G-0461SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 4—Gas, Effective 1/1/12 to Effectuate the On-Bill Recovery Program

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

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4—Gas, effective 1/1/12 to effectuate the Green Jobs-Green New York On-Bill recovery mechanism.

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

Subject: Amendments to PSC No. 4—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Purpose: To approve amendments to PSC No. 4—Gas, effective 1/1/12 to effectuate the On-Bill Recovery program.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4—Gas, effective January 1, 2012 for the establishment of a utility On-Bill Recovery program for the billing and collection of New York State Energy Research and Development Authority Green Job/Green New York loan installments, 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-E-0451SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 220—Electricity, Eff. 1/1/12 for Revisions to Its Service Classification No. 4

I.D. No. PSC-42-11-00019-A

Filing Date: 2011-12-15

Effective Date: 2011-12-15

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

Action taken: On 12/15/11, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No.220—Electricity, effective 1/1/12, for revisions to its SC No. 4 for the allocations of New York Power Authority expansion.

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

Subject: Amendments to PSC No. 220—Electricity, eff. 1/1/12 for revisions to its Service Classification No. 4.

Purpose: To approve amendments to PSC No. 220—Electricity, eff. 1/1/12 for revisions to its Service Classification No. 4.

Substance of final rule: The Commission, on December 15, 2011 adopted

an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No.220—Electricity, effective January 1, 2012, for revisions to its Service Classification No. 4 for the treatment of allocations of New York Power Authority expansion and replacement power.

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-0535SA1)

NOTICE OF ADOPTION

Amendments to 16 NYCRR, Chapter VII, Subchapter F, Part 753 - Protection of Underground Facilities

I.D. No. PSC-42-11-00022-A

Filing No. 1381

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: Amendment of Part 753 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1), 65(1) and 119-b(2)

Subject: Amendments to 16 NYCRR, Chapter VII, Subchapter F, Part 753 - Protection of Underground Facilities.

Purpose: To adopt amendments to 16 NYCRR, Chapter VII, Subchapter F, Part 753 - Protection of Underground Facilities.

Substance of final rule: The Commission, on December 15, 2011 adopted the final rules amending 16 NYCRR, Chapter VII, Subchapter F, Part 753 - Protection of Underground Facilities.

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-M-0466SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 1 - Gas, Eff. 1/2/12, to Extend the Business Incentive Riders

I.D. No. PSC-43-11-00006-A

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: On 12/15/11, the PSC adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid's amendments to PSC No. 1—Gas, effective 1/2/12, to extend the acceptance of applications for KeySpan's Business Incentive Riders.

Statutory authority: Public Service Law, section 66

Subject: Amendments to PSC No. 1 - Gas, eff. 1/2/12, to extend the Business Incentive Riders.

Purpose: To approve amendments to PSC No. 1 - Gas, eff. 1/2/12, to extend the Business Incentive Riders.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving, with modifications, KeySpan Gas East Corporation

d/b/a National Grid's (KEDLY) amendments to PSC No. 1 - Gas, effective January 2, 2012, to extend the acceptance of applications for KeySpan's Business Incentive Riders, 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-G-0538SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 12 - Gas, Eff. 1/2/12, to Extend the Business Incentive Riders and Area Development Rates

I.D. No. PSC-43-11-00009-A

Filing Date: 2011-12-20

Effective Date: 2011-12-20

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

Action taken: On 12/15/11, the PSC adopted an order approving, with modifications, Brooklyn Union Gas Company d/b/a National Grid's amendments to PSC No. 12 - Gas, eff. 1/2/12, to extend the Business Incentive Riders and Area Development Rates.

Statutory authority: Public Service Law, section 66

Subject: Amendments to PSC No. 12 - Gas, eff. 1/2/12, to extend the Business Incentive Riders and Area Development Rates.

Purpose: To approve amendments to PSC No. 12 - Gas, eff. 1/2/12, to extend the Business Incentive Riders and Area Development Rates.

Substance of final rule: The Commission, on December 15, 2011 adopted an order approving, with modifications, Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) amendments to PSC No. 12 - Gas, effective January 2, 2012, to extend the acceptance of applications for the Business Incentive Riders and Area Development Rates, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.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-G-0539SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The New York State Reliability Council's Revisions to its Rules and Measurements

I.D. No. PSC-01-12-00007-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 30 of the NYSRC's Reliability Rules.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: The New York State Reliability Council's revisions to its rules and measurements.

Purpose: To adopt revisions to various rules and measurements of the New York State Reliability Council.

Substance of proposed rule: The Public Service Commission (PSC) is considering whether to adopt, modify, or reject, in whole or in part, revisions to the rules and measurements of the New York State Reliability Council (NYSRC) contained in Version 30 of the NYSRC's Reliability Rules, which were filed with the PSC on December 15, 2011.

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

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

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

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

(05-E-1180SP12)

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

Transfer of Real Property and Easements from NMPNS to NMP3

I.D. No. PSC-01-12-00008-P

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

Proposed Action: The Commission is considering approval of the transfer, from Nine Mile Point Nuclear Station LLC (NMPNS) to Nine Mile Point 3 Nuclear Station LLC (NMP3), of real property and easements at the Nine Mile Point Nuclear Station in Scriba, New York.

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

Subject: Transfer of real property and easements from NMPNS to NMP3.

Purpose: Consideration of the transfer of real property and easements from NMPNS to NMP3.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 13, 2011 requesting approval of the transfer, from Nine Mile Point Nuclear Station LLC (NMPNS) to Nine Mile Point 3 Nuclear Station LLC (NMP3), of portions of the real property and easements located at the Nine Mile Point Nuclear Station in Scriba, New York owned by NMPNS, for the purpose of facilitating the construction of new electric generating plant by NMP3. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

(11-E-0671SP1)

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

Recovery of Expenses Related to the Expansion of Con Edison's ESCO Referral Program, PowerMove

I.D. No. PSC-01-12-00009-P

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

Proposed Action: The Commission is considering adopting, rejecting or modifying the proposals included in Consolidated Edison Company of New York, Inc.'s Report and Cost Recovery Proposal Regarding Expansion of the ESCO Referral Program for New Service Customers.

Statutory authority: Public Service Law, sections 5(1), 65(1) and 66(1)

Subject: Recovery of expenses related to the expansion of Con Edison's ESCO referral program, PowerMove.

Purpose: To determine how and to what extent expenses related to the Expansion of Con Edison's ESCO referral program should be recovered.

Substance of proposed rule: On November 23, 2011, Consolidated Edison Company of New York, Inc. (Con Edison or Company) filed a "Report and Cost Recovery Proposal Regarding Expansion of the ESCO Referral Program for New Service Customers." That filing states that the expansion of the Company's ESCO referral Program, PowerMove, to include calls seeking new service initiation resulted in increased labor costs for calendar year 2011 of \$420,000 and will cause annual labor costs of \$625,000 for 2012. These costs are related to the hiring of seven customer service representatives needed to handle the increased length of customer calls to initiate service. The Company proposes to recover these costs from ESCOs in 2012, and recover the recurring annual labor costs in future years. If ESCOs decline to fund the recurring labor costs, Con Edison requests authority to abandon the expanded PowerMove program. In the event that the expanded PowerMove is terminated, the Company proposes to continue to defer the labor costs incurred through the date of the termination of the program for recovery in base rates at some point in the future. The Commission may accept, reject, or modify, in whole or part, these proposals, or alternative proposals and may consider other related matters.

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

(07-E-0523SP9)