

# 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.

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## Education Department

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### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Charter School Public Hearings

**I.D. No.** EDU-23-12-00011-EP

**Filing No.** 467

**Filing Date:** 2012-05-22

**Effective Date:** 2012-05-22

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

**Proposed Action:** Amendment of section 3.16 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20), 2853(3)(a) and 2857(1-a)

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

**Specific reasons underlying the finding of necessity:** The purpose of the proposed technical amendment is to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a). Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board

members, and having the Commissioner, through Department staff, hold such hearings provides for the most efficient and expeditious means to conduct such hearings.

Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 3, 2012, the date a Notice of Adoption would be published in the State Register. However, it is anticipated that the Department may need to conduct public hearings in accordance with Article 56 of the Education Law as early as the end of May 2012. Emergency action is therefore necessary for the preservation of the general welfare to immediately clarify the authority of the Commissioner of Education to conduct, on behalf of the Board of Regents, all public hearings for purposes of soliciting community comments on charter school matters as required pursuant to Article 56 of the Education Law, and thereby ensure that any such public hearings may be timely conducted pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 45 day public comment period mandated by the State Administrative Procedure Act.

**Subject:** Charter school public hearings.

**Purpose:** To provide for the Commissioner to conduct, on behalf of the Board of Regents, public hearings required by article 56 of the Education Law to solicit comments from the community on charter school matters.

**Text of emergency/proposed rule:** Subdivision (b) of section 3.16 of the Rules of the Board of Regents is amended, effective May 22, 2012, as follows:

(b) Hearings. The Board of Regents delegates to the Commissioner of Education the authority to conduct and hold public hearings *as required pursuant to Article 56 of the Education Law* to solicit comments from the community *including, but not limited to, hearings* in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) *and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).*

**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 August 19, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

#### Regulatory Impact Statement

##### STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents 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 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 2853(3)(a) provides that before a charter school may be located in part of an existing public school building, the charter entity shall provide notice to the parents or guardians of the students then enrolled in the existing school building and shall hold a public hearing for purposes of discussing the location of the charter school.

Education Law section 2857(1) requires, among other things, school districts in which charter schools are located to hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter. Section 2857(1-a) provides that in the event the school district fails to conduct a public hearing, the Board of Regents shall conduct a public hearing to solicit comments from the community in connection with the issuance, revision, or renewal of a charter.

#### LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters.

#### NEEDS AND BENEFITS:

The proposed amendment is necessary to conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that having the Commissioner conduct such hearings, on behalf of the Board of Regents, will provide for the most efficient and expeditious means to conduct such hearings.

#### COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Cost to private regulated parties: none. The proposed amendment does not affect any private regulated parties.
- (d) Cost to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters. The proposed amendment will not impose any additional costs on the State, school districts and charters schools, or the State Education Department beyond those inherent in the statute.

#### LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon school districts, charter schools or other local governments. It merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

#### PAPERWORK:

The proposed amendment does not impose any additional reporting, record keeping or other paperwork requirements upon school districts or charter schools. It merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters.

#### DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements.

#### ALTERNATIVES:

Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community, such as hearings in connection with the issuance, revision, or renewal of a charter school's charter or hearings to discuss the location of a charter school, is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that having the Commissioner conduct such hearings, on behalf of the Board of Regents, provides for the most efficient and expeditious means to conduct such hearings.

#### FEDERAL STANDARDS:

There are no applicable Federal standards.

#### COMPLIANCE SCHEDULE:

The proposed amendment does not impose any compliance requirements or costs on charter schools, but merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters.

#### Regulatory Flexibility Analysis

##### Small Businesses:

The proposed amendment applies to school districts and charter schools, and will conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

The proposed amendment does not impose any economic impact, or 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 further measures were 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:

##### EFFECT OF RULE:

The proposed rule applies to all school districts and charter schools in the State. At present, there are 695 school districts (including New York City) and 37 BOCES. There are currently 189 operating charter schools.

##### COMPLIANCE REQUIREMENTS:

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements on school districts or charter schools. It merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

##### PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or charter schools.

##### COMPLIANCE COSTS:

The proposed amendment merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters. The proposed amendment does not impose any compliance costs on school districts or charter schools beyond those inherent in Article 56 of the Education Law.

##### ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any compliance costs or new technological requirements on school districts or charter schools.

##### MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely

conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that having the Commissioner conduct such hearings, on behalf of the Board of Regents, will provide for the most efficient and expeditious means to conduct such hearings.

#### LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. Copies of the proposed amendment have been provided to each charter school for review and comment.

#### Rural Area Flexibility Analysis

##### TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and charter schools within the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. There is currently one charter school located in a rural area.

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

The proposed amendment does not establish any reporting, recordkeeping or other compliance requirements, or impose any additional professional services requirements on school districts or charter schools in rural areas. It merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

##### COSTS:

The proposed amendment merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters. The proposed amendment does not impose any compliance costs on school districts or charter schools in rural areas beyond those inherent in Article 56 of the Education Law.

##### MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or compliance costs on school districts or charter schools. It merely conforms section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

Having the Board of Regents personally conduct and hold such hearings is not practical, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that having the Commissioner conduct such hearings, on behalf of the Board of Regents, will provide for the most efficient and expeditious means to conduct such hearings.

##### RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from the Department's Rural Advisory Committee. Comments on the proposed amendment were also solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, copies of the proposed rule have been provided to each charter school for review and comment.

#### Job Impact Statement

The proposed amendment applies to school districts and charter schools, and will conform section 3.16(b) of the Regents Rules to the Department's existing practice of having the Commissioner, on behalf of the Board of Regents, hold public hearings required by Article 56 of the Education Law to solicit comments from the community on charter school matters, such

as hearings in connection with the issuance, revision or renewal of a charter pursuant to Education Law section 2857(1-a) and hearings to discuss the location of a charter school pursuant to Education Law section 2853(3)(a).

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

## EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Dignity for All Students Act (L. 2010, Ch. 482)

**I.D. No.** EDU-23-12-00012-EP

**Filing No.** 468

**Filing Date:** 2012-05-22

**Effective Date:** 2012-07-01

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

**Proposed Action:** Amendment of section 100.2(c) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 801-a(not subdivided) and 2854(1)(b); and L. 2010, ch. 482

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

**Specific reasons underlying the finding of necessity:** The proposed amendment is necessary to implement the Dignity for All Students Act (L. 2010, Ch. 482) to ensure that all public school students, including those attending charter schools, are provided instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

Because the Board of Regents meets at fixed intervals, and generally does not meet in the month of August, the earliest the proposed amendment could be presented for regular adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the September 10-11, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the September meeting, would be October 3, 2012, the date a Notice of Adoption would be published in the State Register. However, the Dignity Act takes effect on July 1, 2012, and charter schools must act immediately so that the instruction can be timely implemented for the 2012-2013 school year.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the proposed rule to ensure that all public school students, including those attending charter schools, are timely provided instruction in the 2012-2013 school year that supports development of a school environment free of discrimination and harassment, as required by the Dignity for All Students Act.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 10-11, 2012 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period for proposed rule makings mandated by the State Administrative Procedure Act.

**Subject:** Dignity for All Students Act (L. 2010, ch. 482).

**Purpose:** To prescribe instructional requirements to implement the Dignity Act.

**Text of emergency/proposed rule:** 1. The amendment of subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education, which was adopted by the Board of Regents on March 20, 2012 and for which a Notice of Adoption was published in the State Register on April 11, 2012 (EDU-04-12-00002-A), is repealed, effective July 1, 2012.

2. Subdivision (c) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective July 1, 2012, as follows:

(c) Instruction in certain subjects. Pursuant to articles 2, 17 and 65 of the Education Law, instruction in certain subjects in elementary and secondary school shall be provided as follows:

(1) for all students, instruction in patriotism and citizenship, as required by section 801 of the Education Law;

(2) for all public school students, instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity For All Students Act (article 2 of the Education Law), including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex; provided that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law;

[(2)] (3) for all students in the eighth and higher grades, instruction in the history, meaning, significance and effect of the provisions of the Constitution of the United States and the amendments thereto, the Declaration of Independence, the Constitution of the State of New York and the amendments thereto, as required by section 801 of the Education Law;

[(3)] (4) for all students, health education regarding alcohol, drugs and tobacco abuse, as required by section 804 of the Education Law;

[(4)] (5) for all students, instruction in highway safety and traffic regulation, as required by section 806 of the Education Law;

[(5)] (6) for all students, instruction in fire drills and in fire and arson prevention, injury prevention and life safety education, as required by sections 807 and 808 of the Education Law. Such course of instruction shall include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe, or a life safety emergency;

[(6)] (7) for all students in grades one through eight, instruction in New York State history and civics as required by section 3204(3) of the Education Law;

[(7)] (8) for public school students, instruction relating to the flag and certain legal holidays, as required by section 802 of the Education Law;

[(8)] (9) for all public elementary school students, instruction in the humane treatment of animals and birds, as required by section 809 of the Education Law; and

[(9)] (10) for all public school students, instruction relating to the conservation of the natural resources of the State, as required by section 810 of the Education Law.

**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 August 19, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Ken Slentz, Deputy Commissioner for P-12 Education, State Education Department, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

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

Education Law section 305(1) empowers the Commissioner of Education to be the chief executive officer of the State system of education and the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Board of Regents. Education Law section 305(2) authorizes the Commissioner to have general supervision over all schools subject to the Education Law.

Education Law section 801-a requires the Regents to ensure that the course of instruction in grades kindergarten through twelve includes a component on civility, citizenship and character education and instruct students on the principles of honesty, tolerance, personal responsibility, respect for others, observance of laws and rules, courtesy, dignity and other traits that will enhance the quality of their experiences in, and contributions to, the community.

Education Law section 2854(1)(b) provides that charter schools shall meet the same health and safety, civil rights, and student assessment requirements applicable to other public schools, except as otherwise specifically provided in Article 56 of the Education Law.

Chapter 482 of the Laws of 2010 added a new Article 2 to the Education Law, relating to Dignity for All Students ("Dignity Act") to afford all students in public schools an environment free of discrimination and harassment and foster civility in public schools and to prevent and prohibit conduct which is inconsistent with a school's educational mission. Section 3 of Chapter 482 amended Education Law section 801-a to provide that instruction regarding "tolerance", "respect for others" and "dignity" shall include awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement the instructional requirements of the Dignity Act, including provisions to conform the Commissioner's regulations to Education Law section 801-a, as amended by the Act.

##### 3. NEEDS AND BENEFITS:

At their March 19-20, 2012 meeting, the Board of Regents adopted an amendment to section 100.2(c) of the Commissioner's Regulations to add language requiring that courses of instruction in civility, citizenship and character education provided pursuant to Education Law section 801-a include instruction relating to awareness and sensitivity to discrimination or harassment and civility in the relations of people of different races, weights, national origins, ethnic groups, religions, religious practices, mental or physical abilities, sexual orientations, genders, and sexes. This was necessary to conform section 100.2(c) to section 3 of the Dignity Act, which expanded section 801-a to include such instruction relating to the principles of the Dignity Act. Because it has been the Department's interpretation since the enactment of section 801-a in 2000 that charter schools are exempt from the statute's required instruction on civility, citizenship and character education, the March amendment included language excluding charter schools from the requirements of section 801-a.

However, concerns have been expressed by many parties, including the Assembly sponsor of the Dignity Act and the Dignity for All Students Task Force, that an exclusion of charter schools from any instructional requirement relating to prevention of harassment and discrimination would be inconsistent with the intent of Article 2, which is to afford all students in public schools an environment free of discrimination and harassment. It was pointed out that even if charter schools are not required to provide the component on civility, citizenship and character education prescribed under section 801-a, in order to carry out the intent of the Dignity Act and protect the civil rights and the health and safety of charter school students, charter school students must receive instruction targeted at prevention of harassment and discrimination.

The Department finds that argument persuasive and recommends the regulation be amended to clarify that while charter schools are not required to provide a curriculum component on civility, citizenship and character education in accordance with § 801-a, they must nonetheless provide instruction targeted at preventing harassment and discrimination in charter schools to comply with the requirements of the Dignity Act and protect the civil rights and health and safety of their students.

Accordingly, the proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

##### 4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment is necessary to implement the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to implement the Dignity Act and will not impose any additional program, service, duty or responsibility beyond those by the statute. The proposed amendment would require charter schools to provide instruction that supports development of a

school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

#### 6. PAPERWORK:

The proposed amendment will not impose any additional reporting requirements, forms or other paperwork, beyond those imposed by the Dignity Act.

#### 7. DUPLICATION:

The proposed amendment does not duplicate existing State or Federal regulations, and is necessary to implement the Dignity Act and protect the civil rights and the health and safety of charter school students.

#### 8. ALTERNATIVES:

There are no viable alternatives and none were considered. The proposed amendment is necessary to implement the Dignity Act and protect the civil rights and the health and safety of charter school students.

#### 9. FEDERAL STANDARDS:

There are no related Federal standards.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement the Dignity Act and protect the civil rights and the health and safety of charter school students, and will not impose any additional compliance requirements or costs on regulated parties beyond those imposed by the statute. It is anticipated that regulated parties will be able to achieve compliance with proposed amendment by its effective date.

### **Regulatory Flexibility Analysis**

#### Small Businesses:

The proposed amendment is applicable to school districts, boards of cooperative educational services and charter schools and is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch 452). The proposed amendment does not impose any adverse economic impact, reporting, record keeping 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 further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

#### Local Governments:

##### 1. EFFECT OF RULE:

The proposed amendment applies to each school district, board of cooperative educational services (BOCES) and charter school in the State. At present, there are 695 school districts (including New York City) and 37 BOCES. There are currently 189 operating charter schools.

##### 2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch. 482), including provisions to conform the Commissioner's regulations to Education Law section 801-a, as amended by the Act. The proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

##### 3. PROFESSIONAL SERVICES:

The proposed amendment will not impose any additional professional services requirements.

##### 4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

##### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional costs or technological requirements.

##### 6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch. 482), including provisions to conform the Commissioner's regulations to Education Law section 801-a, as amended by the Act. The proposed amendment will not impose any additional compliance requirements or costs beyond those imposed by the statute. Because these statutory requirements specifi-

cally apply, it is not possible to provide exemptions from the proposed amendment's requirements or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing its the impact.

Consistent with the Dignity Act, the proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

##### 7. LOCAL GOVERNMENT PARTICIPATION:

The proposed amendment was developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations. Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

### **Rural Area Flexibility Analysis**

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts, boards of cooperative educational services (BOCES) and charter 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 a population density of 150 per square mile or less. There is currently one charter school located in a rural area.

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

The proposed amendment is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch. 482), including provisions to conform the Commissioner's regulations to Education Law section 801-a, as amended by the Act. The proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

The proposed amendment will not impose any additional professional services requirements.

#### 3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations with the Dignity Act and will not impose any additional costs beyond those imposed by the statute.

#### 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch. 482), including provisions to conform the Commissioner's regulations to Education Law section 801-a, as amended by the Act. The proposed amendment will not impose any additional compliance requirements or costs on entities in rural areas beyond those imposed by the statute. Because these statutory requirements specifically apply, it is not possible to provide an exemption from the proposed amendment's requirements or impose a lesser standard. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing its impact on entities in rural areas.

Consistent with the Dignity Act, the proposed amendment would require charter schools to provide instruction that supports development of a school environment free of discrimination and harassment, as required by the Dignity Act, including but not limited to instruction that raises awareness and sensitivity to discrimination or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex. The proposed amendment further provides that in public schools other than charter schools, such instruction shall be provided as part of a component on civility, citizenship and character education in accordance with section 801-a of the Education Law.

The statute which the proposed amendment implements applies to all school districts and BOCES throughout the State, including those in rural areas. Therefore, it was not possible to establish different requirements for entities in rural areas, or to exempt them from the rule's provisions.

#### 5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. The proposed amendments were developed in cooperation with the Dignity Act Task Force State Policy Work Group which is comprised of other State agencies, the New York City Department of Education, and several not-for-profit organizations.

#### **Job Impact Statement**

The proposed amendment is applicable to school districts, boards of cooperative educational services and charter schools and is necessary to implement the instructional requirements of the Dignity for All Students Act (L. 2010, Ch 452). The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

### **NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED**

#### **Policy and Guidelines Prohibiting Discrimination and Harassment of Students**

**I.D. No.** EDU-07-12-00011-ERP

**Filing No.** 469

**Filing Date:** 2012-05-22

**Effective Date:** 2012-05-22

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

**Action Taken:** Addition of section 100.2(jj) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 11(1-7), 12(1), (2), 13(1-3), 14(1-3), 101(not subdivided), 207(not subdivided), 305(1), (2) and 2854(1)(b); and L. 2010, ch. 482

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

**Specific reasons underlying the finding of necessity:** The proposed rule is necessary to implement provisions of the Dignity Act. The statute added a new Article 2 to the Education Law and new section 13 of Article 2 to require school districts, boards of cooperative educational services (BOCES) and charter schools to create:

(i) policies to create a school environment free from discrimination and harassment;

(ii) guidelines to be used in school training programs to discourage the development of discrimination or harassment and that are designed to raise awareness and sensitivity of school employees to potential discrimination or harassment and enable employees to prevent and respond to discrimination or harassment; and

(iii) guidelines relating to the development of nondiscriminatory instructional and counseling methods, and requiring that at least one staff member of every school be thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender and sex.

The proposed rule establishes standards and criteria for the issuance of such policies and guidelines.

The proposed rule was discussed by the P-12 Education Committee at the February Regents meeting. A Notice of Proposed Rule Making was published in the State Register on February 15, 2012. The proposed rule was subsequently revised in response to public comment and discussed at the April Regents meeting. A Notice of Revised Rule Making was published in the State Register on April 25, 2012.

Additional revisions have now been made to the proposed revised rule in response to public comment. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for regular adoption, after publication in the State Register and expiration of the 30-day public comment period provided for revised rule makings pursuant to the State Administrative Procedure Act (SAPA) section 202(4-a), is the July 16-17, 2012 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the July meeting, would be August 1, 2012, the date a Notice of Adoption would be published in the State Register. However, the Dignity Act takes effect on July 1, 2012 and school districts, BOCES and charter schools must establish by such date guidelines for the implementation of school employee training programs under the Act.

Emergency action is therefore necessary for the preservation of the general welfare to immediately adopt the proposed revised rule so that school districts, BOCES and charter schools are provided sufficient time to timely develop and establish guidelines for Dignity Act school employee training programs in accordance with the rule's provisions, so that such programs may be timely implemented in the 2012-2013 school year pursuant to statutory requirements.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their July 16-17, 2012 meeting, which is the first scheduled meeting after expiration of the 30-day public comment period for revised rule makings mandated by the State Administrative Procedure Act.

**Subject:** Policy and guidelines prohibiting discrimination and harassment of students.

**Purpose:** To establish criteria for issuance of policy and guidelines relating to the Dignity for All Students Act (Ch. 482, L. 2010).

**Text of emergency/revised rule:** Subdivision (jj) of section 100.2 of the Regulations of the Commissioner of Education is added, effective May 22, 2012, as follows:

(jj) *Dignity For All Students School Employee Training Program.*

(i) *Definitions. As used in this subdivision:*

(i) "School property" means in or within any building, structure, athletic playing field, playground, parking lot or land contained within the real property boundary line of a public elementary or secondary school, including a charter school; or in or on a school bus, as defined in section 142 of the Vehicle and Traffic Law.

(ii) "School function" means a school-sponsored extracurricular event or activity.

(iii) "Disability" means disability as defined in Executive Law section 292(21).

(iv) "Employee" means an employee as defined in Education Law section 1125(3), or an employee of a charter school.

(v) "Sexual orientation" means actual or perceived heterosexuality, homosexuality or bisexuality.

(vi) "Gender" means actual or perceived sex and shall include a person's gender identity or expression.

(vii) "Discrimination" means discrimination against any student by a student or students and/or an employee or employees on school property or at a school function including, but not limited to, discrimination based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(viii) "Harassment" means the creation of a hostile environment by conduct or by verbal threats, intimidation or abuse that has or would have the effect of unreasonably and substantially interfering with a student's educational performance, opportunities or benefits, or mental, emotional or physical well-being; or conduct, verbal threats, intimidation or abuse that reasonably causes or would reasonably be expected to cause a student to fear for his or her physical safety; such conduct, verbal threats, intimidation or abuse includes but is not limited to conduct, verbal threats, intimidation or abuse based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

(2) On or before July 1, 2012, each school district and each charter school shall establish guidelines for its school or schools to implement, commencing with the 2012-2013 school year and continuing in each school year thereafter, Dignity for All Students school employee training programs to promote a positive school environment that is free from discrimination and harassment; and to discourage and respond to incidents of discrimination and/or harassment on school property or at a school function. Such guidelines shall be approved by the board of education, trustees or sole trustee of the school district (or by the chancellor of the city school district, in the case of the City School District of the City of New York) or by the board of trustees of the charter school.

(3) The guidelines shall include, but not be limited to, providing employees, including school and district administrators and instructional and non-instructional staff, with:

(i) training to:

(a) raise awareness and sensitivity to potential acts of discrimination and/or harassment directed at students that are committed by students or school employees on school property or at school functions; including, but not limited to, discrimination and/or harassment based on a person's actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice[s], disability, sexual orientation, gender or sex; and

(b) training to enable employees to prevent and respond to incidents of discrimination and/or harassment;

(c) such training may be implemented and conducted in conjunction with existing professional development training pursuant to subpara-

graph 100.2(dd)(2)(ii) of this Title and/or with any other training for school employees; and

(ii) guidelines relating to the development of nondiscriminatory instructional and counseling methods.

(4) At least one employee in every school shall be designated as a Dignity Act Coordinator and instructed in the provisions of this subdivision and thoroughly trained to handle human relations in the areas of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, and sex.

(i) The designation of each Dignity Act Coordinator shall be approved by the board of education, trustees or sole trustee of the school district (or in the case of the City School District of the City of New York, by the principal of the school in which the designated employee is employed) or, in the case of a charter school, by the board of trustees.

(ii) The name(s) and contact information for the Dignity Act Coordinator(s) shall be shared with all school personnel, students, and persons in parental relation, which shall include, but is not limited to, providing the name, designated school and contact information of each Dignity Act Coordinator by:

(a) listing such information in the code of conduct and updates posted on the Internet web site, if available, of the school or school district, or of the board of cooperative educational services, pursuant to subclause 100.2(l)(2)(iii)(b)(1) of this Part;

(b) including such information in the plain language summary of the code of conduct provided to all persons in parental relation to students before the beginning of each school year, pursuant to subclause 100.2(l)(2)(iii)(b)(3);

(c) include such information in at least one district or school mailing per school year to parents and persons of parental relation and, if such information changes, in at least one subsequent district or school mailing as soon as practicable thereafter;

(d) posting such information in highly-visible areas of school buildings; and

(e) making such information available at the district and school-level administrative offices.

(iii) In the event a Dignity Act Coordinator vacates his or her position, another school employee shall be immediately designated for an interim appointment as Coordinator, pending approval of a successor Coordinator by the applicable governing body as set forth in subparagraph (i) of this paragraph within 30 days of the date the position was vacated. In the event a Coordinator is unable to perform the duties of his or her position for an extended period of time, another school employee shall be immediately designated for an interim appointment as Coordinator, pending return of the previous Coordinator to his or her duties as Coordinator.

(5) Nothing in this subdivision shall be construed to prohibit a denial of admission into, or exclusion from, a course of instruction based on a person's gender that would be permissible under Education Law sections 3201-a or 2854(2)(a) and Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681, et seq.), or to prohibit, as discrimination based on disability, actions that would be permissible under section 504 of the Rehabilitation Act of 1973.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on February 15, 2012, I.D. No. EDU-07-12-00011-P. The emergency rule will expire August 19, 2012.

**Revised rule making(s) were previously published in the State Register** on April 25, 2012.

**Emergency rule compared with proposed rule:** Substantial revisions were made in section 100.2(jj)(1).

**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) 474-6400, email: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Ken Slentz, Deputy Commissioner P-12 Education, State Education Department, State Education Building 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

#### **Revised Regulatory Impact Statement**

Since publication of a Notice of Revised Rule Making in the State Register on April 25, 2012, the proposed rule has been revised as follows.

Paragraph (1) of subdivision (jj) of section 100.2 of the Commissioner's Regulations was revised in response to public comment to clarify what is meant by "discrimination and harassment" by providing separate definitions of each term, and to otherwise ensure consistency of definitions between proposed sections 100.2(jj) and 100.2(kk), which is the subject of a

separate rule making published in the State Register on April 11, 2012 (EDU-15-12-00011-P). The proposed rule also enacts certain technical changes to ensure consistency in the terminology used in the proposed rule.

The above revisions do not require any changes to the previously published Regulatory Impact Statement.

#### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Revised Rule Making in the State Register on April 25, 2012, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions do not require any changes to the previously published Regulatory Flexibility Analysis.

#### **Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Revised Rule Making in the State Register on April 25, 2012, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revisions do not require any changes to the previously published Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

Since publication of a Notice of Revised Rule Making in the State Register on April 25, 2012, the proposed rule has been revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to school employee training under the Dignity for All Students Act (L. 2010, Ch. 482), and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised proposed 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 Revised Rule Making in the State Register on April 25, 2012, the State Education Department received the following comments.

##### **1. COMMENT:**

Concern was expressed that the definitions in the proposed section 100.2(jj) are inconsistent with the definitions in proposed section 100.2(kk), which relates to reporting requirements under the Dignity for All Students Act (L. 2010, Ch.482) and is the subject of a separate rule making published in the State Register on April 11, 2012 [EDU-15-12-00011-P]. It was recommended that the definitions used in sections 100.2(jj) and 100.2(kk) be incorporated into a single definitions section.

##### **DEPARTMENT RESPONSE:**

The Department acknowledges that the definitions in sections 100.2(jj) and 100.2(kk) are inconsistent, but does not believe it would be appropriate to combine the definitions into a single section because the training provisions and the reporting provisions are in two different subdivisions of section 100.2. Instead, the Department has revised the definitions in proposed section 100.2(jj)(1) to provide for separate definitions of "discrimination" and "harassment" and to be otherwise consistent with the definitions in proposed section 100.2(kk)(1).

##### **2. COMMENT:**

In some places in the proposed rule the phrase "discrimination and harassment" is used, in other places the phrase "discrimination and/or harassment" is used. Concern was expressed that these inconsistencies will result in ambiguity, unnecessary questions and potential misinterpretations.

##### **DEPARTMENT RESPONSE:**

The Department agrees and has revised the phrases, where necessary, to ensure consistency.

##### **3. COMMENT:**

Although proposed section 100.2(jj)(4)(ii) requires that the name and contact information of the Dignity Act Coordinator (DAC) be publicized, the DAC may not always be the person responsible for receiving discrimination and harassment complaints from students and/or parents. Some districts may assign the complaint function to their Title IX Officer or an ombudsman. It may be more appropriate to publicize the name and contact information of the complainant person and/or the DAC.

##### **DEPARTMENT RESPONSE:**

The Department believes that it would be potentially confusing to the public to list contact information for individuals other than the DAC, and that the DAC should serve as the point person for the process. In instances where the school district (district), board of cooperative educational services (BOCES) or charter school has assigned the complaint function to another staff member, the DAC should be responsible for following-up with this person when contacted by a student or parent.

##### **4. COMMENT:**

The proposed rule does not make it clear that all students are covered by its provisions prohibiting discrimination and harassment and is

susceptible to being applicable only to students who are discriminated against or harassed on the basis of race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender or sex.

**DEPARTMENT RESPONSE:**

The Department has revised the proposed rule to provide separate definitions of “discrimination” and “harassment.” The definition of discrimination provides that such terms includes discrimination against any student. The Department believes that the definition of harassment in the proposed rule is sufficiently worded to be clear it applies to any student. In addition, the Department intends to issue guidance to make it clear that all students are covered by its provisions prohibiting discrimination and harassment.

**5. COMMENT:**

The proposed rule does not sufficiently emphasize the need for districts to take non-punitive action when a complaint of harassment or bullying is received. First and foremost, districts need to provide support and guidance to the target student. However, the importance of emphasizing social/emotional learning for both the “bullied” and the “bully” has not been adequately addressed.

**DEPARTMENT RESPONSE:**

A regulation change is not necessary. The proposed rule provides broad flexibility for districts and schools to establish policies and guidelines for preventing and responding to incidents of discrimination and harassment according to local needs and individual circumstances, which can include non-punitive social/emotional learning, and the Department encourages districts and schools to do so. The Department may consider addressing this issue in guidance.

## Department of Financial Services

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

#### Limitation of New Enrollment to the Healthy NY High Deductible Plan Pursuant to Section 4326(g) of the Insurance Law

**I.D. No.** DFS-23-12-00003-P

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

**Proposed Action:** Addition of section 362-2.9 (Regulation 171) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326 and 4327

**Subject:** Limitation of new enrollment to the Healthy NY high deductible plan pursuant to section 4326(g) of the Insurance Law.

**Purpose:** To mitigate large premium increases for current enrollees in Healthy NY by limiting new enrollees to the high deductible plan.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>):** A new section 362-2.9 is added to read as follows:

§ 362-2.9 *Healthy New York Enrollment Limitation*

(a) *With respect to coverage effective on or after January 1, 2012, a health maintenance organization or a participating insurer may enroll new applicants in the Healthy New York Program only in the high deductible health plans set forth in section 362-2.8 of this Part.*

(b) *With respect to existing enrollees who are in non-high deductible health plans with coverage effective prior to January 1, 2012, a health maintenance organization or a participating insurer shall:*

(1) *permit qualifying individuals to add dependents to or remove dependents from their qualifying health insurance contracts; and*

(2) *permit qualifying small employers to add employees and dependents to or remove employees and dependents from their qualifying health insurance contracts.*

(c) *A health maintenance organization or participating insurer shall permit qualifying individuals and qualifying employers enrolled in non-high deductible plans to change their benefit packages to other non-high deductible plans with the same health maintenance organization or participating insurer at the time of annual recertification or a change in the premium rate.*

**Text of proposed 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 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

**Data, views or arguments may be submitted to:** Mary Sabo, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-0431, email: mary.sabo@dfs.ny.gov

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

**Regulatory Impact Statement**

1. **Statutory authority:** The Superintendent’s authority for the adoption of the fourth amendment to 11 NYCRR 362 is derived from sections 202, 301, and 302 of the Financial Services Law (“FSL”) and sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326, and 4327 of the Insurance Law.

Section 202 of the Financial Services Law 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.

Section 1109 of the Insurance Law authorizes the Superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization (HMO) and its subscribers.

Section 3201 of the Insurance Law authorizes the Superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state.

Section 3216 of the Insurance Law sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers.

Section 3217 of the Insurance Law authorizes the Superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies.

Section 3221 of the Insurance Law sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers.

Section 4235 of the Insurance Law defines group accident and health insurance and the types of groups to which such insurance may be issued.

Section 4303 of the Insurance Law governs the accident and health insurance contracts written by non-for-profit corporations and sets forth the benefits that must be covered under such contracts.

Section 4304 of the Insurance Law includes requirements for individual health insurance contracts written by not-for-profit corporations and health maintenance organizations.

Section 4305 includes requirements for group health insurance contracts written by not-for profit corporations and health maintenance organizations.

Section 4326 of the Insurance Law authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the Superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) also authorizes the Superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002.

Section 4327 of the Insurance Law authorizes the establishment of stop loss funds for standardized health insurance contracts issued to qualifying small employers and qualifying individuals. Section 4327(k) authorizes the suspension of enrollment in the program if it is anticipated that annual expenditures from the stop loss fund will exceed the total funds available for distribution from the fund.

2. **Legislative objectives:** Chapter 1 of the Laws of 1999 enacted the Healthy New York (Healthy NY) program, an initiative designed to enable small employers to provide health insurance to employees and their families and to provide working uninsured individuals with an affordable health insurance coverage option.

3. **Needs and benefits:** Healthy NY provides essential health coverage to over 170,000 New Yorkers. Due to State fiscal constraints, the New York State budget set Healthy NY funding appropriations at approximately \$160 million for the past three consecutive fiscal years. During this timeframe, Healthy NY enrollment and claims increased. As a result, there has been a need to pro-rate state payments to health plans for the last two years. This has caused health plans to apply for significant rate increases, to the detriment of Healthy NY’s low income enrollees and applicants.

In response, the Department of Financial Services intends to better utilize Healthy NY’s limited financial resources. Promulgation of this regulation is the first and most necessary step to better utilizing program resources. This rule will permit existing Healthy NY enrollees to keep

their current coverage option. New applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. The Department believes this approach strikes a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those purchasing coverage.

Healthy NY high deductible health plans are not as popular with consumers as the standard Healthy NY products. Therefore, we expect new enrollment in the program to decrease. This decrease, combined with normal program attrition, will lead to an overall reduction in the size of the program. State stop loss funds will go further in providing premium support to this smaller population. As noted above, expedited promulgation of this regulation is necessary to begin the limitation of program enrollment that will ultimately lead to more effective usage of the stop loss funds.

4. **Costs:** This rule imposes no compliance costs upon state or local governments. The overall costs of the program are capped at the appropriated funding amounts. Through this rule the Department of Financial Services expects to be able to maintain the viability of the program within the appropriated funding amounts.

5. **Local government mandates:** This rule imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. **Paperwork:** Healthy NY requires HMOs and participating insurers to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county-by-county basis are submitted to the Department. This rule will not impose any new reporting requirements.

7. **Duplication:** There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. **Alternatives:** The Department of Financial Services examined multiple alternatives ranging from full program suspension to adjustments to benefits and cost-sharing amounts. It was determined that a full program suspension would have eliminated an affordable health insurance alternative for the working uninsured, and adjustments to benefits and cost-sharing would have had an insufficient impact on savings. Thus, it was decided that this rule would have the most positive outcome in that it will strike a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those who seek to purchase coverage.

9. **Federal standards:** The Healthy NY high deductible health plans meet all federal standards to ensure that program enrollees achieve any available federal tax benefits.

10. **Compliance schedule:** HMOs and participating insurers are required to comply immediately.

#### **Regulatory Flexibility Analysis**

1. **Effect of rule:** This rule will affect small businesses that are seeking to enter the Healthy New York (Healthy NY) program because it will limit the number of Healthy NY coverage options that they can offer to their employees. However, the Department of Financial Services feels that qualifying small businesses that choose to offer the high deductible health plan option to their employees will be able to attract and keep talented workers. This rule will have the greatest impact upon health maintenance organizations (HMOs) and licensed insurers in New York State, none of which fall within the definition of small business as found in section 102(8) of the State Administrative Procedure Act. This rule will not affect local governments.

2. **Compliance requirements:** There are no compliance requirements for small businesses or local governments. As noted above, this rule will have the greatest impact upon health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in section 102(8) of the State Administrative Procedure Act.

3. **Professional services:** No professional services will be necessitated as a result of this rule.

4. **Compliance costs:** This rule should reduce insurance costs for qualifying small businesses that choose to offer the high deductible health plan to their employees. This rule imposes no compliance costs to local governments.

5. **Economic and technological feasibility:** The Healthy NY program is designed to make health insurance premiums more affordable for small businesses. Compliance with this rule should be economically and technologically feasible as it requires no action on their part.

6. **Minimizing adverse impact:** This rule minimizes the impact on small businesses by providing an affordable health insurance option that the businesses can choose to offer to their employees.

7. **Small business and local government participation:** This notice is intended to provide small businesses, local governments and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule-making process.

#### **Rural Area Flexibility Analysis**

1. **Types and estimated numbers of rural areas:** Health maintenance organizations (HMOs) and participating insurers to which this regulation is applicable do business in every county of the State, including rural areas as defined under section 102(10) of the State Administrative Procedure Act. Small employers and individuals in need of health insurance coverage are located in every county of the State, including rural areas as defined under section 102(10) of the State Administrative Procedure Act.

2. **Reporting, recordkeeping and other compliance requirements; and professional services:** Healthy New York requires HMOs and participating insurers to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Department of Financial Services. This rule will not add any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option. Nothing in this rule distinguishes between rural and non-rural areas. No special type of professional services will be needed in a rural area to comply with this requirement.

3. **Costs:** HMOs and participating insurers may incur some minor costs as they educate their customer service staff on the changes being made to the program. There are no costs to local governments. This rule has no impact unique to rural areas.

4. **Minimizing adverse impact:** Because the same requirements apply to both rural and non-rural entities, the rule will have the same impact on all affected entities.

5. **Rural area participation:** None.

#### **Job Impact Statement**

While this rule may reduce the number of health coverage options available to employees; it will not adversely affect jobs or employment opportunities. A health maintenance organization or a participating insurer shall continue to permit existing Healthy New York (Healthy NY) enrollees to keep their current coverage option. New applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. The Department believes that this approach strikes a balance in protecting existing enrollees from unaffordable rate increases, while maintaining an affordable option for those purchasing new coverage. It is the Department's position that this rule will permit employers enrolled in the program to maintain health insurance coverage for their employees. The ability to offer affordable coverage will allow employers to attract and retain qualified workers. Through this rule the Department of Financial Services intends to better leverage Healthy NY's limited financial resources.

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## Office of Parks, Recreation and Historic Preservation

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### NOTICE OF ADOPTION

#### **Conditions for a Proposed High Wire Walk Event at Niagara Falls State Park**

**I.D. No.** PKR-14-12-00003-A

**Filing No.** 466

**Filing Date:** 2012-05-21

**Effective Date:** 2012-06-06

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

**Action taken:** Addition of section 376.1 to Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(5), (8), (9) and (14), L. 2011, ch. 572

**Subject:** Conditions for a proposed high wire walk event at Niagara Falls State Park.

**Purpose:** To allow Nik Wallenda conditional access to Niagara Falls State Park for a hire wire walk event across the Gorge.

**Text or summary was published** in the April 4, 2012 issue of the Register, I.D. No. PKR-14-12-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Kathleen L. Martens, Associate Counsel, OPRHP, 625 Broadway Albany, NY 12207, (518) 486-2921, email: rulemaking@parks.ny.gov

**Revised Job Impact Statement**

A Job Impact Statement is not submitted with this notice because the rule will not have an impact on jobs and employment opportunities. The proposed rule allows Nik Wallenda access to Niagara Falls State Park for a high wire event across the Gorge.

**Assessment of Public Comment**

The agency received no public comment.

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## Public Service Commission

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### NOTICE OF WITHDRAWAL

#### Central Hudson Gas and Electric Corporation Energy Efficiency Program

**I.D. No.** PSC-08-10-00010-W

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

**Action taken:** Notice of proposed rule making, I.D. No. PSC-08-10-00010-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 24, 2010.

**Subject:** Central Hudson Gas and Electric Corporation energy efficiency program.

**Reason(s) for withdrawal of the proposed rule:** Withdrawn by the company submitting the petition.

### NOTICE OF ADOPTION

#### Major Electric Rate Filing

**I.D. No.** PSC-52-11-00012-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order approving, in part, the terms of a Joint Proposal submitted by Pennsylvania Electric Company and PSC Staff; rejecting a proposed fixed carrying charge of 6% and instead adopt the PSC's customer capital rate at 3.4%.

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

**Subject:** Major electric rate filing.

**Purpose:** To approve, in part terms of a Joint Proposal rejecting a fixed carrying charge of 6% and adopt the customer capital rate at 3.4%.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving, in part, the terms of a Joint Proposal submitted by Pennsylvania Electric Company and Department of Public Service Staff (NYS PSC); rejecting a proposed fixed carrying charge of 6% and instead adopt the NYS PSC's other customer capital rate which is currently 3.4%, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (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-0594SA1)

### NOTICE OF ADOPTION

#### Authorizing the Transfer Certain Equipment to GenOn Bowline LLC on a Permanent Basis

**I.D. No.** PSC-07-12-00003-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order authorizing the Joint Petition of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to transfer certain equipment to GenOn Bowline LLC on a permanent basis.

**Statutory authority:** Public Service Law, section 70

**Subject:** Authorizing the transfer certain equipment to GenOn Bowline LLC on a permanent basis.

**Purpose:** To authorize transfer certain equipment to GenOn Bowline LLC on a permanent basis.

**Substance of final rule:** The Commission, on May 17, 2012 adopted on a permanent basis an order authorizing the Joint Petition of Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. to transfer certain equipment to GenOn Bowline LLC, subject to the terms and conditions set forth in the order.

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

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

(12-E-0011SA1)

### NOTICE OF ADOPTION

#### Petition of 8 East 102nd Street LLC to Submeter Electricity at 4 East 102 Street, New York, New York

**I.D. No.** PSC-07-12-00012-A

**Filing Date:** 2012-05-22

**Effective Date:** 2012-05-22

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

**Action taken:** On 5/17/12, the PSC adopted an order approving the petition of 8 East 102nd Street LLC to submeter electricity at 4 East 102 Street, New York, New York.

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

**Subject:** Petition of 8 East 102nd Street LLC to submeter electricity at 4 East 102 Street, New York, New York.

**Purpose:** To approve the petition of 8 East 102nd Street LLC to submeter electricity at 4 East 102 Street, New York, New York.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving the petition of 8 East 102nd Street LLC to submeter electricity at 4 East 102 Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 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-0468SA1)

### NOTICE OF ADOPTION

#### Demolition and Remediation Plan for the Former Russell Generating Station

**I.D. No.** PSC-08-12-00012-A

**Filing Date:** 2012-05-22

**Effective Date:** 2012-05-22

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

**Action taken:** On 5/17/12, the PSC adopted an order accepting Rochester Gas and Electric Corporation's (RG&E) Demolition and Remediation Plan for the former Russell Generating Station located in the Town of Greece, New York.

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

**Subject:** Demolition and Remediation Plan for the former Russell Generating Station.

**Purpose:** To accept RG&E's Demolition and Remediation Plan for the former Russell Generating Station.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order accepting Rochester Gas and Electric Corporation's Demolition and Remediation Plan for the former Russell Generating Station located in the Town of Greece, New York, subject to the terms and conditions set forth in the order.

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

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

(12-E-0025SA1)

**NOTICE OF ADOPTION**

**Issue Long-Term Debt, Common Stock and Stock Acquisition**

**I.D. No.** PSC-09-12-00013-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order approving in part, the petition of Corning Natural Gas Corporation to issue and sell long-term debt through 12/31/16, not to exceed \$18 million in aggregate, \$9 million for long-term and denying non-regulated operations.

**Statutory authority:** Public Service Law, sections 4(1), 65 and 66(1)

**Subject:** Issue long-term debt, common stock and stock acquisition.

**Purpose:** To approve the issuance of long-term debt, common stock and stock acquisition.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving in part, the petition of Corning Natural Gas Corporation (Corning) to issue and sell long-term debt through December 31, 2016, in an amount not to exceed \$18.0 million in aggregate, \$9.0 million for long-term debt. The Company is also authorized to issue additional common stock, convertible preferred stock and/or stock warrants up to \$9.0 million, through December 31, 2016. Corning's financing request for non-regulated operations is denied, subject to the terms and conditions set forth in the order.

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

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

(12-G-0049SA1)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 4—Electricity, Eff. 6/1/12 to Establish Net Metering Provisions for Solar/Wind Generation**

**I.D. No.** PSC-11-12-00003-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order approving The Incorporated Village of Rockville Centre's amendments to PSC No. 4—Electricity, effective 6/1/12 to establish net metering provisions for customers who own or operate solar/wind electric generating equipment.

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

**Subject:** Amendments to PSC No. 4—Electricity, eff. 6/1/12 to establish net metering provisions for solar/wind generation.

**Purpose:** To approve amendments to PSC No. 4—Electricity, eff. 6/1/12 to establish net metering provisions for solar/wind generation.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving The Incorporated Village of Rockville Centre's amendments to PSC No. 4—Electricity, effective June 1, 2012, to establish net metering provisions for customers who own or operate solar or wind electric generating equipment.

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

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

(12-E-0058SA1)

**NOTICE OF ADOPTION**

**Amendments to P.S.C. No. 214 — Electricity, Effective May 21, 2012, to Make Modifications to Existing Rules**

**I.D. No.** PSC-11-12-00006-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid amendments to P.S.C. No. 214 — Electricity, effective May 21, 2012, to make minor modifications, additions and deletions to existing rules and offerings.

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

**Subject:** Amendments to P.S.C. No. 214 — Electricity, effective May 21, 2012, to make modifications to existing rules.

**Purpose:** To approve amendments to P.S.C. No. 214 — Electricity, effective May 21, 2012, to make modifications to existing rules.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid amendments to P.S.C. No. 214 — Electricity, effective May 21, 2012, to make minor modifications, additions and deletions to existing rules and offerings, as well as minor conforming, clarifying, and housekeeping revisions.

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

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

(12-E-0069SA1)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 7 — Electricity, Eff. 6/1/12 to Establish Net Metering Provision for Solar/Wind Generation**

**I.D. No.** PSC-11-12-00007-A

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** On 5/17/12, the PSC adopted an order approving City of Jamestown Board of Public Utilities' amendments to PSC No. 7 — Electricity, eff. 6/1/12, to establish net metering provisions for customers who own or operate solar or wind electric generating equipment.

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

**Subject:** Amendments to PSC No. 7 — Electricity, eff. 6/1/12 to establish net metering provision for solar/wind generation.

**Purpose:** To approve amendments to PSC No. 7 — Electricity, eff. 6/1/12 to establish net metering provision for solar/wind generation.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving the City of Jamestown Board of Public Utilities' amendments to PSC No. 7 — Electricity, effective June 1, 2012, to establish net metering provisions for customers who own or operate solar or wind electric generating equipment.

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

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

(12-E-0062SA1)

### NOTICE OF ADOPTION

**Amendments to PSC No. 12—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00007-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY's amendments to PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY's amendments to PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA1)

### NOTICE OF ADOPTION

**Amendments to PSC No. 3—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00008-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving St. Lawrence Gas Company, Inc.'s amendments to PSC No. 3—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 3—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 3—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving St. Lawrence Gas Company, Inc.'s amendments to PSC No. 3—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA10)

### NOTICE OF ADOPTION

**Amendments to PSC No. 15—Electricity and No. 12—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

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

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity and PSC No. 12—Gas, effective 6/1/12 to effectuate the Excelsior Jobs Program for the rate discount portion of the program.

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

**Subject:** Amendments to PSC No. 15—Electricity and No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 15—Electricity and PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 15—Electricity and PSC No. 12—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA2)

### NOTICE OF ADOPTION

**Amendments to PSC No. 10—Electricity and No. 9—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00010-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 10—Electricity and No. 9—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 10—Electricity and No. 9—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 10—Electricity and No. 9—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 10—Electricity and PSC No. 9—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA3)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 1—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00011-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid 's amendments to PSC No. 1—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 1—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 1—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving KeySpan Gas East Corporation d/b/a National Grid 's amendments to PSC No. 1—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA4)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 8—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

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

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving National Fuel Gas Distribution Corporation's amendments to PSC No. 8—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 8—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 8—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving National Fuel Gas Distribution Corporation's amendments to PSC No. 8—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA5)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 2 and 3—Electricity, and No. 4—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

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

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2 and 3—Electricity, and PSC No. 4—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 2 and 3—Electricity, and No. 4—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 2 and 3—Electricity, and PSC No. 4—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2 and 3—Electricity, and PSC No. 4—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA8)

**NOTICE OF ADOPTION**

**Amendments to PSC No. 119, 120 and 121—Electricity; No. 87, 88 and 90—Gas Effective 6/1/12 for Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00014-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119, 120 and 121—Electricity; PSC No. 87, 88 and 90—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

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

**Subject:** Amendments to PSC No. 119, 120 and 121—Electricity; No. 87, 88 and 90—Gas effective 6/1/12 for Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 119, 120 and 121—Electricity; No. 87, 88 and 90—Gas effective 6/1/12, for the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving New York State Electric & Gas Corporation's amendments to PSC No. 119, 120 and 121—Electricity; PSC No. 87, 88 and 90—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA7)

### NOTICE OF ADOPTION

**Amendments to PSC No. 220—Electric and PSC No. 219—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00015-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electric and No. 219—Gas effective 6/1/12 to effectuate the Excelsior Jobs Program to institute a rate discount.

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

**Subject:** Amendments to PSC No. 220—Electric and PSC No. 219—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 220—Electric and PSC No. 219—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 220—Electricity and PSC No. 219 Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA6)

### NOTICE OF ADOPTION

**Amendments to PSC No. 19—Electricity, and No. 16—Gas, Effective 6/1/12, to Effectuate the Excelsior Jobs Program**

**I.D. No.** PSC-12-12-00016-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** On 5/17/12, the PSC adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, and No. 16—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this program.

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

**Subject:** Amendments to PSC No. 19—Electricity, and No. 16—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Purpose:** To approve amendments to PSC No. 19—Electricity, and PSC No. 16—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order approving Rochester Gas and Electric Corporation's amendments to PSC No. 19—Electricity, and PSC No. 16—Gas, effective 6/1/12, to effectuate the Excelsior Jobs Program to institute the rate discount portion of this 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, 3 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-M-0542SA9)

### NOTICE OF ADOPTION

**Request for Waiver of 16 NYCRR 602.10(b) Requiring Distribution of Telephone Residential White Page Directories**

**I.D. No.** PSC-12-12-00017-A

**Filing Date:** 2012-05-22

**Effective Date:** 2012-05-22

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

**Action taken:** The PSC on 5/17/12 adopted an order approving Frontier Communications Local Exchange Carriers' request for waiver of 16 NYCRR 602.10(b) requiring distribution in hard copy of its telephone residential white page directories.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Request for waiver of 16 NYCRR 602.10(b) requiring distribution of telephone residential white page directories.

**Purpose:** To approve a request for waiver of 16 NYCRR 602.10(b) requiring distribution of telephone residential white page directories.

**Substance of final rule:** The Commission, on May 17, 2012, adopted an order approving Frontier Communications Local Exchange Carriers' request for waiver of 16 NYCRR § 602.10(b) requiring distribution in hard copy of its telephone residential white page directories, subject to the terms and conditions set forth in the order.

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

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

(12-C-0060SA1)

### NOTICE OF ADOPTION

**Request to Expend the Balance of Its Deferred Intrastate Rural Telephone Bank Monies**

**I.D. No.** PSC-13-12-00008-A

**Filing Date:** 2012-05-18

**Effective Date:** 2012-05-18

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

**Action taken:** The PSC on 5/17/12 adopted an order approving Middleburgh Telephone Company's request to expend the balance of its deferred intrastate Rural Telephone Bank monies to purchase next generation central office equipment for upgrading its broadband.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Request to expend the balance of its deferred intrastate Rural Telephone Bank monies.

**Purpose:** To approve a request to expend the balance of its deferred intrastate Rural Telephone Bank monies.

**Substance of final rule:** The Commission, on May 17, 2012, adopted an order approving Middleburgh Telephone Company's request to expend the balance of its deferred intrastate Rural Telephone Bank monies to purchase next generation central office equipment for the purpose of upgrading its broadband service offerings, subject to the terms and conditions set forth in the order.

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

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

(12-C-0102SA1)

### NOTICE OF ADOPTION

#### Authorizing the Petition to Lease a Portion of Office Space at 18 Link Drive, Binghamton, New York

**I.D. No.** PSC-13-12-00009-A

**Filing Date:** 2012-05-21

**Effective Date:** 2012-05-21

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

**Action taken:** On 5/17/12, the PSC adopted an order authorizing the petition of New York State Electric & Gas Corporation to lease a portion of its office space at 18 Link Drive, Binghamton, New York.

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

**Subject:** Authorizing the petition to lease a portion of office space at 18 Link Drive, Binghamton, New York.

**Purpose:** To approve the petition to lease a portion of office space at 18 Link Drive, Binghamton, New York.

**Substance of final rule:** The Commission, on May 17, 2012 adopted an order authorizing the petition of New York State Electric & Gas Corporation to lease a portion of its office space at 18 Link Drive, Binghamton, New York to Coughlin & Gerhart, L.L.P and O'Brien and Gere Engineers, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 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.

(12-M-0086SA1)

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

#### Program Modifications for the Multifamily Energy Efficiency Program

**I.D. No.** PSC-23-12-00004-P

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

**Proposed Action:** The Commission is considering whether to adopt,

modify or deny in whole or in part, The Brooklyn Union Gas Company d/b/a National Grid NY's (KEDNY) proposal seeking substantial modifications to their multifamily energy efficiency program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Program modifications for the multifamily energy efficiency program.

**Purpose:** To modify program design of the multifamily energy efficiency program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify or deny in whole or in part, or to take any other action with respect to a petition filed on May 11, 2012 by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) for approval of substantive program modifications to their energy efficiency Multifamily Program. The company is seeking to remove the cap on multifamily building sizes and other constraints that currently limit participation in the multifamily program.

**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-M-0548SP66)

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

#### EEPS Multifamily Programs Administered by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-23-12-00005-P

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

**Proposed Action:** The Commission is considering a May 11, 2012 petition from Consolidated Edison Company of New York, Inc. for modifications to the companies' EEPS energy efficiency multifamily electric and gas programs.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** EEPS multifamily programs administered by Consolidated Edison Company of New York, Inc.

**Purpose:** To redesign the multifamily electric and gas programs and modify the budgets and targets.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take other action regarding a filing submitted on May 11, 2012 by Consolidated Edison Company of New York, Inc. (Con Edison) to redesign and rename its Energy Efficiency Portfolio Program for electric and gas Refrigerator Replacement Programs.

Con Edison seeks to modify its existing electric and gas Refrigerator Replacement Programs to modify the budgets and targets of the program. Con Edison proposes to reduce the electric program savings by 24% and the budget by 2%. For the gas program, Con Edison seeks to reduce the gas program savings by 53% and the budget by 21%. Con Edison plans to modify the measures and incentives offered to customers in the redesigned program. Finally, it proposes to officially change the program name to Multifamily Energy Efficiency Program.

The Commission may apply its decision here to other utilities and/or the New York State Energy Research and Development Authority. In addition, Commission action on this matter may result in modifications to the Energy Efficiency Portfolio Program Classification Groups.

**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-M-0548SP68)

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

**Proposed Merger of Aqua New York, Inc., Its Subsidiaries and Long Island Water Corporation**

**I.D. No.** PSC-23-12-00006-P

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

**Proposed Action:** The Commission is considering whether to accept, reject or modify the petition to merge Aqua New York, Inc. and its subsidiaries New York Water Service Corporation and Aqua New York of Sea Cliff, Inc. with Long Island Water Corporation.

**Statutory authority:** Public Service Law, sections 89-h and 108

**Subject:** Proposed merger of Aqua New York, Inc., its subsidiaries and Long Island Water Corporation.

**Purpose:** To consider whether to grant the petition for the merger of Aqua New York, Inc., its subsidiaries and Long Island Water Corp.

**Substance of proposed rule:** American Water works Company has petitioned the Commission for approval of a merger of its wholly owned subsidiary Aqua New York, Inc. and its subsidiaries New York Water Service, Inc. and Aqua New York of Sea Cliff, Inc., with Aqua New York, Inc. as the surviving entity. Aqua New York Inc. would then be merged with Long Island Water Corporation d/b/a Long Island American Water. The surviving entity would then be called New York American Water Company. The various systems would continue to operate under their existing tariffs, changed to reflect the new company name, until such time that the Commission approve new rates for the company.

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

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

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

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

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

(12-W-0217SP1)

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

**Approval of a Financing Upon a Transfer to Alliance of Upstream Ownership Interests in a Generation Facility**

**I.D. No.** PSC-23-12-00007-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 the approval of a financing, in the amount of \$487,500.00, upon the transfer to Alliance Energy, New York LLC (Alliance) of upstream ownership interests in an 85 MW generation facility located in Massena, New York.

**Statutory authority:** Public Service Law, sections 69 and 70

**Subject:** Approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility.

**Purpose:** To consider the approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on May 3, 2012, and supplemented on May 18, 2012, by Alliance Energy, New York LLC (Alliance), Massena Energy Holdings LLC, Power City Partners, L.P. (Power City) and others, requesting the approval of a financing, in the amount of \$487,500.00, that supports a transaction which results in the transfer to Alliance of upstream indirect ownership interests in Power City and its approximately 85 MW electric generation facility located in Massena, New York. 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.

(12-E-0211SP1)

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

**Petition for the Submetering of Electricity**

**I.D. No.** PSC-23-12-00008-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York.

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

**Subject:** Petition for the submetering of electricity.

**Purpose:** To consider the request of 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(12-E-0235SP1)

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

**Over Earnings Sharing Between Rate Payers and Shareholders**

**I.D. No.** PSC-23-12-00009-P

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

**Proposed Action:** The PSC is considering whether to adopt, modify or deny in whole or in part, Corning's and Staff's request to adopt an Earnings Sharing Mechanism that continues the previously adopted sharing mechanisms, but without any cumulative effect.

**Statutory authority:** Public Service Law, section 66

**Subject:** Over earnings sharing between rate payers and shareholders.

**Purpose:** To establish an Earnings Sharing Mechanism to be applied following the conclusion of Corning's rate plan.

**Substance of proposed rule:** The Public Service Commission is considering a request by the New York State Department of Public Service Staff and Corning Natural Gas Corporation to adopt an Earnings Sharing Mechanism (ESM) that continues the sharing mechanisms in the Joint Proposal adopted in Case 11-G-0280, but without any cumulative effect. Specifically, the ESM shall continue the sharing percentages between ratepayers and shareholders previously agreed to in the January 13, 2012 Joint Proposal on an annual basis, not a cumulative basis, for each twelve-month period (Supplemental Rate Year) or partial Supplemental Rate Year beyond April 30, 2015 (the termination date of the current Rate Plan) until delivery rates are next changed by the Commission. The Commission is considering whether to adopt, modify, or reject, in whole or in part, Corning's and Staff's request; in addition, the Commission may take additional action as necessary.

**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-G-0280SP3)

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

**Program Modifications for the Multifamily Energy Efficiency Program**

**I.D. No.** PSC-23-12-00010-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify or deny in whole or in part, Keyspan Gas East Corporation d/b/a National Grid's (KEDLI) proposal seeking substantial modifications to their multifamily energy efficiency program.

**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)

**Subject:** Program modifications for the multifamily energy efficiency program.

**Purpose:** To modify program design of the multifamily energy efficiency program.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify or deny, in whole or in part, or to take any other action with respect to a petition filed on May 11, 2012 by Keyspan Gas East Corporation d/b/a National Grid (KEDLI) for approval of substantive program modifications to their energy efficiency Multifamily Program. The company is seeking to remove the cap on multifamily building sizes and other constraints that currently limit participation in the multifamily program.

**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-M-0548SP67)

**Racing and Wagering Board**

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

**Maximum Fines for Violations in Thoroughbred, Harness and Quarterhorse Racing**

**I.D. No.** RWB-23-12-00001-P

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

**Proposed Action:** This is a consensus rule making to amend sections 4022.13, 4102.3 and 4207.29 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 250, 301(1), 310, 401(1) and 410

**Subject:** Maximum fines for violations in thoroughbred, harness and quarterhorse racing.

**Purpose:** To establish maximum fine amounts in accordance with statute (chapter 240 of the Laws of 2010).

**Text of proposed rule:** Section 4022.13 is amended to read as follows:

4022.13. Imposition of civil penalty.

In place of or in addition to the actions recited in section 4022.12 of this Part, the steward of the board is hereby authorized to impose a civil penalty in an amount not to exceed [\$ 5,000] \$25,000 for each violation of any of the sections of this Subchapter or for any action detrimental to the best interests of racing generally; and each day upon which such violation continues may be considered by the steward as a separate violation in assessing the amount of such civil penalty. Before imposing such civil penalty, the steward of the board shall give the other two stewards of the meeting a reasonable opportunity to submit recommendations relative to such penalty.

Paragraph (2) of subdivision (a) of Section 4102.3 of 9 NYCRR is amended to read as follows:

(2) monetary fines not exceeding [\$ 5,000] \$25,000 for each violation;

Subdivision (f) of Section 4207.29 of 9 NYCRR is amended to read as follows:

(f) A violation of this rule may result in a fine not to exceed [\$ 5,000] \$25,000, in a suspension, or in any other penalty as the board may impose.

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

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

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

**Consensus Rule Making Determination**

The New York State Racing and Wagering Board has determined that this proposed rulemaking is a consensus rule because it implements or conforms to non-discretionary statutory provisions of Chapter 240 of the Laws of 2010.

Chapter 240 amended Racing, Pari-Mutuel Wagering and Breeding Law sections 250, 310, 410 and 1005 to increase the maximum fines imposed by the Board to \$25,000.

This rulemaking includes amendments that strictly conform to the statutory amendments and raise the Board's maximum fines from \$5,000 to \$25,000.

Therefore, the Board has determined that no person is likely to

object to its adoption and the rule can be adopted on an expedited basis.

#### **Job Impact Statement**

As is apparent from the nature and purpose of the rule, this rule amendment will not have a substantial impact on jobs and employment opportunities. These amendments are strictly tied to statute and address penalties to be assessed against licensees who have committed violations in horseracing and off-track betting. All licensees are entitled to due process protections under the State Administrative Procedure Act. There may be instances where a fine may cause financial hardship upon a licensee, but such amounts are not prescribed by the rule as much as they are imposed at the discretion of the Racing and Wagering Board. If a fine will negatively impact a job or employment opportunity, the licensee has the right to be heard and appeal to the Board, which will make the ultimate administrative determination as to whether a fine is fair and appropriate given the nature of the violation and the impact upon the licensee. This rulemaking merely conforms to the statutory levels prescribed by Chapter 240 of the Laws of 2010 and establishes the maximum amount of fines that can be imposed. It will not have a substantial impact on jobs and economic opportunities.

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## Workers' Compensation Board

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### EMERGENCY RULE MAKING

#### **Filing Written Reports of Independent Medical Examinations (IMEs)**

**I.D. No.** WCB-23-12-00002-E

**Filing No.** 460

**Filing Date:** 2012-05-17

**Effective Date:** 2012-05-17

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

**Action taken:** Amendment of section 300.2(d)(11) of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117 and 137

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

**Specific reasons underlying the finding of necessity:** This amendment is adopted as an emergency measure because time is of the essence. Memorandum of Decisions issued by Panels of three members of the Workers' Compensation Board (Board) have interpreted the current regulation as requiring reports of independent medical examinations be received by the Board within ten calendar days of the exam. Due to the time it takes to prepare the report and mail it, the fact the Board is not open on legal holidays, Saturdays and Sundays to receive the report, and the U.S. Postal Service is not open on legal holidays and Sundays, it is extremely difficult to timely file said reports. If a report is not timely filed it is not accepted into evidence and is not considered when a decision is rendered. As the medical professional preparing the report must send the report on the same day and in the same manner to the Board, the workers' compensation insurance carrier/self-insured employer, the claimant's treating provider, the claimant's representative and the claimant it is not possible to send the report by facsimile or electronic means. The Decisions have greatly, negatively impacted the professionals who conduct independent medical examinations and the entities that arrange and facilitate these exams, as well as the workers' compensation insurance carriers and self-insured employers. When untimely reports are not accepted into evidence, the insurance carriers and self-insured employers are prevented from adequately defending their position in a workers' compensation claim. Accordingly, emergency adoption of this rule is necessary.

**Subject:** Filing written reports of Independent Medical Examinations (IMEs).

**Purpose:** To amend the time for filing written reports of IMEs with the Board and furnished to all others.

**Text of emergency rule:** Paragraph (11) of subdivision (d) of section 300.2 of Title 12 NYCRR is amended to read as follows:

(11) A written report of a medical examination duly sworn to, shall be filed with the Board, and copies thereof furnished to all parties as may be required under the Workers' Compensation Law, within 10 business

days after the examination, or sooner if directed, except that in cases of persons examined outside the State, such reports shall be filed and furnished within 20 business days after the examination. *A written report is filed with the Board when it has been received by the Board pursuant to the requirements of the Workers' Compensation Law.*

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 14, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 20 Park Street, Albany, NY 12207, (518) 486-9564, email: regulations@wcb.ny.gov

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 300.2(d)(11). Workers' Compensation Law (WCL) Section 117(1) authorizes the Chair to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Section 141 of the Workers' Compensation Law authorizes the Chair to make administrative regulations and orders providing, in part, for the receipt, indexing and examining of all notices, claims and reports, and further authorizes the Chair to issue and revoke certificates of authorization of physicians, chiropractors and podiatrists as provided in sections 13-a, 13-k, and 13-l of the Workers' Compensation Law. Section 137 of the Workers' Compensation Law mandates requirements for the notice, conduct and reporting of independent medical examinations. Specifically, paragraph (a) of subdivision (1) requires a copy of each report of an independent medical examination to be submitted by the practitioner on the same day and in the same manner to the Board, the carrier or self-insured employer, the claimant's treating provider, the claimant's representative and the claimant. Sections 13-a, 13-k, 13-l and 13-m of the Workers' Compensation Law authorize the Chair to prescribe by regulation such information as may be required of physicians, podiatrists, chiropractors and psychologists submitting reports of independent medical examinations.

##### 2. Legislative objectives:

Chapter 473 of the Laws of 2000 amended Sections 13-a, 13-b, 13-k, 13-l and 13-m of the Workers' Compensation Law and added Sections 13-n and 137 to the Workers' Compensation Law to require authorization by the Chair of physicians, podiatrists, chiropractors and psychologists who conduct independent medical examinations, guidelines for independent medical examinations and reports, and mandatory registration with the Chair of entities that derive income from independent medical examinations. This rule would amend one provision of the regulations adopted in 2001 to implement Chapter 473 regarding the time period within which to file written reports from independent medical examinations.

##### 3. Needs and benefits:

Prior to the adoption of Chapter 473 of the Laws of 2000, there were limited statutory or regulatory provisions applicable to independent medical examiners or examinations. Under this statute, the Legislature provided a statutory basis for authorization of independent medical examiners, conduct of independent medical examinations, provision of reports of such examinations, and registration of entities that derive income from such examinations. Regulations were required to clarify definitions, procedures and standards that were not expressly addressed by the Legislature. Such regulations were adopted by the Board in 2001.

Among the provisions of the regulations adopted in 2001 was the requirement that written reports from independent medical examinations be filed with the Board and furnished to all parties as required by the WCL within 10 days of the examination. Guidance was provided in 2002 to some participants in the process from executives of the Board that filing was accomplished when the report was deposited in a U.S. mailbox and that "10 days" meant 10 calendar days. In 2003 claimants began raising the issue of timely filing with the Board of the written report and requesting that the report be excluded if not timely filed. In response some representatives for the carriers/self-insured employers presented the 2002 guidance as proof they were in compliance. In some cases the Workers' Compensation Law Judges (WCLJs) found the report to be timely, while others found it to be untimely. Appeals were then filed to the Board and assigned to Panels of Board Commissioners. Due to the differing WCLJ decisions and the appeals to the Board, Board executives reviewed the matter and additional guidance was issued in October 2003. The guidance clarified that filing is accomplished when the report is received by the Board, not when it is placed in a U.S. mailbox. In November 2003, the Board Panels began to issue decisions relating to this issue. The Panels held that the report is filed when received by the Board, not when placed in a U.S. mailbox, the CPLR provision providing a 5-day grace period for mailing is not applicable to the Board (WCL Section 118), and therefore the report must be filed within 10 days or it will be precluded.

Since the issuance of the October 2003 guidance and the Board Panel decisions, the Board has been contacted by numerous participants in the system indicating that ten calendar days from the date of the examination is not sufficient time within which to file the report of the exam with the Board. This is especially true if holidays fall within the ten day period as the Board and U.S. Postal Service do not operate on those days. Further the Board is not open to receive reports on Saturdays and Sundays. If a report is precluded because it is not filed timely, it is not considered by the WCLJ in rendering a decision.

By amending the regulation to require the report to be filed within ten business days rather than calendar days, there will be sufficient time to file the report as required. In addition by stating what is meant by filing there can be no further arguments that the term "filed" is vague.

#### 4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments for its implementation and continuation. The requirement that a report be prepared and filed with the Board currently exists and is mandated by statute. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 5. Local government mandates:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. These self-insured municipal employers will be affected by the proposed rule in the same manner as all other employers who are self-insured for workers' compensation coverage. As with all other participants, this proposal merely modifies the manner in which the time to file a report is calculated, and clarifies the meaning of the word "filed".

#### 6. Paperwork:

This proposed rule does not add any reporting requirements. The requirement that a report be provided to the Board, carrier, claimant, claimant's treating provider and claimant's representative in the same manner and at the same time is mandated by WCL Section 137(1). Current regulations require the filing of the report with the Board and service on all others within ten days of the examination. This rule merely modifies the manner in which the time period to file the report is calculated and clarifies the meaning of the word "filed".

#### 7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

#### 8. Alternatives:

One alternative discussed was to take no action. However, due to the concerns and problems raised by many participants, the Board felt it was more prudent to take action. In addition to amending the rule to require the filing within ten business days, the Board discussed extending the period within which to file the report to fifteen days. In reviewing the law and regulations the Board felt the proposed change was best. Subdivision 7 of WCL Section 137 requires the notice of the exam be sent to the claimant within seven business days, so the change to business days is consistent with this provision. Further, paragraphs (2) and (3) of subdivision 1 of WCL Section 137 require independent medical examiners to submit copies of all requests for information regarding a claimant and all responses to such requests within ten days of receipt or response. Further, in discussing this issue with participants to the system, it was indicated that the change to business days would be adequate.

The Medical Legal Consultants Association, Inc., suggested that the Board provide for electronic acceptance of IME reports directly from IME providers. However, at this time the Board cannot comply with this suggestion as WCL Section 137(1)(a) requires reports to be submitted by the practitioners on the same day and in the same manner to the Board, the insurance carrier, the claimant's attending provider and the claimant. Until such time as the report can be sent electronically to all of the parties, the Board cannot accept it in this manner.

#### 9. Federal standards:

There are no federal standards applicable to this proposed rule.

#### 10. Compliance schedule:

It is expected that the affected parties will be able to comply with this change immediately.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

Approximately 2511 political subdivisions currently participate as municipal employers in self-insured programs for workers' compensation coverage in New York State. Any independent medical exams conducted at their request must be filed by the physician, chiropractor, psychologist or podiatrist conducting the exam or by an independent medical examination (IME) entity. Workers' Compensation Law § 137 (1)(a) does not permit self-insured employers or insurance carriers to file these reports, therefore there is no direct action a self-insured local government must or can take with respect to this rule. However, self-insured local govern-

ments are concerned about the timely filing of an IME report as one filed late will not be admissible as evidence in a workers' compensation proceeding. This rule makes it easier for a report to be timely filed as it expands the timeframe from 10 calendar days to 10 business days. Small businesses that are self-insured will also be affected by this rule in the same manner as self-insured local governments.

Small businesses that derive income from independent medical examinations are a regulated party and will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

Individual providers of independent medical examinations who own their own practices or are engaged in partnerships or are members of corporations that conduct independent medical examinations also constitute small businesses that will be affected by the proposed rule. These individual providers will be required to file reports of independent medical examinations conducted at their request within ten business days of the exam, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding.

#### 2. Compliance requirements:

This rule requires the filing of IME reports within 10 business days rather than 10 calendar days. Prior to this rule medical providers authorized to conduct IMEs and IME entities hired to perform administrative functions for IME examiners, such as filing the report with the Board, had less time to file such reports. Self-insured local governments and small employers, who are not authorized or registered with the Chair to perform IMEs or related administrative services, are not required to take any action to comply with this rule. As noted above, WCL § 137(1)(a) does not permit self-insured employers or insurance carriers to file IME reports with the Board. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

#### 3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

#### 4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

#### 5. Economic and technological feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

#### 6. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impacts due to the current regulations for small businesses and local governments. This rule provides only a benefit to small businesses and local governments.

#### 7. Small business and local government participation:

The Board received input from a number of small businesses who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association, Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated numbers of rural areas:

This rule applies to all claimants, carriers, employers, self-insured employers, independent medical examiners and entities deriving income from independent medical examinations, in all areas of the state.

#### 2. Reporting, recordkeeping and other compliance requirements:

Regulated parties in all areas of the state, including rural areas, will be required to file reports of independent medical examinations within ten business days, rather than ten calendar days, in order that such reports may be admissible as evidence in a workers' compensation proceeding. The new requirement is solely the manner in which the time period to file reports of independent medical examinations is calculated.

#### 3. Costs:

This proposal will not impose any compliance costs on rural areas. The rule solely changes the manner in which a time period is calculated and only requires the use of a calendar.

#### 4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

#### 5. Rural area participation:

The Board received input from a number of entities who derive income from independent medical examinations, some providers of independent medical examinations and the Medical Legal Consultants Association,

Inc. which is a non-for-profit association of independent medical examination firms and practitioners across the State.

***Job Impact Statement***

The proposed regulation will not have an adverse impact on jobs. The regulation merely modifies the manner in which the time period to file a written report of an independent medical examination is filed and clarifies the meaning of the word “filed”. These regulations ultimately benefit the participants to the workers’ compensation system by providing a fair time period in which to file a report.