

RULE MAKING ACTIVITIES

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

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

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

Department of Economic Development

EMERGENCY RULE MAKING

Economic Transformation and Facility Redevelopment Program

I.D. No. EDV-12-12-00003-E

Filing No. 205

Filing Date: 2012-03-02

Effective Date: 2012-03-02

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

Action taken: Addition of Parts 200 - 204 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 18

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Economic Transformation and Facility Redevelopment Program (“the Program”) which was created by Chapter 61 of the Laws of 2011. The Program is created to support communities affected by the closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe

for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be a key economic development tool for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from the closure of these facilities.

It bears noting that section 403 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Economic Transformation and Facility Redevelopment Program.

Purpose: Allow Dept to implement the Economic Transformation and Facility Redevelopment Program.

Substance of emergency rule: The regulation creates new Parts 200-204 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Economic Transformation and Facility Redevelopment Program (the “Program”). Key definitions include, but are not limited to, certificate of eligibility, preliminary schedule of benefits, net new jobs, new business, economic transformation area, and closed facility.

2) The regulation creates the application and review process for the Program. In order to become a participant in the Program, an applicant must submit a complete application by the later of: (1) the date that is three years after the date of the closure of the closed facility located in the economic transformation area in which the business entity would operate or (2) January 1, 2015. An applicant must also agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the “Department”); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; and (c) agreeing to not participate in either the Excelsior Jobs Program, the Empire Zones Program or claim any tax credits under the Brownfield Cleanup Program if admitted into the Economic Transformation and Facility Redevelopment Program specifically with regard to the facility located in the economic transformation area.

3) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility. When considering an application, the Commissioner shall consider factors including, but not limited to, the overall cost and effectiveness of the project, and whether the project is consistent with the intent of the Program. If a participant does not start construction on or acquire a qualified investment or create at least one net new job within one year of the issuance of its certificate of eligibility, the participant will not be eligible for any of the Program’s tax credits.

4) The regulation sets forth the eligibility criteria for the Program. In order to qualify for the Program, (1) a participant must create and maintain at least five net new jobs in an economic transformation area, and must demonstrate that its benefit-cost ratio is at least ten to one; (2) a participant must be in compliance with all worker protection and environmental laws and regulations; (3) a participant must not owe past due federal or state taxes or local property taxes, unless those taxes are being paid pursuant to an executed payment plan; and (4) the location of the participant’s operations for which it seeks tax benefits must be wholly located within the economic transformation area.

5) In addition, a business entity that is primarily operated as a retail business is not eligible to participate in the program if its application is for any facility or business location that will be primarily used in making

retail sales to customers who personally visit such facilities. A business entity that is engaged in offering professional services licensed by the state or by the courts of this state is not eligible to participate in the Economic Transformation and Facility Redevelopment Program. In addition, a business entity that is or will be principally operated as a real estate holding company or landlord for retail businesses or entities offering professional services licensed by the state or by the courts of this state is also not eligible to participate in the Note, however, that the commissioner may determine that such a business entity described in the preceding three sentences may be eligible to participate in the Program at the site of a closed facility if it is pursuant to an adaptive reuse plan for a substantial portion of such facility, the adaptive reuse plan is consistent with the strategic plan of the Regional Economic Development Council and it has been recommended by the Regional Economic Development Council to the Commissioner.

6) The regulation sets forth the fourteen (14) evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) the number of net new jobs to be created in New York State; or (2) the amount of capital investment to be made; or (3) whether the applicant is proposing to substantially renovate and reuse closed facilities; or (4) whether the applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (5) whether the application has been recommended by the Regional Economic Council representing the region where the project will be located; or (6) the degree to which the project is consistent with the strategic plan and priorities for the region; or (7) the degree of economic distress in the area where the applicant will locate the project identified in its application; or (8) the degree of an applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (9) the degree to which the project identified in the application supports New York State's minority and women business enterprises; or (10) the degree to which the project identified in the application supports the principles of Smart Growth; or (11) the estimated return on investment that the project identified in the application will provide to the state; or (12) the overall economic impact that the project identified in the application will have on a region, including, but not limited to, the impact of any direct and indirect jobs that will be created; or (13) the degree to which other state or local incentive programs are available to the applicant; or (14) the likelihood that the project identified in the application would be located outside of New York State or would not occur but for the availability of state or local incentives.

7) The regulation states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

8) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or eligibility criteria of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

9) The regulation lays out the appeal process for participants who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://esd.ny.gov/BusinessPrograms/EconomicTransformation.html>.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires May 30, 2012.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 61 of the Laws of 2011 established Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to

create jobs and invest in the redevelopment of closed facilities and the economic transformation of surrounding communities. The Economic Transformation and Facility Redevelopment Program is created to support communities affected by closure of correctional and juvenile justice facilities. The Program will provide tax credits to firms that create jobs and make investments in certain areas designated as economic transformation areas. The Program will leverage private sector job creation and investments and help transform the economies of the communities in these areas and lessen the impact of the facility closures. The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 18 of the Economic Development Law, creating the Economic Transformation and Facility Redevelopment Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act. New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and could be even more severe for those communities where correctional and juvenile justice facilities will be closed.

The Economic Transformation and Facility Redevelopment Program will be one of the State's key economic development tools for creating jobs and private sector investment in communities affected by the facility closures. It is imperative that this Program be implemented immediately so that the State can respond quickly to the dislocation and job losses that will likely result from closure of these facilities.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Economic Transformation and Facility Redevelopment Program, only voluntary participants.

B. Costs to the agency, the State, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Economic Transformation and Facility Redevelopment Program. This emergency rule does not impose any costs to local governments for administration of the Economic Transformation and Facility Redevelopment Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program to establish and maintain complete and accurate books relating to their participation in the Economic Transformation and Facility Redevelopment Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Economic Transformation and Facility Redevelopment Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Economic Transformation and Facility Redevelopment Program. The emer-

gency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Economic Transformation and Facility Redevelopment Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program would be required to keep is information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Economic Transformation and Facility Redevelopment Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive the tax incentives. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Economic Transformation and Facility Redevelopment Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Economic Transformation and Facility Redevelopment Program is a tax credit program available to new businesses that locate in communities affected by the closure of correctional and juvenile justice facilities, create jobs and make private sector investments. Economic transformation areas will be designated through implementation of these regulations. New businesses to these areas that create jobs and make investments are eligible to apply to participate in the Program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Economic Transformation and Facility Redevelopment Program. The Economic Transformation and Facility Redevelopment Program will enable New York State to provide financial incentives to businesses that create jobs and make investments in communities affected by the closure of correctional and juvenile justice facilities. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment in certain areas designated as economic transformation areas. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to firms that commit to creating new jobs and/or to making significant capital investment in these areas, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF EXPIRATION

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

Excelsior Jobs Program

I.D. No.	Proposed	Expiration Date
EDV-48-10-00010-ERP	December 1, 2010	February 29, 2012

Education Department

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

Institutional Accreditation for Title IV Purposes

I.D. No. EDU-12-12-00005-P

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

Proposed Action: Amendment of Subpart 4-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided) and 305(1) and (2)

Subject: Institutional accreditation for Title IV purposes.

Purpose: To conform Regents Rules to federal regulations relating to voluntary institutional accreditation for Title IV purposes.

Text of proposed rule: Subpart 4-1 of the Rules of the Board of Regents is amended, effective June 13, 2012, as follows:

SUBPART 4-1

VOLUNTARY INSTITUTIONAL ACCREDITATION FOR TITLE IV PURPOSES

4-1.1. . . .

4-1.2 Definitions. As used in this Subpart:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .
- (f) . . .
- (g) . . .
- (h) . . .

(i) *Correspondence education shall mean education provided through one or more courses by an institution under which the institution provides instructional materials, by mail or electronic transmission, including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student and is typically self-paced.*

(j) *Course means an organized series of instructional and learning activities dealing with a subject.*

[(j)] (k) *Curriculum or program or program of study means the formal educational requirements necessary to qualify for certificates or degrees.*

[(k)] (l) *Credit means a unit of academic award applicable towards a degree offered by the institution.*

[(l)] (m) *Degree means an academic award listed in section 3.50 of this Title.*

[(m)] (n) *Department means the Education Department of the State of New York.*

[(n)] (o) *Deputy commissioner means the Deputy Commissioner for Higher Education of the State of New York.*

(p) *Distance education means education that uses one of the following technologies to deliver instruction to students who are separated from the instructor and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously:*

- (1) *the internet;*
- (2) *one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;*
- (3) *audioconferencing; or*

(4) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (1) through (3).

[(o)] (q) Higher Education Act or HEA or HEA means the Higher Education Act of 1965, as amended.

[(p)] (r) Institution of higher education or institution means an institution authorized by the Regents to confer degrees.

[(q)] (s) Probationary accreditation means accreditation for a set period of time, not to exceed two years, during which the institution shall come into compliance with standards for accreditation through corrective action.

[(r)] (t) Principal center means the location of the principal administrative offices and instructional facilities of an institution of higher education.

[(s)] (u) Secretary means the United States Secretary of Education.

[(t)] (v) Semester hour means a credit, point, or other unit granted for the satisfactory completion of a course which requires at least 15 hours (of 50 minutes each) of instruction and at least 30 hours of supplementary assignments, or the equivalent as approved by the commissioner.

[(u)] (w) State means New York State.

[(v)] (x) Teach-out agreement means a written agreement between or among institutions that are accredited or pre-accredited by a nationally recognized accrediting agency that provides for the equitable treatment of students if one of those institutions stops offering an educational program before all students enrolled in that program have completed the program.

(y) Teach-out plan shall mean a written plan that provides for the equitable treatment of students if an institution or an institutional location that provides one hundred percent of at least one program ceases to operate prior to all students completing their program of study. A teach-out plan may include a teach-out agreement between institutions.

4-1.3. . . .

4-1.4 Standards of quality for institutional accreditation.

(a) . . .

(b) . . .

(c) Programs of study.

(1) Integrity of credit.

(i) . . .

(ii) . . .

(iii) *The institution, in offering coursework through distance education or correspondence education, must have processes in place to verify that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course and receives the academic credit for the course, using methods such as a secure login and pass code; proctored examinations; and other technologies and practices that are effective in verifying student identity. Institutions must also use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.*

(iv) Learning objectives for each course shall be of a level and rigor that warrant acceptance in transfer by other institutions of higher education.

[(iv)] (v) the institution shall assure that credit is granted only to students who have achieved the stated objectives of each credit-bearing learning activity.

(2) . . .

(3) . . .

(4) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) Consumer information.

(1) The following information shall be included in all catalogs of the institution:

(i) . . .

(ii) . . .

(iii) . . .

(iv) The instructional programs of the institution shall be described accurately.

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) *Transfer of credit. The process and criteria for accepting transfer of credit from other institutions shall be published.*

[(g)] (h) . . .

[(h)] (i) . . .

[(i)] (j) . . .

[(j)] (k) . . .

(v) . . .

(2) . . .

(3) . . .

(4) . . .

(j) . . .

(k) . . .

(l) Teach-out plans and agreements.

(1) Institutions are required to submit for approval to the accrediting agency a teach-out plan upon the occurrence of any of the following events:

(i) the Board of Regents receives notification by the Secretary of Education that the Secretary has initiated an emergency action against an institution, or an action to limit, suspend, or terminate an institution participating in any Title IV program of the Higher Education Act, and that a teach-out plan is required;

(ii) the Board of Regents acts to withdraw, terminate, or suspend the accreditation of the institution;

(iii) the institution notifies the Board of Regents that it intends to cease operations or close a location that provides one hundred percent of at least one program; or

(iv) another state's licensing or authorizing agency notifies the Board of Regents that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(2) As part of its teach-out plan, the institution must submit [Any] any teach-out agreement that an institution has entered into with another institution or institutions [shall be submitted to the department] for approval. To be approved, such agreement shall:

[(1)] (i) be between or among institutions that are accredited or pre-accredited by a nationally recognized accrediting agency;

[(2)] (ii) ensure that the teach-out institution(s) has the necessary experience, resources, and support services to provide an educational program that is of acceptable quality and reasonable similar in content, structure and scheduling to that provided by the closed institution;

(iii) ensure that the institution will remain stable, carry out its mission, and meet all obligations to existing students; and

[(3)] (iv) ensure that the teach-out institution(s) can provide student access to the program and services without requiring them to move or travel substantial distances.

(m) . . .

4-1.5 Procedures for accreditation.

(a) . . .

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) . . .

(7) . . .

(8) . . .

(9) Appeal of advisory council recommendation.

(i) . . .

(ii) . . .

(iii) . . .

(iv) The commissioner shall review any appeal papers, written responses filed, the record before the advisory council, the record of its deliberations, and its findings and recommendations. *The commissioner shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made, the information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances.* Upon such record, the commissioner may affirm, reverse, remand or modify the findings and recommendations of the advisory council. Such determination shall constitute a recommendation regarding accreditation action to the Board of Regents.

(10) . . .

(11) . . .

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

- (v) . . .
- (vi) The subcommittee shall review any appeal papers, written responses filed, and the entire record upon which the Regents determination was based, which may include but not be limited to: the record before the advisory council, the record for the advisory council's deliberations and its findings and recommendations, any appeal papers and written responses foiled for an appeal of the findings and recommendations of the advisory council, the commissioner's recommendation to the Board of Regents regarding accreditation action, and the Regents determination. *The subcommittee shall also consider any new financial information submitted by the institution as part of its appeal if the information was unavailable to the institution until after the decision subject to the appeal was made, the information is significant as determined by the commissioner, and bears materially on the financial deficiencies identified by the agency and the only remaining deficiency cited by the agency is the institution's failure to meet any agency standard pertaining to finances.* Upon such record, the subcommittee may recommend to the Board of Regents that it affirm, reverse, remand or modify its determination of adverse accreditation action or granting probationary accreditation.
- (vii) . . .
- (viii) . . .
- (b) . . .
- (c) . . .
- (d) Procedures for a change in scope of accreditation.
 - (1) For purposes of this subdivision, substantive change shall mean:
 - (i) . . .
 - (ii) . . .
 - (iii) . . .
 - (iv) . . .
 - (v) . . .
 - (vi) a substantial increase in the number of clock hours or credit hours awarded for successful completion of a program; [or]
 - (vii) the establishment of an additional location or branch campus, as such terms are defined in section 4-1.2 of this subpart[.];
 - (viii) *the entrance into a contractual agreement with an entity not certified to participate in Title IV, HEA programs, that offers more than 25% of one or more of the institution's program of study;*
 - (ix) *the establishment of an additional location at which the institution offers at least fifty percent of an educational program;*
 - (x) *the acquisition of any other institution or any program or location of another institution; or*
 - (xi) *the addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.*
 - (2) . . .
 - (3) . . .
 - (4) . . .
 - (5) . . .
 - (6) . . .
 - (7) . . .
 - (8) . . .

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, 89 Washington Avenue, Room 148, (518) 473-2183, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, 89 Washington Avenue, Rm 977 EBA, Albany, NY 12234, (518) 478-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 214 of the Education Law provides that higher educational institutions that are incorporated in New York State shall be members of The University of the State of New York.

Section 215 of the Education Law authorizes the Commissioner of Education to visit, examine, and inspect schools or institutions under the educational supervision of the State and require reports from such schools.

Subdivision (1) of section 305 of the Education Law empowers the

Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

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

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by clarifying the standards and procedures that must be met by institutions of higher education that voluntarily seek institutional accreditation by the Board of Regents and the Commissioner of Education in order to participate in programs established by Title IV of the Higher Education Act.

3. NEEDS AND BENEFITS:

In June 2001, the Board of Regents adopted Part 4 of the Rules of the Board of Regents, Voluntary Institutional Accreditation for Title IV Purposes (now Subpart 4-1) as part of a process of complying with the requirements in regulations of the U.S. Department of Education (34 CFR Part 602) for continued recognition of the Board of Regents as an institutional accrediting agency. One of the Federal regulations requires each Nationally Recognized Accrediting Agency to have "a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students". (34 CFR 602.21[a])

As a result of the review of accreditation standards, including an assessment of their alignment with revised Federal standards for accreditation agencies (34 CFR Part 602), the Department proposes to clarify and update the existing regulation.

The amendment establishes a definition of "correspondence education", "distance education" and "teach-out plan."

The program of study accreditation standard is revised to require processes to verify that students who register for correspondence education or distance education programs or courses are the same as those who complete and are credited with the programs or courses. The new provisions also require processes to protect student privacy and to notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

Existing provisions for teach-out agreements are amended to incorporate teach-out plans and to define the events under which institutions must submit such plans to the agency for approval.

The consumer information accreditation standard is expanded to specify that institutions must publish the process and criteria for accepting transfer of credit from other institutions.

Amendment to provisions addressing procedures for considering an institution's appeal of adverse accreditation actions add detail to allow for the consideration of new financial information and an option for the appeals subcommittee to remand the adverse action to the Board of Regents.

Additional amendments further specify the types of actions that constitute a substantive change at an institution.

4. COSTS:

(a) Costs to State government. This amendment will not impose any additional costs on State government over and above the current costs for accrediting institutions pursuant to Subpart 4-1 of the Rules of the Board of Regents. The Department will use existing personnel and resources to review institutions for accreditation under this Subpart.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendment relates to voluntary institutional accreditation. The State Education Department expects that existing faculty and staff at colleges and universities choosing the Board of Regents as their institutional accrediting agency will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities. The amendment does not impose additional costs on such colleges and universities.

(d) Costs to the regulatory agency. As stated above under Costs to State Government, the proposed amendment would not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns the institutional accreditation of institutions of higher education. It does not impose any program, service, duty, or responsibility on local governments.

6. PAPERWORK:

The proposed amendment imposes minimal additional paperwork for institutions voluntarily applying to the Board of Regents and the Commissioner of Education for institutional accreditation. Institutions will be required to expand their published policies to state their process and criteria for accepting transfer of credit from other institutions.

7. DUPLICATION:

The standards and procedures for voluntary institutional accreditation build on requirements and standards for the registration of undergraduate

and graduate programs set forth in Part 52 of the Regulations of the Commissioner of Education. In some cases, additional requirements are imposed for accreditation, but these standards do not conflict with program registration standards.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

The proposed amendment is consistent with Federal requirements, which specify the standards, for which an accrediting agency will be approved by U.S. Secretary of Education. In addition, Federal standards require a recognized accreditation agency to carry out periodic reviews of the agency's accreditation standards.

10. COMPLIANCE SCHEDULE:

The amendment will be effective on its stated effective date. No additional time is needed to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment to the Rules of the Board of Regents applies to institutions of higher education applying for institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education for Title IV purposes. On the basis of the most recent data transmitted to the State Education Department, 3 of the 24 institutions of higher education that have voluntarily chosen the Commissioner and the Board of Regents as their institutional accreditor are for-profit small businesses with 100 or fewer employees.

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed amendment is to establish requirements and clarify existing standards and procedures that must be met by institutions of higher education voluntarily seeking institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education. The amendment would align Regents Rules with updated provisions of the federal requirements for institutional accreditation agencies.

The amendment establishes a definition of "correspondence education", "distance education" and "teach-out plan."

The program of study accreditation standard is revised to require processes to verify that students who register for correspondence education and distance education programs or courses are the same as those who complete and are credited with the programs or courses. The new provisions also require processes to protect student privacy and to notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

Existing provisions for teach-out agreements are amended to incorporate teach-out plans and to define the events under which institutions must submit such plans to the agency for approval.

The consumer information accreditation standard is expanded to specify that institutions must publish the process and criteria for accepting transfer of credit from other institutions.

Amendment to provisions addressing procedures for considering an institution's appeal of adverse accreditation actions add detail to allow for the consideration of new financial information and an option for the appeals subcommittee to remand the adverse action to the Board of Regents.

The proposed amendment further specifies the types of actions that constitute a substantive change at an institution.

3. PROFESSIONAL SERVICES:

The Department expects that existing faculty and administrative staff of the institutions, including those that are small businesses, will meet the requirements of the proposed amendment as part of their on-going responsibilities.

No additional professional services are expected to be required by small businesses to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment relates to voluntary institutional accreditation. The proposed amendment will not impose costs beyond those currently required under Subpart 4-1 of the Rules of the Board of Regents.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any additional technological requirements on colleges and universities that voluntarily choose the Board of Regents and the Commissioner of Education as their institutional accrediting agency. As stated above in "Compliance Costs," the amendment will not result in additional costs to regulated parties.

6. MINIMIZING ADVERSE IMPACT:

The State Education Department has determined that uniform standards for institutional accreditation are necessary to help ensure the quality of all institutions that are accredited. Because of the nature of the proposed amendment, different standards for institutions that are small businesses are not feasible.

7. SMALL BUSINESS PARTICIPATION:

The Department solicited comments on the proposed amendment from the Regents Advisory Council, which has representatives from small businesses.

(b) Local Governments:

The proposed amendment establishes requirements and clarifies existing standards and procedures for voluntary institutional accreditation of higher education institutions by the Board of Regents and the Commissioner of Education. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed amendment that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to institutions of higher education voluntarily choosing to apply to the Board of Regents and the Commissioner of Education for institutional accreditation. Three of the 24 institutions currently accredited by the Commissioner and the Board of Regents are located in rural counties with less than 200,000 inhabitants or in towns with a population density of 150 per square mile or less in urban counties.

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

The purpose of the proposed amendment is to update and clarify existing standards and procedures that must be met by institutions of higher education voluntarily seeking institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education. The proposed amendment will align the Regents Rules with updated federal requirements for institutional accreditation for Title IV purposes.

The amendment establishes a definition of "correspondence education", "distance education" and "teach-out plan."

The programs of study accreditation standard is revised to require processes to verify that students who register for correspondence education and distance education programs or courses are the same as those who complete and are credited with the programs or courses. The new provisions also require processes to protect student privacy and to notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

Existing provisions for teach-out agreements are amended to incorporate teach-out plans and to define the events under which institutions must submit such plans to the agency for approval.

The consumer information accreditation standard is expanded to specify that institutions must publish the process and criteria for accepting transfer of credit from other institutions.

Amendment to provisions addressing procedures for considering an institution's appeal of adverse accreditation actions add detail to allow for the consideration of new financial information and an option for the appeals subcommittee to remand the adverse action to the Board of Regents.

The proposed amendment also specifies types of actions that constitute a substantive change at an institution.

3. COSTS:

The State Education Department expects that existing faculty and staff at colleges and universities choosing the Board of Regents as their institutional accrediting agency will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities. The amendment will not impose additional costs on such colleges and universities.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes no exception for institutions that are located in rural areas. The standards for institutional accreditation are defined in Federal regulations (34 CFR Part 602). As an accrediting agency recognized by U.S. Secretary of Education, the Board of Regents and Commissioner of Education institutional accreditation standards are aligned with Federal standards. The requirements in each of these subject categories must be met regardless of the location of the institution. As a result, it is not appropriate to establish different standards for institutions located in rural areas of New York State.

5. RURAL AREA PARTICIPATION:

The Department solicited comments on the proposed amendment from the Regents Advisory Council, which has representatives located in rural areas of the State.

Job Impact Statement

The proposed amendment clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. The State Education Department expects that the proposed amendment

will not have a negative impact on the number of jobs or employment opportunities at higher education institutions or in any other field, and that higher education institutions will use existing staff to satisfy accreditation requirements as part of their on-going responsibilities. Therefore, the amendment will have no impact on jobs or employment opportunities at these institutions. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Landscape Architecture

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

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

Proposed Action: Amendment of sections 79-1.1 and 79-1.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6506(1), 6507(2)(a), 7324(1) and (2)

Subject: Landscape Architecture.

Purpose: Align Landscape Architect Registration Examination admission requirements with national standards and clarify professional study and experience requirements for landscape architecture candidates.

Text of proposed rule: 1. Section 79-1.1 of the Regulations of the Commissioner of Education is amended, effective June 13, 2012, as follows:

79-1.1 Professional study [of] and experience requirements for landscape architecture.

(a) *Definition.* Unless otherwise provided, acceptable accrediting agency means an accrediting agency which is recognized by the United States Commissioner of Education as a reliable authority for the purpose of accreditation at the postsecondary level, and which applies its criteria for granting accreditation in a fair, consistent and nondiscriminatory manner.

(b) *Licensure requirement.* To meet the professional education [requirement] and experience requirements for [admission to the examination] licensure as a landscape architect in this State, the applicant shall submit evidence of either:

(1)(i) graduation from a five-year professional program in landscape architecture registered by the department, accredited by an acceptable accrediting [organization acceptable to the department] agency, or determined by the department to be the equivalent of a registered or accredited program; and

(ii) receipt of the degree of bachelor of landscape architecture or higher [master of landscape architecture], or the equivalent as determined by the department, from a school offering a program which meets the requirements of subparagraph (i) of this paragraph; and

(iii) completion of a minimum of three years of landscape architectural work experience of a scope and nature satisfactory to the State Board for Landscape Architecture; or

(2)(i) graduation from a four-year professional program in landscape architecture registered by the department, accredited by an acceptable accrediting agency, or determined by the department to be the equivalent of a registered or accredited program; and

(ii) receipt of the degree of bachelor of landscape architecture, or the equivalent as determined by the department, from a school offering a program which meets the requirements of subparagraph (i) of this paragraph; and

(iii) completion of a minimum of four years of landscape architectural work experience of a scope and nature satisfactory to the State Board for Landscape Architecture; or

(3) completion of experience in landscape architectural work acceptable to the State Board for Landscape Architecture, or a combination of education and experience totaling 12 years which is determined by the department to be the equivalent of the education and experience described in paragraph (1) or (2) of this subdivision.

[(b) A graduate from a program in landscape architecture registered by the department, accredited by an accrediting organization acceptable to the department, or determined by the department to be the equivalent of a registered or accredited program, or a candidate with eight years of experience satisfactory to the State Board for Landscape Architecture, may be admitted to the part of the licensing examination related to fundamental landscape architectural theory prior to completion of the experience requirements provided in subdivision (a) of this section.

(c) The department may conditionally admit to the licensing examination any person who will complete the experience requirement within 90 days after the examination.]

(c) *The department may accept a second professional degree in landscape architecture in lieu of not more than one year of work experience.*

2. Section 79-1.2 of the Regulations of the Commissioner of Education is amended, effective June 13, 2012, as follows:

79-1.2 Licensing examinations.

(a) Content. The examination may include, but need not be limited to, landscape architectural history, theory, construction, professional administration, landscape architectural design and plant materials and planting design. The department may accept satisfactory scores on all or part of the written examination produced by the Council of Landscape Architectural Registration Boards.

(b) Passing score. All parts of the examination shall be scored numerically or on a pass/fail basis. For numerically scored examinations, the [The] passing score on each part of the examination shall be 75.0 as determined by the State Board for Landscape Architecture.

(c) Retention of credit. The grade retention provisions of section 59.5(f) of this Title shall not be applicable to the examination.

(d) [Rescorings and reviews. Multiple choice or other objective parts of the examination will be rescored upon written request of the candidates. Candidates who have failed the graphic parts of the examination may review those parts in accordance with the provisions of section 59.5(g) of this Title. Graphic parts of the examination with scores of 65 or above will be regraded upon written request including detailed justification of such appeal.] *Admission to examination.* (1) To meet the professional education and experience requirements for admission to the licensing examination, an applicant shall either:

(i) have met the professional study requirements of section 79-1.1(b)(1)(i) and (ii) or 79-1.1(b)(2)(i) and (ii) of this Part; or

(ii) have met the eligibility requirements of the Council of Landscape Architectural Registration Boards; or

(iii) provide evidence of completion of experience in landscape architectural work acceptable to the State Board for Landscape Architecture or a combination of education and experience totaling 8 years which is determined by the department to be the equivalent of the education and experience credit described in section 79-1.1(b)(1) or 79-1.1(b)(2) of this Part.

(2) The department may conditionally admit to the licensing examination any person who will complete the experience requirement within 90 days after the examination.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-2183, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Avenue, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise and the State Education Department to administer admission to and regulate the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the admission to the practice of the professions and to promulgate rules to carry out such supervision.

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

Paragraph (2) of subdivision 1. of section 7324 of the Education Law requires an applicant for licensure in landscape architecture to have education in accordance with the Commissioner's regulations.

Paragraph (3) of subdivision 1. of section 7324 of the Education Law requires an applicant for licensure in landscape architecture to have experience satisfactory to the board in appropriate landscape architectural work.

Paragraph (4) of subdivision 1. of section 7324 of the Education Law requires an applicant for licensure in landscape architecture to pass a licensing examination satisfactory to the board and in accordance with Commissioner's regulations.

Subdivision (2) of section 7324 of the Education Law authorizes the Department to accept 12 years of practical experience in landscape

architecture of a grade and character satisfactory to the board in lieu of the usual education and experience requirements, provided that each complete year of study satisfactory to the department may at the discretion of the board be accepted in lieu of two years of experience but not to exceed eight years toward the required total of 12 years.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes by establishing education and experience requirements for admission to the Landscape Architect Registration Examination (LARE) and for licensure.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendments to sections 79-1.1 and 79-1.2 of the Regulations of the Commissioner of Education is to align the New York State requirements for admission to the Landscape Architect Registration Examination (LARE) with national standards beginning with the September 2012 administration of the LARE and to clarify the professional study and experience requirements for landscape architecture candidates. The modification of the existing regulation regarding the admission to the LARE will be consistent with policy of the owners of the national licensing examination, the Council of Landscape Architectural Registration Boards (CLARB). The professional study and experience requirements for licensure candidates will be clarified to incorporate long-held policies used by the Department and State Board for Landscape Architecture during education/experience evaluations.

The proposed amendment to section 79-1.1 of the Regulations of the Commissioner clarifies the education and experience requirements in order to be a landscape architect, while recognizing the varying statutory pathways to licensure. The licensure pathways reflected in the proposed amendment include those affecting candidates with and without a professional degree. Specifically, the amendment offers three routes to licensure. The first route requires a five-year professional degree from an accredited landscape architecture program and three years of acceptable experience satisfactory to the State Board for Landscape Architecture. The second route requires a four-year professional degree from an accredited landscape architecture program and four years of acceptable experience satisfactory to the State Board. The third and final route permits those without the professional degree to attain licensure by compiling up to 12 years of a combination of education and experience acceptable to the Department and State Board for Landscape Architecture.

The proposed amendment to section 79-1.2 of the Regulations of the Commissioner aligns New York's requirements with the national requirements for entry to the licensing examination. Beginning with the September 2012 administration of the LARE, CLARB will move to a fully computerized model for the delivery of exam content to improve relevance and reliability. In order to clarify and streamline the examination process for New York candidates, those candidates who meet CLARB exam eligibility requirements will directly apply to CLARB to take the licensing examination instead of applying to the Department. The proposed amendment also removes the ability of candidates to review their graphic solutions and have their exams rescored by CLARB since CLARB will no longer offer candidate those opportunities. Finally, the proposed amendment will allow those atypical candidates who do not meet CLARB's exam eligibility standards to apply for exam admission to the Department instead of CLARB.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government. The State Education Department will continue to review atypical candidates who do not meet CLARB's exam eligibility requirements. Existing staff and resources of the State Education Department will continue to be used for these tasks.

(b) Costs to local government: None.

(c) Costs to private regulated parties: The amendment will not impose any additional costs to private regulated parties.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment establishes requirements relating to admission to the Landscape Architect Registration Examination (LARE) for candidates in New York. The amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The existing regulation contains no direct recordkeeping or other paperwork requirements.

7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no Federal standards concerning the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment relates to requirements for admission to the Landscape Architect Registration Examination (LARE) and clarifies the professional study and experience requirements for landscape architecture candidates. The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments, or have any adverse economic effect on them.

Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Each year, about 52 individuals are licensed by the State Education Department as landscape architects in New York. The Department estimates that about 13 will come from a rural county of New York State.

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

The proposed amendment relates to requirements that individuals must meet for admission into the Landscape Architect Registration Examination and clarifies the professional study and experience requirements for landscape architecture candidates. The proposed amendment does not impose any direct recordkeeping or other paperwork requirements, and does not impose a need for professional services.

3. COSTS:

The proposed amendment does not impose any additional costs on applicants seeking licensure as a landscape architect in New York State.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment amends sections 79-1.1 and 79-1.2 to align the New York State requirements for admission to the Landscape Architect Registration Examination (LARE) with national standards beginning with the September 2012 administration of the LARE and to clarify the professional study and experience requirements for landscape architecture candidates. The licensure requirements are in place to ensure minimal competency in newly licensed professionals and thereby safeguard the public. The statutory requirements for licensure in New York State do not make exceptions for individuals who live or work in rural areas. The Department has determined that the proposed amendment shall apply to all applicants seeking licensure as a landscape architect in New York State, regardless of their geographic location, to help ensure minimum competency for licensure across the State. Because of the nature of the proposed amendment, alternative approaches for rural areas were not considered.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of landscape architecture. Included in this group was the State Board for Landscape Architecture and professional associations representing the landscape architecture profession. These groups have members who live or work in rural areas. Each organization has been provided with notice of the proposed amendment and an opportunity to comment.

Job Impact Statement

The purpose of the proposed amendments to sections 79-1.1 and 79-1.2 is to align the New York State requirements for admission to the Landscape Architect Registration Examination (LARE) with national standards beginning with the September 2012 administration of the LARE and to clarify the professional study and experience requirements for landscape architecture candidates. These regulatory changes will have no effect on the number of jobs or employment opportunities in the field of landscape architecture or any other field.

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

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Repeal 6 NYCRR Part 640 “Uniform Appearance Ticket” Which Is Obsolete

I.D. No. ENV-12-12-00021-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 repeal Part 640 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, art. 3 and section 71-0203

Subject: To repeal 6 NYCRR Part 640 “Uniform Appearance Ticket” which is obsolete.

Purpose: To repeal 6 NYCRR Part 640 “Uniform Appearance Ticket” which is obsolete.

Text of proposed rule: 6 NYCRR Part 640 is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Anthony London, New York State Department of Environmental Conservation, 625 Broadway, 14th Floor, Albany, NY 12233, (518) 402-9515, email: aalondon@gw.dec.state.ny.us

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

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

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

Consensus Rule Making Determination

No person is likely to object to the rule as written since the rule making merely involves the repeal of 6 NYCRR Part 640 which is obsolete. The repeal of Part 640 is not controversial because the department has officially prescribed the Simplified Information/Complaint form utilized by the New York State Department of Motor Vehicles (or succeeding formats) as its prescribed form, thereby making 6 NYCRR Part 640, which relates to a previous form, obsolete.

Job Impact Statement

The repeal of 6 NYCRR Part 640 will not have any impact on jobs or employment opportunities since it is only repealing an obsolete rule relating to the New York State Department of Environmental Conservation’s (department) form for a uniform appearance ticket and simplified information. Therefore, the department has concluded that a Job Impact Statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

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

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

Filing No. 209

Filing Date: 2012-03-05

Effective Date: 2012-03-05

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

Action taken: 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

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

Specific reasons underlying the finding of necessity: 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. The program offers standard benefit packages and high deductible health plan options to eligible individuals and employers. Healthy NY currently provides essential health coverage to over 170,000 New Yorkers.

Due to State fiscal constraints, the New York State budget has set Healthy NY funding appropriations at approximately \$160 million for the past three consecutive fiscal years. During this timeframe, Healthy NY enrollment and claims have increased. As a result, there has been a need to pro-rate stop loss distributions to health plans for the last two years.

Health maintenance organizations and participating insurers (“health plans”) are currently setting Healthy NY premiums for 2012. In developing proposed premium rates for 2012, most health plans have assumed that future funding for Healthy NY will again be held flat. 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 to the anticipated rate increases, the Department of Financial Services proposes to promulgate this amendment to 11 NYCRR Part 362. Through this amendment, existing Healthy NY enrollees will be permitted 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. This change will allow the Department to better leverage the program’s limited financial resources because 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.

The Department recognizes that this change will pose a hardship for some applicants seeking broader choice in benefit options. However, 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.

This emergency filing is necessary at this time in order to ensure that the health plans have adequate time to prepare for this change to the program. The plans will need to educate their customer service personnel regarding the new enrollment restrictions, make revisions to websites and consumer materials, and notify brokers about the enrollment restrictions. If the health plans are fully prepared to implement this change, eligible applicants who wish to enroll in the Healthy NY high deductible option effective January 1, 2012 and thereafter will be able to do so without any impediments. The regulation was previously promulgated on an emergency basis on December 7, 2011.

In light of the foregoing, it is critical that this amendment be adopted promptly as possible, and this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

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.

Text of emergency rule: 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.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 2, 2012.

Text of rule and any required statements and analyses may be obtained from: Patricia Patwell, Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: Patricia.Patwell@dfs.ny.gov

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 the Superintendent 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 HMOs.

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

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. Expedited 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 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.

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.

NOTICE OF ADOPTION**Life Settlements**

I.D. No. DFS-52-11-00005-A

Filing No. 211

Filing Date: 2012-03-06

Effective Date: 2012-03-21

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

Action taken: Addition of Part 381 (Regulation 198) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 2137, 7803, 7804 and 7817, as added by L. 2009, ch. 499, section 21

Subject: Life Settlements.

Purpose: To implement the provisions of Chapter 499 of the Laws of 2009 as to license fees and financial accountability requirements.

Text or summary was published in the December 28, 2011 issue of the Register, I.D. No. DFS-52-11-00005-P.

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

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

Assessment of Public Comment

A trade association of approximately 450 surety and fidelity bond insurers is the only party that submitted comments on the proposal within the 45-day comment period.

The association commented that a net worth requirement is not a sufficient substitute for a surety bond under proposed section 381.1 because a surety bond provides prequalification services and it provides financial protection in the event the life settlement provider defaults.

As previously stated in the Department's regulatory impact statement, an outreach draft of the proposed rule was posted on the Department's website for a two-week public comment period and was discussed at a meeting with interested parties in April 2010. The outreach draft originally only provided two options to demonstrate financial accountability – purchase of a surety bond or placement of securities on deposit. The Department received comments indicating that these options would create a financial barrier for some providers wishing to enter and operate in the New York market. In response to such comments, the Superintendent added a third option that provides a less costly and less capital restrictive compliance alternative. The third option allows a life settlement provider to satisfy the financial accountability requirements by demonstrating that its assets exceed its liabilities by an amount no less than \$250,000. The three financial accountability requirements provided in the rule are on a par with the requirements in many other states. The Department has determined that additional changes to the rule in light of the foregoing comment are not necessary.

Long Island Power Authority**NOTICE OF ADOPTION****Daily Service, Monthly and Demand Charges Under the Authority's Tariff for Electric Service**

I.D. No. LPA-51-11-00005-A

Filing Date: 2012-03-02

Effective Date: 2012-03-05

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

Action taken: The Long Island Power Authority ("Authority") adopted a proposal to modify its Tariff for Electric Service to increase certain Daily Service, Monthly and Demand charges to cover increases in the costs of Delivery Service.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Daily Service, Monthly and Demand charges under the Authority's Tariff for Electric Service.

Purpose: To increase certain Daily Service, Monthly and Demand charges to cover increases in the costs of Delivery Service.

Text or summary was published in the December 21, 2011 issue of the Register, I.D. No. LPA-51-11-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Authority's Tariff for Electric Service

I.D. No. LPA-51-11-00006-A

Filing Date: 2012-03-02

Effective Date: 2012-03-02

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

Action taken: The Long Island Power Authority ("Authority") adopted a proposal to modify its Tariff for Electric Service to make miscellaneous changes in connection with certain temporary pole attachments and regarding Solar Hot Water Heating.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Authority's Tariff for Electric Service.

Purpose: To make miscellaneous Tariff changes in connection with certain pole attachments and Solar Hot Water Heating.

Substance of final rule: The Long Island Power Authority ("Authority") adopted a proposal to modify its Tariff for Electric Service ("Tariff") to make miscellaneous changes to add language to the Tariff indicating that the pole attachment fee may be waived for certain temporary and revocable attachments where the disposition is of nominal value to the parties, and further to allow existing customers on the water heating discounted rate to participate in the Solar Hot Water efficiency program without losing their rate benefits.

Final rule as compared with last published rule: Nonsubstantive changes were made in section IV.C.1.

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Authority's Tariff for Electric Service

I.D. No. LPA-51-11-00008-A

Filing Date: 2012-03-02

Effective Date: 2012-03-02

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

Action taken: The Long Island Power Authority ("Authority") adopted a proposal to modify its Tariff for Electric Service to expand and clarify the eligibility criteria for Residential Service.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Authority's Tariff for Electric Service.

Purpose: To expand and clarify the eligibility criteria for Residential Service.

Text or summary was published in the December 21, 2011 issue of the Register, I.D. No. LPA-51-11-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Authority's Tariff for Electric Service

I.D. No. LPA-12-12-00022-P

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

Proposed Action: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to establish an on-bill energy efficiency loan recovery mechanism.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Authority's Tariff for Electric Service.

Purpose: To establish an on-bill energy efficiency loan recovery mechanism.

Public hearing(s) will be held at: 10:00 a.m., May 7, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., May 7, 2012 at 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to establish an on-bill energy efficiency loan recovery mechanism. The modifications will effectuate On-Bill Efficiency Loan Recovery in compliance with the Power NY Act of 2011 regarding the NYSEDA Loan Installment program. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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.

Office of Mental Health

NOTICE OF ADOPTION

Visitation and Inspection of Facilities

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

Filing No. 210

Filing Date: 2012-03-06

Effective Date: 2012-03-21

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

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

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

Subject: Visitation and Inspection of Facilities.

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

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

PART 553

VISITATION AND INSPECTION OF FACILITIES

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

§ 553.1 Introduction.

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

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

§ 553.2 Legal base.

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

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

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

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

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

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

(g) Section 31.09 of the Mental Hygiene Law gives the Commissioner of Mental Health or his/ her authorized representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary in order to carry out his/her

responsibilities under Article 31 of such law. Further, all such investigations and inspections shall be made by persons competent to conduct them, and information obtained by the Commissioner or his/her authorized representative shall be kept confidential in accordance with the provisions of applicable law.

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

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

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

§ 553.3 Scope of reviews and inspections.

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

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

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

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

§ 553.4 Reports.

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

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

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

§ 553.5 Deemed status.

(a) Applicability. For purposes of this Section, the term "hospital" shall mean a psychiatric unit of a general hospital that is certified under

Article 31 of the Mental Hygiene Law and under Article 28 of the Public Health Law operating in accordance with Part 580 of this Chapter. The provisions of this section shall apply to such hospitals.

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

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

(1) the hospital has a history of compliance with applicable laws, rules, and regulations and a record of providing care of good quality, as determined by the Commissioner;

(2) a copy of the survey report and the certificate of accreditation of The Joint Commission or other approved accrediting organization is submitted by the accrediting body to the Commissioner, within 7 days of issuance to the hospital;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 553.4(c) and 553.5(b).

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

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the changes to the final version of the rule making are non-substantive. The changes improve readability by correcting a typographical error and eliminating an unnecessary clause.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the changes to the final version of the rule making are non-substantive. The changes improve readability by correcting a typographical error and eliminating an unnecessary clause. The amendments to 14 NYCRR Part 553 will not have an adverse economic impact upon small businesses or local governments.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The changes improve readability by correcting a typographical error and eliminating an unnecessary clause. The amendments to 14 NYCRR Part 553 will not impose any adverse economic impact on rural areas.

Revised Job Impact Statement

A revised Job Impact Statement is not submitted with this notice because the changes to the final version of the rulemaking are non-substantive. The changes improve readability by correcting a typographical error and eliminating an unnecessary clause. There will be no adverse impact on jobs and employment opportunities as a result of these changes.

Assessment of Public Comment

The agency received two comment letters with respect to the new 14 NYCRR Part 553, "Visitation and Inspection of Facilities".

One commenter expressed strong support for the proposed rule, which enables the Commissioner of the New York State Office of Mental Health to accept accreditation by The Joint Commission or other accreditation agency to which the Centers for Medicare and Medicaid Services has granted deeming status, as evidence of compliance with the Office's inpatient operation standards, rather than requiring a separate visit and inspection by personnel of the Office of Mental Health (Office). The writer believes this provision is consistent with the Governor's priorities to streamline government operations, eliminate duplicative provider requirements, and reduce costs to the Medicaid program, while ensuring the highest quality care for persons with mental illness.

The second commenter raised several concerns regarding the proposed rule that appear to be grounded in the mistaken belief that the Commissioner's authority would be diminished by the regulation as it pertains to deemed status. It is important to note that the Office maintains the authority to conduct its own reviews, and to "look behind" the reviews conducted by the accrediting organization. The Commissioner has full access to any of the accreditation organization's survey reports, information, communications, or materials regarding the hospital. Deemed status is not a right. To be considered for deemed status, hospitals must have a history of compliance with applicable laws, rules and regulations and have a record of providing good quality care, as determined by the Commissioner. In addition, the Commissioner has the authority to deny or revoke a hospital's deemed status if the hospital fails to adhere to the requirements in Section 553.5 of Title 14 NYCRR.

The writer questioned the issue of confidentiality and legality with respect to the accrediting body having access to confidential materials such as incident reports and investigations. The writer further expressed concern with the fact that surveys would be completed by individuals with limited knowledge of the local service system.

Response: Section 31.09 of the Mental Hygiene Law gives the Commissioner or his authorized representative the power to inspect facilities, examine records, conduct examinations and interviews, and obtain such other information as necessary in order to carry out his responsibilities under Article 31. All investigations and inspections must be made by persons competent to conduct them, and information obtained by the Commissioner or his authorized representative must be kept confidential in accordance with law. The use of secondary agents in the performance of certification inspections is not new. The Department of Health and The Joint Commission have participated in a collaborative agreement for the surveil-

lance of hospitals and diagnostic and treatment centers since 1996. In addition, the Federal government, through the Centers for Medicare and Medicaid Services, provides for deeming authority.

The writer expressed concern about the potential for a conflict of interest since hospitals would pay an annual fee to the accrediting organization, and that accrediting body would determine if the hospital's performance is sufficient to warrant continued certification/licensure.

Response: While it is true that in the case of The Joint Commission a hospital is required to pay a yearly fee of approximately \$1,000 to the accreditation review organization, and other organizations may similarly require the payment of a fee, in order for an accrediting organization to be granted deeming status, it will be required to review the operational standards set forth in 14 NYCRR Part 580 in the performance of their reviews. It is believed that the ability of the Office to independently review licensed programs and the discretionary nature of the granting of deeming authority provides a far greater incentive for accrediting organizations to diligently perform their functions than the minimal incentive created by the receipt by the organization of a fee from the hospital to be less than rigorous in such reviews.

The writer believes the expense paid by hospitals to accrediting agencies could be passed on to the public, and suggests that the Office complete a fiscal analysis based on the number of hospitals anticipated to participate in the deeming process.

Response: As mentioned above, the cost to a hospital wishing to participate in deemed status is anticipated to be approximately \$1,000 annually. This cost is minimal, compared to the savings achieved through the reduction in costs associated with multiple reviews conducted by several surveyors. Inspections are very demanding on hospitals as they must ensure that key personnel from a variety of departments are readily available. Surveys of psychiatric inpatient services conducted as part of the hospital's regularly scheduled accreditation visit should reduce redundancy and the number of disruptions that hospitals currently experience. This will allow for hospital staff to attend to the needs of individuals receiving mental health services with limited interruption. Hospitals that will participate in deemed status have yet to be determined; therefore, the Office has no means to develop the fiscal comparison as suggested by the writer.

The writer claims that the deeming proposal will create a barrier to transparency.

Response: The Joint Commission maintains a website that provides a list of all hospitals and programs that have been accredited by that body (www.jointcommission.org). Accreditation Quality Reports by facility as available on that website as well. Final reports developed by the accreditation agency shall be provided by the hospital to the local governmental unit upon request.

The writer questioned the "Job Impact Statement" in the regulatory filing paperwork which stated that there will not be a negative impact on jobs and employment opportunities as a result of the proposed rule.

Response: The Office has already addressed this issue in its Regulatory Impact Statement. Deemed status will enable the Office to better utilize its limited agency resources by freeing staff to focus on quality improvement initiatives and by allowing staff additional time to work with programs that are not performing up to minimal standards. Further, as the proposed rule does not mandate deemed status, the Office will continue to survey hospitals that choose not to participate in the deemed status option or those hospitals that have compliance issues that prevent them from participating.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

IRA and Community Residence Reimbursement Methodology

I.D. No. PDD-02-12-00017-A

Filing No. 213

Filing Date: 2012-03-06

Effective Date: 2012-03-21

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

Action taken: Amendment of section 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.36(c) and 43.02

Subject: IRA and community residence reimbursement methodology.

Purpose: To update rent allowance offsets based on Supplemental Security Income (SSI) levels for 2012.

Text or summary was published in the January 11, 2012 issue of the Register, I.D. No. PDD-02-12-00017-EP.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

ERRATUM

Two Notices of Adoption, I.D. Nos. PSC-51-11-00012-A and PSC-51-11-00016-A, pertaining to Amendments to PSC No. 11—Electricity, Effective 2/20/12, to Convert its Electric Tariff, published in the March 7, 2012 issue of the *State Register* contained an incorrect date throughout. All references to 2/20/11 should be 2/20/12.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Excelsior Jobs Program

I.D. No. PSC-12-12-00007-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 a proposed tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company, d/b/a National Grid NY to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, 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-M-0542SP1)

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

Excelsior Jobs Program

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

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

Proposed Action: The Commission is considering a proposed tariff filing by St. Lawrence Gas Company, Inc. to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its gas tariff schedule.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by St. Lawrence Gas Company, Inc. to gas tariff schedule, PSC No. 3 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP10)

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

Excelsior Jobs Program

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

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

Proposed Action: The Commission is considering a proposed tariff filing by Central Hudson Gas & Electric Corporation to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation to its electric and gas tariff schedules, PSC No. 15 - Electricity and PSC No. 12 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP2)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00010-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 a proposed tariff filing by Consolidated Edison Company of New York, Inc. to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its electric and gas tariff schedules.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to its electric and gas tariff schedules, PSC No. 10 - Electricity and PSC No. 9 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP3)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00011-P

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

Proposed Action: The Commission is considering a proposed tariff filing by KeySpan Gas East Corporation d/b/a National Grid to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its gas tariff schedule.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corporation d/b/a National Grid to its gas tariff schedule, PSC No. 1 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

tive date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP4)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00012-P

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

Proposed Action: The Commission is considering a proposed tariff filing by National Fuel Gas Distribution Corporation to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its gas tariff schedule.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by National Fuel Gas Distribution Corporation to its gas tariff schedule, PSC No. 8 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP5)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00013-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 proposed tariff filing by Orange and Rockland Utilities, Inc. to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its electric and gas tariff schedules.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to its electric and gas tariff schedules, PSC No.2 - Electricity and PSC No. 4 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP8)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00014-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 proposed tariff filing by New York State Electric & Gas Corporation to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its electric and gas tariff schedules.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation to its electric and gas tariff schedules, PSC No.120 - Electricity and PSC Nos. 87 and 88 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP7)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00015-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 proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its electric and gas tariff schedules.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to its electric and gas tariff schedules, PSC No.220 - Electricity and PSC No. 219 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP6)

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

Excelsior Jobs Program

I.D. No. PSC-12-12-00016-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 proposed tariff filing by Rochester Gas and Electric Corporation to effectuate the Excelsior Jobs Program in compliance with a Commission Notice issued December 9, 2011 in Case 11-M-0542.

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

Subject: Excelsior Jobs Program.

Purpose: To establish an Excelsior Jobs Program in its electric and gas tariff schedules.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation to its electric and gas tariff schedules, PSC No.19 - Electricity and PSC No. 16 - Gas, to effectuate the Excelsior Jobs Program in compliance with the Commission's Notice to File Proposed Tariff Provisions issued December 9, 2011 in Case 11-M-0542. The proposed filing has an effective date of June 1, 2012. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-M-0542SP9)

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

Petition of Frontier Communications Companies to Waive the Commission's Rules Requiring it to Distribute Telephone Directories

I.D. No. PSC-12-12-00017-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 approve, modify or reject a request by Frontier Communications Local Exchange Carriers to waive the Commission's Rules and Regulations, 16 NYCRR 602.10(b) pertaining to the distribution of telephone directories.

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

Subject: Petition of Frontier Communications companies to waive the Commission's rules requiring it to distribute telephone directories.

Purpose: To review the merits of Frontier's Petition.

Substance of proposed rule: Frontier Communications Local Exchange Carriers (the company) has filed a petition requesting that the Commission waive the provision of 16NYCRR 602.10(b) which requires the company to distribute a residential white page directory to all customers in its service territory. Citing technological advances, environmental concerns, and reduced subscriber interest in receiving white page directories, the company is requesting that it be allowed to discontinue blanket directory distribution and only provide white page directories to customers who affirmatively opt to receive one. It will also provide a CD-ROM in lieu of a directory if requested by the customers. Its on-line white page listings will be available at no charge. The company will continue to distribute directories containing government and business white pages listing, the yellow pages, and the consumer guide. The Commission may approve, modify or deny, in whole or in part the request of Frontier Communications Local Exchange Carriers and may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.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-C-0060SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-12-12-00018-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 Lafayette Boynton Apt. Corp. to submeter electricity at 825 and 875 Boynton Ave. and 820 and 880 Colgate Ave., Bronx, 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 Boynton Apt. Corp. to submeter electricity at 825 and 875 Boynton Ave. and 820 and 880 Colgate Ave., Bronx.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Lafayette Boynton Apartment Corporation to submeter electricity at 825 and 875 Boynton Avenue and 820 and 880 Colgate Avenue, Bronx, 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-0076SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of an Internal Corporate Reorganization of IUSA

I.D. No. PSC-12-12-00019-P

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

Proposed Action: The Commission is considering a petition requesting the approval of an internal corporate reorganization of Iberdrola USA, Inc. (IUSA) as the upstream owner of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.

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

Subject: Approval of an internal corporate reorganization of IUSA.

Purpose: Consideration of approval of an internal corporate reorganization of IUSA.

Substance of proposed rule: The Public Service Commission is considering a petition filed on February 23, 2012 requesting approval of an internal corporate reorganization of Iberdrola USA, Inc. (IUSA) as the upstream owner of New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E). The reorganization will result in the insertion of two intermediate indirect holding companies upstream from NYSEG and RG&E. The first intermediate holding company will be the newly created Iberdrola USA Networks, Inc., which will be owned 100% by IUSA and will own indirectly 100% of NYSEG and RG&E. The second intermediate holding company will be Iberdrola Finance UK Limited, which will be owned 100% by Iberdrola, S.A. and will own 100% of the stock of IUSA. 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-M-0066SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of Trench SU362.550 Voltage Transformer

I.D. No. PSC-12-12-00020-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by ABB Incorporated and Trench Germany for the approval to use the Trench SU352.550 voltage transformer.

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

Subject: Whether to permit the use of Trench SU362.550 voltage transformer.

Purpose: Pursuant to 16 NYCRR Part 93, is necessary to permit electric utilities in New York State to use the Trench SU362 transformer.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by ABB Incorporated and Trench Germany, to use the Trench SU-362.550 voltage transformer in substation applications.

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, Three Empire State Plaza, Albany, New York 10007, (518) 486-2655, email: leann_ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (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-0078SP1)

Racing and Wagering Board

NOTICE OF ADOPTION

Authorizing and Prohibiting the Use of Phenylbutazone, or "Bute"

I.D. No. RWB-52-11-00007-A

Filing No. 173

Filing Date: 2012-02-29

Effective Date: 2012-03-21

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

Action taken: Amendment of sections 4043.2(d) and 4120.2(d) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(2)(a) and 902(1)

Subject: Authorizing and prohibiting the use of phenylbutazone, or "bute."

Purpose: To make bute a 48-hour drug only (versus 24- and 48-hour) in both harness and thoroughbred racing.

Text or summary was published in the December 28, 2011 issue of the Register, I.D. No. RWB-52-11-00007-P.

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

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

Assessment of Public Comment

The agency received no public comment.

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

Conforming Horse Racing Rule Amendments to the Provisions of the 2011 Marriage Equality Act

I.D. No. RWB-12-12-00001-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 4002.14, 4100.1, 4102.3, 4205.1 and 4205.6 of Title 9 NYCRR.

Statutory authority: Racing, Pari-mutuel Wagering and Breeding Law, sections 101, 301 and 401

Subject: Conforming horse racing rule amendments to the provisions of the 2011 Marriage Equality Act.

Purpose: To ensure that the Board's rule and regulations do not conflict with the provisions of the 2011 Marriage Equality Act.

Text of proposed rule: Subdivision (b) of Section 4002.14 of 9 NYCRR is amended to read as follows:

(b) Disqualification of a *licensee* [husband or wife] from having a license applies equally to the *licensee's spouse*, [both] unless the spouse of the disqualified person shows to the satisfaction of the board that ownership and racing of his or her horses are independent of or not under the control or influence of the disqualified spouse.

Paragraph 44 of subdivision (a) of Section 4100.1 of 9 NYCRR is amended to read as follows:

(44) Spouse. Where used in these rules, the term spouse means a *person married to the licensee or applicant* [person's husband or wife] or one held out by a person to be his or her *spouse*. [husband or wife.]

Subdivision (d) of Section 4102.3 of 9 NYCRR is amended to read as follows:

(d) Suspension or exclusion of a *person shall apply in each instance to the spouse of the person*. [either husband or wife shall apply in each instance to both husband and wife.]

Subdivision (b) of Section 4205.6 of 9 NYCRR is amended to read as follows:

(b) Disqualification of a *person from having a license shall apply in each instance to the spouse of the person*. [husband or wife from having a license applies equally to both.]

Subdivision (g) of Section 4205.1 of 9 NYCRR is amended to read as follows:

(g) No license as an owner shall be granted to the lessee or lessees of any corporation, syndicate or partnership, unless such corporation, syndicate or partnership shall have no more than 35 stockholders or members, as the case may be, each of whom shall be the registered and beneficial owner of stock or membership in such corporation, syndicate or partnership; and every such stockholder or member is required to be licensed as an owner; provided, however, that the commission may waive this rule with respect to any one horse owned by any said corporation, syndicate or partnership, to enable it to participate in a race on a specified date. For the purposes of this rule, the stockholders or members who bear to each other the relationship of *persons married to each other* [husband and wife], parent and child, or any other blood relationship with either of such parents shall be regarded collectively as one stockholder or member, as the case may be.

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 Office of Counsel has determined that this rulemaking is a consensus rule under State Administrative Procedure Act section 102, paragraph 11(b) because it implements or conforms to non-discretionary statutory provisions of the Marriage Equality Act. This rulemaking removes references that could be construed to limit certain rights or privileges to persons in different sex marriages. The new language is gender neutral and consistent with the stated legislative intent of the Marriage Equality Act.

Job Impact Statement

As is apparent from the nature of rule, this rule will not have a substantial adverse effect upon jobs and employment. The proposed amendments

merely replace obsolete references in the Board's horse racing rules and include gender neutral references to couples who are married. These amendments are consistent with the Marriage Equality Act of 2011, which requires the Board to treat same-sex and different sex couples equally. The amendments are technical in nature, and will have no impact on jobs or employment.

**Susquehanna River Basin
Commission**

INFORMATION NOTICE

18 CFR Part 806

Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains final rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include definitions for new terms and an amended definition; provide for administrative approval of interbasin transfers of flowback and production fluids between drilling pad sites that are isolated from the waters of the basin; provide for administrative approval of out-of-basin transfers of flowback or produced fluids from a Commission approved hydrocarbon development project to an out-of-basin treatment or disposal facility; insert language authorizing renewal of expiring approvals, including Approvals by Rule (ABRs); delete specific references to geologic formations that may be the subject of natural gas development using hydrofracture stimulation and replace with a generic category--"unconventional natural gas development;" broaden the scope of ABRs issued to include hydrocarbon development of any kind utilizing the waters of the basin, not just unconventional natural gas well development; memorialize the current practice of requiring post-hydrofracture reporting; and provide further procedures for the approval of water sources utilized at projects subject to the ABR process.

DATES: Effective April 1, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; email: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's Web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published in the Federal Register on July 13, 2011; the New York Register on July 27, 2011; the Pennsylvania Bulletin on July 23, 2011; and the Maryland Register on July 29, 2011. The Commission convened public hearings on August 2, 2011, in Harrisburg, Pennsylvania and on August 4, 2011, in Binghamton, New York. Public information meetings were also held on October 25, 2011 in Williamsport, Pennsylvania, and on October 27, 2011, in Camp Hill, Pennsylvania. The original 60-day comment period first established on June 23, 2011, was extended until November 10, 2011, pursuant to an action taken by the Commission on September 15, 2011. Comments on the proposed rulemaking were received at both the hearings and during the comment period. The comments can be divided into two categories: (1) General Comments--These comments are not directed to specific language of the proposed rulemaking, but rather address perceived environmental and policy impacts; and (2) Comments by Section--These comments are directed at the specific language of the proposed rulemaking, often offering further revisions to this language. A summary of both categories of comments and the Commission's responses thereto follows.

General Comments

Comment: The Commission should more clearly explain the scientific basis for the proposed rulemaking. Also, the Commission should conduct a full life cycle cumulative impact study of the basinwide impacts of unconventional natural gas extraction prior to issuing this rulemaking.

Response: The proposed rulemaking is administrative in nature and involves no substantive change in the review standards applied to projects. Therefore, the basis of the rulemaking does not involve the analysis, evaluation or re-evaluation of scientific principals. On the whole, it is an attempt to codify within the rules certain definitions, existing practices and policies, and to establish certain procedures related to implementation of the Commission's regulatory authority.

Comment: The more extensive use of the Approval by Rule (ABR)

process in this proposed rulemaking will weaken the Commission's regulatory oversight and will simply make it easier for gas well developers using hydrofracture stimulation methods to withdraw the waters of the basin.

Response: The Commission believes that this comment indicates a basic misunderstanding of the scope of the ABR process and the fact that all withdrawal projects will continue to be docketed and acted on by the full Commission. Through the docketing process, the Commission actively manages the use of the basin's waters and mitigates impacts on surface and ground waters through appropriate conditions limiting use. The ABR process then provides an efficient monitoring system for waters that are consumptively used. The Commission applies the same approval standards to all approvals, no matter the form they take. It exercises continuing jurisdiction and oversight to ensure compliance, and can reopen approvals and issue new orders or conditions if warranted.

Comment: Use of the ABR process to oversee the interbasin transfer of flowback and produced fluids and for the out of basin diversion of such fluids for treatment poses a danger to the waters of the basin due to its toxic content and the potential for spillage. The ABR process also bypasses the usual analysis given to proposed diversions of water.

Response: The proposed rules simply formalize practices that are already in place for the transfer of such fluids. These procedures will provide a net benefit to the basin by encouraging the use and reuse of lesser quality water instead of unimpaired water from streams or ground water sources. Furthermore, unlike the typical diversion of water out of the basin where the consumptive loss occurs and is evaluated in the context of the proposed diversion activity, the consumptive loss in this situation is considered to have occurred at the time of the initial withdrawal from the system, before its first use within the basin and prior to being diverted out of the basin. For into-basin diversions, the existing standards are focused on limiting any introduction of contaminated sources into the waters of the basin. The final rulemaking, as structured, provides that same standard. What it changes is the form of the approval, not the standard that should be applied.

Comment: The Commission places too much reliance on allegedly inadequate state water quality laws relating to wastewater disposal and residual waste. For example, the Commission cannot rely on such state laws and regulations to isolate from the waters of the basin the flowback and production fluids whose interbasin transfer the Commission proposes to approve administratively. Therefore, it is incumbent on the Commission to invoke its own water quality regulatory authority and ensure that wastewater is indeed handled in a manner that isolates it from the waters of the basin.

Response: The Susquehanna River Basin Compact, Public Law 91-575, Section 5.2(b) gives specific emphasis to the primary role of the states in water quality management and control. Member states are already exercising or preparing to exercise their water quality authority with respect to gas drilling activity and are also strengthening their laws and regulations. At this stage, there appears to be no justification for the Commission to assume water quality jurisdiction. As noted in response to a comment below, the Commission is taking steps to replace the term "isolate from the waters of the basin" with language that references the standards and requirements of member jurisdictions.

Comment: The Commission's refusal to promulgate water quality regulations relating to gas well development will allow the non-uniform treatment of water users throughout the basin and therefore not conform to the purposes of the Susquehanna River Basin Compact.

Response: The compact purpose of "uniform treatment of water users" does not require that the Commission exclusively regulate all aspects of water resources in the basin. If state regulations and standards are compatible with the Commission's Comprehensive Plan and do an adequate job of fulfilling the purposes of the plan, the Commission will not attempt to duplicate those regulations and standards. Where it does act, it does so in a manner that provides for uniform treatment of all water users.

Comment: The expanded use of the ABR process lessens the opportunity for public input and scrutiny on project approvals.

Response: The Commission disagrees. The ABR applications must be noticed by applicants and there is an opportunity for interested citizens to comment on these applications before an approval is issued. ABRs are also subject to the same approval standards as docketed approvals, and may be reopened and modified by the Executive Director should unforeseen problems arise. Furthermore, notice of issuance of an ABR is published in the Federal Register and any such approval is subject to appeal pursuant to § 808.2.

Comment: The Commission should not be extending the scope of the ABR program to include other forms of hydrocarbon development without first determining if the ABR program is suitable for these other forms of development.

Response: The ABR process has proven to be a valuable tool for monitoring consumptive use related activity on pad sites. This rulemaking, which as noted above is administrative in nature, would extend the use of this valuable tracking tool to other forms of hydrocarbon development. Water withdrawals by any water user, including that undertaken for use in other forms of hydrocarbon development, will still undergo the full docket approval process, and be subject to all applicable Commission standards and requirements.

Comment: The Commission is a federal agency under the Susquehanna River Basin Compact and is subject to the National Environmental Policy Act (NEPA). It must therefore complete all NEPA requirements in connection with this proposed rulemaking action.

Response: The Commission categorically rejects any suggestion that it is subject to NEPA. This is consistent with the position the Commission has taken on NEPA since the 1980s. Instead of a federal agency, the Commission is a federal-interstate compact agency representing all four of its member jurisdictions. The federal government is only one voting member of the Commission and any action of the Commission requires the vote of a majority of the members. Therefore, the actions of the Commission are not the actions of the federal government, but the joint actions of the member jurisdictions. Also, Congress has specifically exempted the Commission from the provisions of the federal Administrative Procedures Act (APA). Federal court decisions have taken a consistent view, namely that agencies not subject to the APA are not federal agencies in the conventional sense and are therefore not subject to NEPA or similar laws imposing requirements on "federal agencies."

Comments by Section, Part 806

Section 806.3--Definitions

Comment: The 30-day rule in the proposed definition of flowback means that fluid produced from the well bore from the 31st day until the well is placed in production is neither flowback or production fluid within the definition (unless the well is placed into production during the initial 30-day period).

Response: Agreed. The proposed definition is modified to remove the 30-day reference and to make clear that return flow recovered post-hydrofracture and pre-production is defined as flowback.

Comment: The word "siting" in the definitions of "hydrocarbon development" and "unconventional natural gas development" is inconsistent with the "initiation of construction" standard in the Commission's project review regulations. The regulations specify the "spudding of the well" to be the initiation of a well project.

Response: Agreed. The word "siting" is deleted from this definition to avoid the inconsistency.

Comment: The definition of "project" does not make clear that "unconventional natural gas development" is a subset of "hydrocarbon development activity."

Response: Language is inserted in the definition to clarify that the term is a sub-category of hydrocarbon development.

Comment: Several comments expressed disagreement with the proposed definition of "tophole water," with one suggesting use of Pennsylvania's definition instead and another claiming that the definition is too vague.

Response: The tophole water definition is replaced with a modified version of the Pennsylvania definition. The modification, notably removing the reference to surface water, makes it generally consistent with New York's interpretation of the term and allows for more basinwide consistency.

Section 806.4--Projects Requiring Review and Approval

Paragraphs 806.4(a)(3)(v) & (vi)

Comment: The phrase "in such manner as to isolate it from the waters of the basin" is too vague and should be replaced with a reference to the actual controls exercised by the member states. Also, because the industry may mix the waters of the basin withdrawn from surface and ground water sources with flowback or production fluids in preparation for hydrofracture use, it is not possible to isolate it from the waters of the basin if read strictly.

Response: The "isolate" terminology is replaced with "provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdictions." The same language has also been inserted in Paragraph 806.4(a)(3)(vi), which similarly addresses diversions of flowback or production fluids, and is substituted in Paragraph 806.22(f)(11)(iii) for the same reason.

Comment: There is no clear requirement that project sponsors keep track of interbasin transfers of flowback and production fluids.

Response: Language is added to paragraphs 806.4(a)(3)(v) and (vi) reinforcing the requirement that all monitoring and reporting requirements applicable to the pad site ABR must be met. Similar language is added to paragraph 806.22(f)(11) to meet the same concerns about tracking.

Paragraph 806.4(3)(vi)

Comment: The use of the phrase “the same” implies that each tank load of flowback or production fluid would require separate approval.

Response: The language is replaced with “flowback or production fluids” to remove any uncertainty.

Section 806.13--Submission of Application

Comment: The phrase “Project sponsors of projects subject to review and approval” should properly be changed to read “Sponsors of projects subject to review and approval.”

Response: Agreed. The suggested change is incorporated into the final rulemaking.

Section 806.14--Contents of Application

Paragraph 806.14(a)

Comment: With respect to renewal applications, there is no clear indication that they will be made subject to any approval standards.

Response: To remove any ambiguity, and to further clarify the original intent concerning renewal standards, the phrase “shall be subject to the standards set forth in Subpart C--Standards for Review and Approval of this Part” is added to this paragraph.

Section 806.15--Notice of Application

Paragraph 806.15(e)

Comment: The requirement for a newspaper notice in areas where a wastewater discharge source is to be used is unworkable where such water is mixed with other water sources at the initial destination and is then redistributed, oftentimes to other locations not contemplated at the time notice is given.

Response: The word “initially” is added before the phrase “used for natural gas development” to limit this requirement to the initial location(s) where this water is contemplated for use at the time of application.

Section 806.22--Standards for Consumptive Use of Water

Paragraph 806.22(f)(10)

Comment: Extension of ABR approval terms to 15 years will essentially lessen or weaken the oversight that the Commission exercises over gas drilling activities.

Response: Though the Commission feels that there is a fundamental misunderstanding by some who commented about the ongoing oversight that it exercises over approved projects, and the ability of the Commission to reopen approvals, it is willing to retain the current approval term with the addition of procedures for renewal of ABRs. Therefore, the proposed change is removed from the final rulemaking.

Paragraph 806.22(f)(11)

Comment: Need to make clear that this paragraph applies to the use of sources in addition to those sources approved for use by the project sponsor pursuant to § 806.4.

Response: Wording is added to the beginning of this paragraph to make the suggested clarification.

Paragraph 806.22(f)(11)(i), (ii), and (iv)

Comment: Tophole water, precipitation and storm water collected on the pad site or water obtained from a hydrocarbon storage facility can be contaminated, so there is a need to appropriately limit its use.

Response: Language is added limiting the use of this water to drilling or hydrofracture stimulation only, or in the case of paragraph 806.22(f)(11)(iv), limiting the use to that provided for in the approval.

Paragraph 806.22(f)(11)(iii)

Comment: As defined, flowback and production fluids do not cover all fluids encountered in the drilling process that serve as a water source under current practice. For example, water can be recovered from drilling muds. Also, such fluids can be recovered from production well sites, in addition to drilling pad sites or hydrocarbon water storage facilities. Current Commission policy allows for the reuse of such fluids.

Response: Drilling fluids and formation fluids are added to this paragraph to cover all fluids recovered during the drilling process and used under current practice for hydrofracture stimulation. The term “production well site” is also added to clarify the sites from which such fluids can be recovered. The word “only” is also added to this paragraph to make clear that these fluids may only be used for hydrofracture stimulation. Language is also added clarifying that all such fluids must be handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

Paragraph 806.22(f)(14)

Comment: The provisions of the proposed paragraph 806.22(f)(13) pertaining to hydrocarbon water storage facilities need to be separated from provisions relating to public water supply and wastewater sources because of the possible application of the terms to third party water purveyors building hydrocarbon water storage facilities that may not be associated with ABRs.

Response: The changes incorporated into the final rule break out a separate paragraph 806.22(f)(14), clarifying the scope and intent, but make no substantive changes to the provisions contained in the proposed rulemaking. The rule is intended to provide for the approval of such facilities (not otherwise associated with an ABR) to provide a mechanism for monitoring, reporting and tracking associated with such facilities, and to allow for the industry to efficiently register such sources for use.

Paragraph 806.22(f)(15)

Comment: The language in paragraphs 806.22(f)(12)(i) and (ii) relating to providing a copy of any registration or source approval to the appropriate agency of a member state, etc., is repetitive.

Response: Language related to registrations and source approvals that is repetitive is removed and restated once in new paragraph 806.22(f)(15).

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

PART 806--REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

Subpart A--General Provisions

2. Amend § 806.3 by adding definitions for “Flowback”, “Formation fluids”, “Hydrocarbon development”, “Hydrocarbon water storage facility”, “Production fluids”, “Tophole water”, and “Unconventional natural gas development,” and revising the definition of “Project” to read as follows:

§ 806.3 Definitions.

* * * * *

Flowback. The return flow of water and formation fluids recovered from the wellbore of an unconventional natural gas or hydrocarbon development well following the release of pressures induced as part of the hydraulic fracture stimulation of a target geologic formation, and until the well is placed into production.

Formation fluids. Fluids in a liquid or gaseous physical state, present within the pore spaces, fractures, faults, vugs, caverns, or any other spaces of formations, whether or not naturally occurring or injected therein.

* * * * *

Hydrocarbon development. Activity associated with the drilling, casing, cementing, stimulation and completion of wells, including but not limited to unconventional natural gas development wells, undertaken for the purpose of extraction of liquid or gaseous hydrocarbons from geologic formations.

Hydrocarbon water storage facility. An engineered barrier or structure, including but not limited to tanks, pits or impoundments, constructed for the purpose of storing water, flowback or production fluids for use in hydrocarbon development.

* * * * *

Production fluids. Water or formation fluids recovered at the wellhead of a producing hydrocarbon well as a by-product of the production activity.

Project. Any work, service, activity, or facility undertaken, which is separately planned, financed or identified by the Commission, or any separate facility undertaken or to be undertaken by the Commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources, which can be established and utilized independently, or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation. For purposes of hydrocarbon development activity, including that related to unconventional natural gas development, the project shall be considered to be the drilling pad upon which one or more exploratory or production wells are undertaken, and all water-related appurtenant facilities and activities related thereto.

* * * * *

Tophole water. Water that is brought to the surface while drilling through the strata containing fresh groundwater. Tophole water may contain drill cuttings typical of the formation being penetrated but may not be polluted or contaminated by additives, brine, oil or man induced conditions.

Unconventional natural gas development. Activity associated with the drilling, casing, cementing, stimulation and completion of wells undertaken for the purpose of extraction of gaseous hydrocarbons from low permeability geologic formations utilizing enhanced drilling, stimulation or recovery techniques.

3. In § 806.4, revise paragraph (a)(3) introductory text, add paragraphs (a)(3)(v) and (a)(3)(vi), and revise paragraph (a)(8), as follows:

§ 806.4 Projects requiring review and approval.

(a)*****

(3) Diversions. Except with respect to agricultural water use projects not subject to the requirements of paragraph (a)(1) of this section, the projects described in paragraphs (a)(3)(i) through (a)(3)(iv) of this section shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in § 806.24. The project sponsors of out-of-basin diversions shall also comply with all applicable requirements of this part relating to consumptive uses and withdrawals. The projects identified in paragraphs (a)(3)(v) and (a)(3)(vi) of this section shall be subject to regulation pursuant to § 806.22(f).

(v) The interbasin diversion of any flowback or production fluids from hydrocarbon development projects from one drilling pad site to another drilling pad site for use in hydrofracture stimulation, provided it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction, shall not be subject to separate review and approval as a diversion under this paragraph if the generating or receiving pad site is subject to an Approval by Rule issued pursuant to § 806.22(f) and provided all monitoring and reporting requirements applicable to such approval are met.

(vi) The diversion of flowback or production fluids from a hydrocarbon development project for which an Approval by Rule has been issued pursuant to § 806.22(f), to an out-of-basin treatment or disposal facility authorized under separate governmental approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph, provided all monitoring and reporting requirements applicable to the Approval by Rule are met and it is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(8) Any unconventional natural gas development project in the basin involving a withdrawal, diversion or consumptive use, regardless of the quantity.

Subpart B--Application Procedure

4. Revise § 806.13 to read as follows:

§ 806.13 Submission of application.

Sponsors of projects subject to review and approval of the Commission under §§ 806.4, 806.5 or 806.6, or project sponsors seeking renewal of an existing approval of the Commission, shall submit an application and applicable fee to the Commission, in accordance with this subpart.

5. In § 806.14, revise paragraph (a) introductory text to read as follows:

§ 806.14 Contents of application.

(a) Except with respect to applications to renew an existing Commission approval, applications shall include, but not be limited to, the following information and, where applicable, shall be submitted on forms and in the manner prescribed by the Commission. Renewal applications shall include such information that the Commission determines to be necessary for the review of same, shall be subject to the standards set forth in Subpart C--Standards for Review and Approval of this part, and shall likewise be submitted on forms and in the manner prescribed by the Commission.

6. In § 806.15, revise paragraphs (d), (e) and (f) and add paragraph (g), as follows:

§ 806.15 Notice of application.

(d) For applications submitted under § 806.22(f)(13) for a public water supply source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area served by the public water supply.

(e) For applications submitted under § 806.22(f)(13) for a wastewater discharge source, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in each area within which the water obtained from such source will initially be used for natural gas development.

(f) For applications submitted under § 806.22(f)(14) for a hydrocarbon water storage facility, the newspaper notice requirement contained in paragraph (a) of this section shall be satisfied by publication in a newspaper of general circulation in the area in which the facility is located.

(g) The project sponsor shall provide the Commission with a copy of

the United States Postal Service return receipt for the notifications to agencies of member States, municipalities and county planning agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of notice required hereunder for the duration of the approval related to such notices.

Subpart C--Standards for Review and Approval

7. In § 806.22, revise paragraphs (e)(1), (e)(6), (f) introductory text, (f)(1), (f)(4), (f)(6), (f)(8), (f)(9), (f)(11), and (f)(12), and add paragraphs (f)(13), (f)(14) and (f)(15), to read as follows:

§ 806.22 Standards for consumptive uses of water.

(e)*****

(1) Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project whose sole source of water for consumptive use is a public water supply, may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(6) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(f) Approval by rule for consumptive use related to unconventional natural gas and other hydrocarbon development.

(1) Any unconventional natural gas development project, or any hydrocarbon development project subject to review and approval under §§ 806.4, 806.5, or 806.6 of this part, shall be subject to review and approval by the Executive Director under this paragraph (f) regardless of the source or sources of water being used consumptively.

(4) The project sponsor shall comply with metering, daily use monitoring and quarterly reporting as specified in § 806.30, or as otherwise required by the approval by rule. Daily use monitoring shall include amounts delivered or withdrawn per source, per day, and amounts used per gas well, per day, for well drilling, hydrofracture stimulation, hydrostatic testing, and dust control. The foregoing shall apply to all water, including stimulation additives, flowback, drilling fluids, formation fluids and production fluids, utilized by the project. The project sponsor shall also submit a post-hydrofracture report in a form and manner as prescribed by the Commission.

(6) Any flowback or production fluids utilized by the project sponsor for hydrofracture stimulation undertaken at the project shall be separately accounted for, but shall not be included in the daily consumptive use amount calculated for the project, or be subject to the mitigation requirements of § 806.22(b).

(8) The project sponsor shall certify to the Commission that all flowback and production fluids have been re-used or treated and disposed of in accordance with applicable state and federal law.

(9) The Executive Director may grant, deny, suspend, rescind, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

(11) In addition to water sources approved for use by the project sponsor pursuant to § 806.4 or this section, for unconventional natural gas development or hydrocarbon development, whichever is applicable, a project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize any of the following water sources at the drilling pad site, subject to such monitoring and reporting requirements as the Commission may prescribe:

(i) Tophole water encountered during the drilling process, provided it is used only for drilling or hydrofracture stimulation.

(ii) Precipitation or stormwater collected on the drilling pad site, provided it is used only for drilling or hydrofracture stimulation.

(iii) Drilling fluids, formation fluids, flowback or production fluids obtained from a drilling pad site, production well site or hydrocarbon water storage facility, provided it is used only for hydrofracture stimulation, and is handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

(iv) Water obtained from a hydrocarbon water storage facility associated with an approval issued by the Commission pursuant to § 806.4(a) or by the Executive Director pursuant to this section, provided it is used only for the purposes authorized therein, and in compliance with all standards and requirements of the applicable member jurisdiction.

(12) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize a source of water approved by the Commission pursuant to § 806.4(a), or by the Executive Director pursuant to paragraph (f)(14) of this section, and issued to persons other than the project sponsor, provided any such source is approved for use in unconventional natural gas development, or hydrocarbon development, whichever is applicable, the project sponsor has an agreement for its use, and at least 10 days prior to use, the project sponsor registers such source with the Commission on a form and in the manner prescribed by the Commission.

(13) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may also utilize other sources of water, including but not limited to, public water supply or wastewater discharge not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a) or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director. Any request for approval shall be submitted on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(14) A project sponsor issued an approval by rule pursuant to paragraph (f)(9) of this section may utilize water obtained from a hydrocarbon water storage facility that is not otherwise associated with an approval issued by the Commission pursuant to § 806.4(a), or an approval by rule issued pursuant to paragraph (f)(9) of this section, provided such sources are first approved by the Executive Director and are constructed and maintained in compliance with all standards and requirements of the applicable member jurisdiction. The owner or operator of any such facility shall submit a request for approval on a form and in the manner prescribed by the Commission, shall satisfy the notice requirements set forth in § 806.15, and shall be subject to review pursuant to the standards set forth in subpart C of this part.

(15) The project sponsor shall provide a copy of any registration or source approval issued pursuant to this section to the appropriate agency of the applicable member jurisdiction. The project sponsor shall record on a daily basis, and report quarterly on a form and in a manner prescribed by the Commission, the quantity of water obtained from any source registered or approved hereunder. Any source approval issued hereunder shall also be subject to such monitoring and reporting requirements as may be contained in such approval or otherwise required by this part.

Dated: March 6, 2012.

Stephanie L. Richardson

Secretary to the Commission.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-50-11-00013-A

Filing No. 202

Filing Date: 2012-03-01

Effective Date: 2012-03-01

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2012 through March 31, 2012.

Text or summary was published in the December 14, 2011 issue of the Register, I.D. No. TAF-50-11-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

NOTICE OF ADOPTION

Sales Tax Collection Charts

I.D. No. TAF-50-11-00014-A

Filing No. 203

Filing Date: 2012-03-01

Effective Date: 2012-03-21

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

Action taken: Amendment of section 530.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 1111(d), 1142(1), (8) and 1250 (not subdivided)

Subject: Sales tax collection charts.

Purpose: To update regulatory language to more accurately reflect existing statutes and Department practice.

Text or summary was published in the December 14, 2011 issue of the Register, I.D. No. TAF-50-11-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New York State and City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-02-12-00002-A

Filing No. 204

Filing Date: 2012-03-01

Effective Date: 2012-03-21

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

Action taken: Repeal of Appendixes 10, 10-A; addition of new Appendixes 10, 10-A; and amendment of sections 171.4 and 251.1(b) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; City of Yonkers Local Laws No. 3-2011 and No. 9-2011; and L. 2011, ch. 255 and L. 2011, ch. 56

Subject: New York State and City of Yonkers withholding tables and other methods.

Purpose: To provide current New York State and City of Yonkers withholding tables and other methods.

Text or summary was published in the January 11, 2012 issue of the Register, I.D. No. TAF-02-12-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-12-12-00002-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2012 through June 30, 2012.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxvi) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxv) January-March 2012					
16.0	24.0	41.8	16.0	24.0	40.05
(lxvi) April-June 2012					
16.0	24.0	41.8	16.0	24.0	40.05

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.ny.gov

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

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

Regulatory Impact Statement, 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.

Workers' Compensation Board

NOTICE OF ADOPTION

Diagnostic Testing Networks

I.D. No. WCB-47-11-00009-A

Filing No. 208

Filing Date: 2012-03-05

Effective Date: 2012-03-21

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

Action taken: Amendment of sections 325-1.5 and 325-2.1; and addition of Subpart 325-7 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-a(7) and 117

Subject: Diagnostic Testing Networks.

Purpose: To provide for employer and workers' compensation carrier contracts with diagnostic testing networks.

Substance of final rule: The proposed regulation amends Section 325-1.5 and 325-2.1 to provide for carrier contracts with a diagnostic testing network and adopts a new Subpart 325-7 setting forth the requirements for Diagnostic Testing Networks.

Subpart 325-7 is added regarding Diagnostic Testing Networks.

Section 325-7.1 defines terms used in the Subpart, such as "affiliated network provider," "diagnostic examinations and tests" and "reasonable distance."

Section 325-7.2 sets forth the requirements for insurance carriers to contract with a diagnostic testing network. The insurance carriers must file with the Chair a list of all diagnostic testing networks it has contracts with including the network's name and address, toll-free phone number, email address and website address, as well as contact name and information. The insurance carrier must notify the Chair within twenty days if there are any changes in the diagnostic testing network information and the Chair may request additional information and may inspect any diagnostic testing network facilities.

Section 325-7.3 sets forth the requirements to be authorized as a diagnostic testing network. These requirements include: status as a legal and proper business organization as defined in 325-7.1; filing with the Chair of the Board updated addresses, phone numbers, email and web addresses, and business locations; requiring affiliated network providers to obtain an injured workers consent and to be Board authorized to treat injured workers; prescribing the business hours of each affiliated network provider; and requiring that all tests be conducted within five (5) business days of the date requested or the date authorized by the carrier.

Section 325-7.4 describes the services that may be provided by diagnostic testing networks and affiliated network providers. These services include: scheduling of tests or examinations; providing notice to claimants; processing, paying and objecting to bills. This section also describes the procedure when a case is controverted and the carrier will not pay any medical bills until the controversy is resolved.

Section 325-7.5 sets forth the procedures that must be followed to require a claimant to obtain a diagnostic test or examination from a network facility. The claimant does not need to use an affiliated network provider when: the network does not have an affiliated network facility within a reasonable distance from the claimant's home or work; the network is unable to schedule the diagnostic test or examination within five (5) business days; when the case is controverted; prior to receiving notice; and in the event of a medical emergency. This section also prescribes the notice that must be given to an injured worker and to the injured worker's treating medical provider. This section requires that reports of a diagnostic test or examination be filed with all parties on the same day, and within three (3) business days of most tests. This section permits the claimant to choose any affiliated network provider to perform the diagnostic test or examination and to choose in consultation with his or her treating medical provider.

Section 325-7.6 provides that any diagnostic testing network or affiliated network facility that alters a report so as to misrepresent the injured worker's condition shall be ineligible from contracting with an insurance carrier as a diagnostic testing network.

Section 325-7.7 provides that no person or entity may interfere with the injured worker's selection of an affiliated network provider, and bars the insurance carrier from participation in the diagnostic testing or examination or the resulting reports.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 325-7.5(b)(2) and (c).

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

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to correct 3 minor typographical errors.

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB471100009 commenced on November 23, 2011, and expired on

January 7, 2012. The Chair and the Workers' Compensation Board (Board) received and accepted formal written public comments on the proposed rule through January 7, 2012.

The Chair and Board received two formal written comments. The Board received a written comment from the Medical Society of the State of New York (MSSNY) dated January 3, 2012. The Board also received a written comment from Weingarten, Reid and McNally on behalf of One Call Medical dated December 31, 2011. These comments were reviewed and assessed. This assessment will summarize and respond to the comments by author.

MSSNY'S COMMENTS:

The Definition of "Reasonable Distance": The distance that an injured worker may be required to travel from home or work to undergo a diagnostic study remains too far of a distance to be fair or practical to the injured worker as it will require injured workers to travel up to an hour when the best diagnostic provider or facility is not within the network. The best providers or facilities will not be in-network as they are unwilling to accept the steep discounts required by the network. Thus the networks will result in reduced quality of care.

Response: Workers' Compensation Law § 13-a (7)(a) required the Board to define what constitutes a reasonable distance from the claimant's residence or place of employment by regulation. The regulation defines "reasonable distance" as 25 miles from the injured workers' home or residence, except within five miles in the City of New York, ten miles in the cities of Albany, Buffalo, Niagara Falls, Rochester, Schenectady, Syracuse, Troy and Yonkers and 15 miles within the counties of Nassau, Rockland, Suffolk and Westchester. The injured worker may have to travel up to one hour when there are no facilities within a reasonable distance from his or her home. It appears that the majority of the diagnostic testing networks have ample facilities within the parameters defined in the regulation.

Ultrasound should not be subject to the network requirement: Ultrasounds are routinely used for treatment and care of patients as both a diagnostic tool and for guided procedures. Failure to exempt ultrasound from the network requirements will further drive quality medical providers from the workers' compensation system.

Response: The regulation only requires ultrasounds used for diagnosis to be obtained in-network. An ultrasound that is used during a medical procedure is not a diagnostic test or examination covered by the regulation. For example an ultrasound used for guiding injections instead of fluoroscopy is not diagnostic.

Treating medical providers should receive notice for each claim: The carrier should be required to provide the medical provider with notice for each claimant/patient required to use a diagnostic testing network rather than supplying notice via a general mailing to medical providers who treat workers' compensation claimants when the carrier or employer contracts with the diagnostic testing network. The regulation should require that a claimant who fails to provide the treating medical provider with the notice regarding the required use of a diagnostic testing network be directly responsible for the cost of the examination either personally or through his or her private insurer. If the carrier has not supplied the claimant with written notice the carrier should be liable for the cost of the diagnostic examination or test at the fee schedule rate. The regulations should require the Board to create a flow chart explaining when use of a network is required and should also maintain on its website regarding use of diagnostic networks.

Response: The regulation amplifies the notice requirements set forth in WCL § 13-a(7) inasmuch as it requires the treating medical provider to receive notice that the carrier requires claimants to use diagnostic testing networks. Carriers are permitted to give treating medical providers notice with each claim, but they are also permitted to notify the medical provider when it engages the diagnostic testing network. This type of general notice mirrors the notices that are mailed by private health insurers to medical providers advising them of the required use of particular lab facilities for testing or other types of network use. In addition, this type of mailing ensures that the cost savings generated by use of diagnostic testing networks are passed on to New York State employers through reduced insurance premiums rather than absorbed as an increased administrative cost by a diagnostic testing network. WCL § 13-f prohibits medical providers from recovering from claimants for medical care. While the regulation does not require the Board to maintain information concerning diagnostic testing networks on its website, the Board intends to share as much information as possible by publication on its website, so that information concerning the use of diagnostic testing networks is readily available to claimants and medical providers.

The Chair should not be given broad authority to inspect the offices of affiliated network providers: This is an unnecessary expansion of powers and the Board already has ample power to address quality of care issues and fraud issues.

Response: The Chair's ability to inspect the premises of an affiliated

network provider conducting diagnostic examinations and tests of claimants is not an unreasonable expansion of powers. It is assumed that this right will only be exercised where there is an allegation that a facility is inappropriate for the conduct to the tests or examinations being performed. This authority is intended to inspire confidence in use of diagnostic testing networks by claimants and their treating medical providers.

ONE CALL MEDICAL'S COMMENT:

Recommends that the regulation be amended to indicate that hospitals are exempt from MIPPA accreditation. Hospitals are exempt from Medicare Improvements for Patients and Providers Act (MIPPA) accreditation pursuant to Section 1834(e) of the Social Security Act and thus the Board's regulations should be revised to note this exemption.

Response: The exemption provided for in the federal legislation preempts the Board's regulation and thus no change to the regulation is necessary.

CHANGES TO THE REGULATION:

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the November 23, 2011 *State Register*:

- In section 325-7.5(b)(2)(ii), the reference to section 325-7.1(l) has been changed to 325-7.1(k)
- In section 325-7.5(b)(2)(iv), the reference to section 325-7.3(h) has been changed to 325-7.3(i)
- In section 325-7.5(c), the reference to section 325-7.3(h) has been changed to 325-7.3(i)