

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 Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-12-00010-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading “Office of General Services,” by adding thereto the position of Manager Information Services.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-12-00011-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Assistant Director Plant Industry (1).

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously

printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-20-12-00012-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by adding thereto the position of Associate Commissioner.

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

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Corrections and Community Supervision

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

Buffalo CF, Arthurkill CF, Correctional Camps, Summit CF, Mid-Orange CF, Fulton CF and Oneida CF

I.D. No. CCS-20-12-00004-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 sections 100.8, 100.60, 100.65, 100.67, 100.71, 100.98 and 100.120 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Buffalo CF, Arthurkill CF, Correctional Camps, Summit CF, Mid-Orange CF, Fulton CF and Oneida CF.

Purpose: To remove the reference to correctional facilities that are no longer in operation.

Text of proposed rule: The Department of Corrections and Community Supervision repeals and reserves section 100.8 of Title 7 NYCRR.

[Section 100.8 Buffalo Correctional Facility.

(a) There shall be in the department an institution to be known as Buffalo Correctional Facility, which shall be located on the grounds of Wende Correctional Facility in the Town of Alden in Erie County.

(b) Buffalo Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Buffalo Correctional Facility shall be classified as a minimum security correctional facility to be used as a:

- (1) general confinement facility;
- (2) work release facility; and
- (3) residential treatment facility.]

The Department of Corrections and Community Supervision repeals and reserves section 100.60 of Title 7 NYCRR.

[Section 100.60 Arthur Kill Correctional Facility.

(a) There shall be in the department a facility to be known as Arthur Kill Correctional Facility, which shall be located in the County of Richmond, Borough of Staten Island, City and State of New York, and which shall consist of the property under jurisdiction of the department on the land and buildings at 2911 Arthur Kill Road, Staten Island, NY 10309.

(b) Arthur Kill Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Arthur Kill Correctional Facility shall be classified as a medium security correctional facility, to be used as a general confinement facility.

(d) An approximate 200-bed annex/unit on the grounds of Arthur Kill Correctional Facility shall also be used as an alcohol and substance abuse treatment correctional annex.]

The Department of Corrections and Community Supervision repeals and reserves section 100.65 of Title 7 NYCRR.

[Section 100.65 Correctional camps.

(a) There shall be in the department a correctional facility classified as a correctional camp for males between the ages of 16 and 35, which shall be known as Camp Georgetown. Exceptions regarding age ranges may be allowed pursuant to Part 110 of this Title.

(b) Camp Georgetown, is located near Georgetown in Madison County, New York, and consists of the property under the jurisdiction of the department at that location.]

The Department of Corrections and Community Supervision repeals and reserves section 100.67 of Title 7 NYCRR.

[Section 100.67 Summit Correctional Facility.

(a) There shall be in the department a facility to be known as Summit Correctional Facility, which shall be located near Summit in Schoharie County, New York, and which shall consist of the property under the jurisdiction of the department at that location.

(b) Summit Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Summit Correctional Facility shall be classified as a minimum security correctional facility, to be used as a shock incarceration and general confinement facility.]

The Department of Corrections and Community Supervision repeals and reserves section 100.71 of Title 7 NYCRR.

[Section 100.71 Mid-Orange Correctional Facility.

(a) There shall be in the department an institution to be known as the Mid-Orange Correctional Facility, which shall be located in Warwick, Orange County, New York.

(b) Mid-Orange Correctional Facility shall be a facility for males 16 years of age or older.

(c) Mid-Orange Correctional Facility shall be classified as a medium security facility, to be used for general confinement and work release purposes.]

The Department of Corrections and Community Supervision repeals and reserves section 100.98 of Title 7 NYCRR.

[Section 100.98 Fulton Correctional Facility.

(a) There shall be in the department a facility to be known as Fulton Correctional Facility, which shall be located in the borough of The Bronx, City and State of New York, and which shall consist of the property under the jurisdiction of the department on the land and building at 1511 Fulton Avenue, Bronx, NY 10451.

(b) Fulton Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Fulton Correctional Facility shall be classified as a minimum security correctional facility, to be used for the following functions:

- (1) general confinement facility;
- (2) work release facility; and
- (3) residential treatment facility.]

The Department of Corrections and Community Supervision repeals and reserves section 100.120 of Title 7 NYCRR.

[Section 100.120 Oneida Correctional Facility.

(a) There shall be in the department an institution to be known as Oneida Correctional Facility, which shall be located in the City of Rome, in Oneida County, and which shall consist of property under the jurisdiction of the department.

(b) Oneida Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Oneida Correctional Facility shall be classified as a medium security facility, to be used as a general confinement facility.]

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.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 Department of Correctional Services has determined that no person is likely to object to the proposed action. The repeal of this section removes the reference to correctional facilities that are no longer in operation. Since the facilities are no longer in operation the reference to it in the regulations is no longer applicable to any person. See SAPA section 102(11)(a).

The Department’s authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to Correctional Facilities that have been closed in accordance with the law; since the correctional facility is no longer in operation the removal of the reference to it has no adverse impact on jobs or employment opportunities.

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Part 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; and L. 2009, ch. 57

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 statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State’s taxpayers, particularly in light of New York’s current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program’s strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into “distinct and separate contiguous areas.”

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of “cost-benefit analysis” and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise (“QEZE”) Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development (“the Commissioner”). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-20-12-00002-E

Filing No. 405

Filing Date: 2012-04-27

Effective Date: 2012-04-27

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

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule

makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 25, 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@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. 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. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise 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 Empire Zones 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 new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones 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 Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. 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 full 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 businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping 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 Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

NOTICE OF ADOPTION

Award of Local High School Diploma to Veterans of World War II, the Korean Conflict and the Vietnam War

I.D. No. EDU-07-12-00009-A

Filing No. 412

Filing Date: 2012-05-01

Effective Date: 2012-05-16

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

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

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1), (2), (29), (29-a) and (29-b), 309 (not subdivided) and 3204(3)

Subject: Award of Local High School Diploma to Veterans of World War II, the Korean Conflict and the Vietnam War.

Purpose: Prescribe requirements for award of high school diplomas to veterans.

Text or summary was published in the February 15, 2012 issue of the Register, I.D. No. EDU-07-12-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Local High School Equivalency Diplomas Based Upon Experimental Programs

I.D. No. EDU-07-12-00010-A

Filing No. 413

Filing Date: 2012-05-01

Effective Date: 2012-05-16

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

Action taken: Amendment of section 100.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided),

207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 309(not subdivided) and 3204(3)

Subject: Local high school equivalency diplomas based upon experimental programs.

Purpose: To extend until 6/30/13 the provision for awarding local high school equivalency diplomas based upon experimental programs.

Text or summary was published in the February 15, 2012 issue of the Register, I.D. No. EDU-07-12-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8857, email: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

NOTICE OF ADOPTION

Minimum Standards for the New York State Partnership for Long-Term Care Program

I.D. No. DFS-09-12-00008-A

Filing No. 404

Filing Date: 2012-04-26

Effective Date: 2012-06-01

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

Action taken: Amendment of Part 39 (Regulation 144) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 1117, 3201, 3217, 3221, 3229, 4235, 4237 and art. 43; Social Services Law, section 367-f

Subject: Minimum Standards for the New York State Partnership for Long-Term Care Program.

Purpose: To amend minimum standards for inflation protection, to add a new plan and add disclosure requirements relating to reciprocity.

Text or summary was published in the February 29, 2012 issue of the Register, I.D. No. DFS-09-12-00008-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Claims for Personal Injury Protection Benefits

I.D. No. DFS-20-12-00009-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 65-3 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2601 and 5221 and art. 51

Subject: Claims for Personal Injury Protection Benefits.

Purpose: To combat no-fault fraud while also accelerating the resolution of no-fault claims.

Text of proposed rule: New subdivisions (o) and (p) are added to section 65-3.5 to read as follows:

(o) *An applicant from whom verification is requested shall, within 120 calendar days from the date of the initial request for verification, submit all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. The*

insurer shall advise the applicant in the verification request that the insurer may deny the claim if the applicant does not provide within 120 calendar days from the date of the initial request either all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request.

(p) *With respect to a verification request and notice, an insurer's non-substantive technical or immaterial defect or omission, as well as an insurer's failure to comply with a prescribed time frame, shall not negate an applicant's obligation to comply with the request or notice.*

Paragraph (3) of section 65-3.8(b) is amended to read as follows:

(3) Except as provided in subdivision (e) of this section, an insurer shall not issue a denial of claim form (NYS Form N-F 10) prior to its receipt of verification of all of the relevant information requested pursuant to [section] sections 65-3.5 and 65-3.6 of this Subpart (e.g., medical reports, wage verification, etc.). *However, an insurer may issue a denial if, more than 120 calendar days after the initial request for verification, the applicant has not submitted all such verification under the applicant's control or possession or written proof providing reasonable justification for the failure to comply, provided that the verification request so advised the applicant as required in section 65-3.5(o) of this Subpart. This subdivision shall not apply to a prescribed form (NF-Form) as set forth in Appendix 13 of this Title, medical examination request, or examination under oath request.*

Subdivisions (g) through (j) of section 65-3.8 are relettered subdivisions (i) through (l) and new subdivisions (g) and (h) are added to read as follows:

(g) *Proof of the fact and amount of loss sustained pursuant to Insurance Law section 5106(a) shall not be deemed supplied by an applicant to an insurer and no payment shall be due for such claimed services under any circumstances:*

(1) *when the claimed services were not provided to an injured party;*

or

(2) *for those claimed service fees that exceed the charges permissible under the schedules prepared and established pursuant to Insurance Law sections 5108(a) and (b) for services rendered by New York medical providers.*

(h) *With respect to a denial of claim (NYS Form N-F 10), an insurer's non-substantive technical or immaterial defect or omission shall not affect the validity of a denial of claim.*

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

Data, views or arguments may be submitted to: Hoda Nairooz, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5587, email: hoda.nairooz@dfs.ny.gov

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

Regulatory Impact Statement

1. **Statutory authority:** Sections 202 and 302 of the Financial Services Law, and §§ 301 and 5221 and Article 51 of the Insurance Law. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. Article 51 of the Insurance Law governs the no-fault insurance system.

2. **Legislative objectives:** Article 51 of the Insurance Law is popularly referred to as the "no-fault law." No-fault insurance was introduced to rectify problems that were inherent in the existing tort system used to settle claims and to provide for prompt payment of health care and loss of earnings benefits.

3. **Needs and benefits:** The current regulation: (1) imposes no deadline for responding to a verification request nor permits an insurer to deny a claim if it never receives the requested verification, allowing some claims to remain open indefinitely; (2) does not address how a verification request, notice (such as a request for a medical examination or examination under oath), or denial of claim should be treated when the document contains an immaterial defect or omission, resulting in unnecessary legal actions and arbitrations; and (3) provides no express remedy to insurers when applicants for benefits - typically health service providers - bill in excess of the mandated compensation fee schedule or for services not even rendered, resulting in determinations by courts and arbitrators that insurers are precluded from raising as a defense to an untimely denial of

claim that the provider has over-billed or billed for phantom services, leading to an unjust reduction in an injured party's benefits.

To combat these problems, the proposed rule will: (1) reduce the number of claims that remain open indefinitely by requiring an applicant for benefits to either submit any requested verification within the applicant's control or possession, or provide reasonable justification for failing to do so within 120 calendar days from the date of the initial verification request; (2) reduce litigation and arbitration by providing that a technical defect in an insurer's verification request, notice, or claim denial does not discharge the recipient's obligation to comply with the request or notice or invalidate an otherwise proper claim denial; and (3) prevent an injured person's policy limit from being unjustly depleted by providing that no payment is due for services to the extent the charges exceed the applicable fee schedules or where the services for which payment is requested were not rendered.

4. Costs: This rule does not impose compliance costs on state or local governments who are self-insures or insurers because the rule only requires that they notify applicants of the new timeframe for responding to verification requests and that failure to do so may result in the denial of claims, all of which would be included in the verification request already being created. Moreover, the rule, which insurers have requested, should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, as well as for New York consumers in the form of reduced automobile insurance premiums.

Applicants, typically health service providers not regulated by the Department, may incur additional costs for now being required to submit reasonable justification for failing to respond to verification requests. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to applicants. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants actually providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only establishes a timeline for an action that is mandated in the current regulation, in an effort to expeditiously resolve or bring finality to no-fault claims that under the current regulation may be pending indefinitely.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district. However, local governments who are self-insurers must notify policyholders in the verification requests of the new timeframe requirement and that failure to adhere to the requirement may result in a denial of the claim, clearly define reasonableness standards to their claims staff, and implement expedited internal review procedures for affected claims to ensure they are consistent and fair to all applicants for no-fault benefits.

6. Paperwork: This rule does not impose any additional paperwork on insurers or self-insurers. The rule only sets a timeframe for an applicant to submit paperwork that the current regulation requires to be produced, and requires an insurer to notify the applicant of the new timeframe in the same verification request that is being sent. This rule will entail additional paperwork for applicants who need to provide additional justification for non-compliance. However, the timeframe will result in the more expeditious resolution of claims and a decrease in the number of fraudulent claims being submitted for payment.

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

8. Alternatives: The Superintendent carefully evaluated written submissions from various stakeholders in response to prior working drafts posted on the Department's website. Listed below by topic is a summary of alternatives to the present version that the Superintendent considered.

Time Limit for Responding To Verification Requests and Denial for Untimely Response

The current regulation does not set forth a time limit to respond to a verification request, and an insurer may not deny a claim until it receives the requested verification. As a result, claims may be pending indefinitely.

One insurer proposed a timeframe of 90 days from the date of the initial request to respond to verification requests. Attorneys who represent applicants for benefits generally proposed a timeframe of 180 days from the date of the initial request to respond to verification requests, and only with respect to information within the possession or control of the applicant. They further proposed revising the regulation to prohibit insurers from issuing a denial when the applicant for benefits has provided "reasonable justification" for failure to comply with the 180-day timeframe. Insurers generally do not support the restriction whereby a denial may not be issued if the outstanding verification was requested from a third party and not from the applicant.

In an effort to strike a balance between opposing views regarding verification requests, the proposed amendment adds a new provision - 11 NYCRR § 65-3.5(o) - to require that an applicant for benefits either submit the verification within the applicant's possession or control or provide rea-

sonable justification for the failure to comply within 120 calendar days from the date of the initial verification request. Also, the proposal amends 11 NYCRR § 65-3.8(b)(3) to permit an insurer to deny a claim when an applicant has not submitted the verification requested pursuant to 11 NYCRR §§ 65-3.5 and 65-3.6 after 120 days. These provisions do not apply to prescribed forms (NF-Forms) as set forth in Appendix 13 of this Title, medical examination requests, and examination under oath requests. The rule also will require an insurer to notify the applicant, in the verification request, of the deadline within which to respond to the request and that the claim may be denied for failing to respond.

Preventing Billing in Excess of Mandated Fee Schedule or for Services Not Rendered

Based on case law, two central issues have arisen in situations where an applicant for benefits bills for services in excess of the mandated fee schedule or for services that were never provided. In both instances, courts have ruled that an insurer that fails to timely deny a claim is precluded from asserting as a defense the fact that the provider overbilled or fraudulently billed for services never rendered. As a result, consumers have their benefits unjustly reduced.

Insurers support the Superintendent's attempt to remedy instances when services are overcharged or not provided, and several also believe such a remedy should extend to other reasons for denial of claim.

Attorneys representing applicants for benefits do not object to the Superintendent's attempt to remedy overcharges and phantom billing, but some are concerned that the draft amendment would result in the denial of a claim in its entirety when the applicant has billed in excess of the mandated fee schedule, not just to the extent of the excess.

In order to protect consumers from unjust depletion of benefits, the proposed amendment provides that proof of the fact and amount of loss sustained shall not be deemed to be received by an insurer when the applicant for benefits has billed in excess of the mandated fee schedule and/or for services not rendered. This provision will protect consumers from these fraudulent or abusive practices. Additionally, to absolve the fears of plaintiff attorneys, only the excess portion of an excessive bill is not due, not the entire bill.

Keeping Immaterial Defects in Notices, Verification Requests and Denials from Invalidating Them

Insurers expressed concerns that the current regulation does not address how a verification request, notice, or denial of claim should be treated when the document contains an immaterial defect or omission.

To address these concerns, the proposed amendment makes clear that an applicant's obligation to comply with a notice or verification request is not negated and a denial of claim is not invalidated due to a non-substantive technical or immaterial defect contained in any of these documents.

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

10. Compliance schedule: The amendment will take effect upon publication in the State Register.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department does not have any information to indicate that any self-insurers are small businesses.

Local government units make independent determinations on the feasibility of becoming self-insured for no-fault benefits or having these benefits provided by authorized insurers. There are no requirements under the state's financial security laws requiring local governments to report to the Department of Financial Services or the Department of Motor Vehicles that they are self-insured. Therefore the Department has no way of estimating how many local government units are self-insured for no-fault benefits.

The types of small businesses that this rule affect are applicants for no-fault benefits, who are typically health service providers not regulated by the Department. Their participation in the no-fault system, however, is optional and the Department has established no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants actually providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only establishes a timeline for an action that is mandated in the current regulation, in an effort to expeditiously resolve or bring finality to no-fault claims that under the current regulation may be pending indefinitely. Therefore, the Department believes that any negative impact of this rule is significantly outweighed by its benefits.

2. Compliance requirements: This rule will require applicants to re-

spond to verification requests within 120 days or provide reasonable justification for not complying with the request. Local governments who are self-insurers will be required to notify applicants in the verification request of the new deadline for responding and that claims may be denied for failing to respond within the prescribed timeframe.

3. Professional services: This rule does not require anyone to use professional services.

4. Compliance costs: Small businesses affected by this rule may have to hire additional staff to comply with verification requests within the prescribed timeframe or may require some revision to the applicant's office procedures, but since many applicants currently use electronic means or outside billing agencies to prepare and their claims, the costs of imposing a deadline within which to provide all the necessary information to support the claim or reasonable justification for non-compliance should be minimal. Notwithstanding, the Department is unable to estimate the cost of such compliance because the cost depends on the number of the applicant's no-fault patients and current staffing.

Local governments who are self-insurers will not incur any additional costs because although required to notify applicants of the deadline for submitting verification request, the notice would be included in the verification request that is being sent. On the other hand, the rule will help to reduce costs because it will result in the more expeditious resolution of claims and a decrease in the number of fraudulent claims being submitted for payment.

5. Economic and technological feasibility: There should not be any issues pertaining to economic and technological feasibility because the documents necessary to submit as further proof of claim already should have been created in the ordinary course of business.

6. Minimizing adverse impact: Because of systemic fraud and abuse, this rule imposes on small businesses a timeframe for responding to verification requests. The regulation does not treat small businesses differently since, in many instances, those businesses that engage in fraud and abuse are small businesses.

Although some small businesses may incur additional costs in complying with the new requirements, it is expected that any costs incurred will be offset by more expeditious payment of claims and increased efficiencies in the no-fault system.

7. Small business and local government participation: Interested parties have had an opportunity to review and comment on certain portions of this proposed rule in previous draft amendments to Regulation 68 distributed for outreach.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Applicants, who are typically health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements: This rule will require applicants, who are typically health service providers not regulated by the Department, to respond to verification requests within 120 days or provide reasonable justification for not complying with the request. This will entail additional paperwork for applicants, who need to provide additional justification for non-compliance. Insurers must notify their policyholders of the new timeframe requirement and that failure to adhere to the requirement may result in a denial of the claim, clearly define reasonableness standards to their claims staff, and implement expedited internal review procedures for affected claims to ensure they are consistent and fair to all applicants for no-fault benefits. However, no additional paperwork will be created because notice of the new timeframe will be included in the verification request already being created.

3. Costs: Although not regulated entities, applicants may incur additional costs in having to provide, within 120 days of the verification request, reasonable justification for failing to comply with the request. This new timeframe may require some revision to the applicant's office procedures, but since many applicants currently use electronic means or outside billing agencies to prepare and their claims, the economic impact of imposing a deadline within which to provide all the necessary information to support the claim should be minimal. Additionally, the timeframe will result in the more expeditious resolution of claims and a decrease in the number of fraudulent claims being submitted for payment.

4. Minimizing adverse impact: This rule affects uniformly applicants and no-fault insurers and self-insurers throughout New York State. Therefore, it does not impose any adverse impact on rural areas.

5. Rural area participation: Interested parties have had an opportunity to review and comment certain portions of this proposed rule in previous draft amendments to Regulation 68 distributed for outreach.

Job Impact Statement

The proposed rule should have no adverse impact on jobs and employment opportunities with insurers and self-insurers in this state because the

rule only requires them to notify applicants of the new timeframe for responding to verification requests and that claims may be denied for failing to respond within the deadline.

While this rule may affect applicants for no-fault benefits, typically health service providers not regulated by the Department, their participation in the no-fault system is optional and there are no preauthorization or reporting requirements with respect to these small businesses. Further, because the Department does not maintain records of either the number of applicants licensed in this state or the number of applicants actually providing services to injured persons eligible for no-fault benefits, it cannot provide the number of these entities that will be affected by this rule. Notwithstanding, this rule only establishes a timeline for an action that is mandated in the current regulation, in an effort to expeditiously resolve or bring finality to no-fault claims, which under the current regulation, may be pending indefinitely. Therefore, the rule should have no adverse impact on jobs and employment opportunities of these non-regulated entities.

Department of Health

EMERGENCY RULE MAKING

Statewide Pricing Methodology for Nursing Homes

I.D. No. HLT-20-12-00013-E

Filing No. 433

Filing Date: 2012-05-01

Effective Date: 2012-05-01

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

Action taken: Addition of section 86-2.40 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(2-c)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to implement, as expeditiously as possible, the new Medicaid reimbursement methodology for nursing homes, effective January 1, 2012. The new methodology will replace an overly complex and burdensome methodology with a transparent pricing methodology that will stabilize the nursing home industry by timely providing predictable rate setting information that can be effectively used by providers to plan and manage their operations. In addition, implementing the pricing methodology as soon as possible will also mitigate the retroactive cash flow impact of reconciling rates that are paid today to the new pricing rates effective on January 1, 2012.

Proceeding with the proposed regulations on an emergency basis is in accordance with the provisions of Public Health Law section 2808 (2-c) which provides the Commissioner of Health the explicit authority to issue these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Statewide Pricing Methodology for Nursing Homes.

Purpose: To establish a new Medicaid reimbursement methodology for Nursing Homes.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for the operating component of non-specialty residential health care facilities (nursing homes). The operating component of the price is based upon allowable costs and is the sum of the direct price, indirect price and a facility-specific non-comparable price. The direct and indirect prices are a blend of a statewide price and a peer group price. There are two peer groups: 1) all non-specialty hospital-based facilities and non-specialty freestanding facilities with certified beds capacities of 300 or more, and 2) non-specialty freestanding facilities with certified bed capacities of less than 300 beds. The direct price is subject to a case mix adjustment and a wage index adjustment. The indirect price is subject to a wage index adjustment. Per-diem adjustments to the operating component of the rate include add-ons for bariatric, traumatic brain-injured (TBI) extended care, and dementia residents; adjustments for the reporting of quality data; and transition payments. Non-specialty facilities will transition to the price over a five-year period (2012-2016), with prices fully implemented beginning in 2017. The non-capital component of the

rate for specialty facilities, which are not subject to the new reimbursement methodology, will be the rates in effect for such facilities on January 1, 2009.

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 July 29, 2012.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.40 to establish a new Medicaid reimbursement methodology for Nursing Homes. The reimbursement methodology is based on a blend of statewide prices and peer group prices, with adjustments for case mix, regional wage differences, add-ons for certain patients, and quality incentives and payments. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new and streamlined methodology will significantly reduce administrative burdens on both nursing homes and the Department and, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Needs and Benefits:

The new pricing reimbursement methodology reforms an outdated, complex, administratively burdensome (to both providers and the Department) rate-setting system with a stable, predictable and transparent methodology that rewards efficiencies and incentivizes quality outcomes. The new pricing system will also provide a good foundation for the transition of nursing home residents to Managed Care that will occur over the next several years. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be reporting quality measures in their annual cost report.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulation does not create new or additional paperwork responsibility of any kind.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The Department is required by the Public Health Law section 2808 2-c to implement the new pricing methodology. The department worked closely with the Nursing Home Industry Associations to develop the details of the pricing methodology to be implemented by the regulation.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The new prices will be published by the department and transmitted to the EMedNY system. There are no new compliance efforts required by the nursing homes.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities were identified as employing fewer than 100 employees.

To ensure a smooth transition and mitigate significant swings in Medicaid revenues, the new Medicaid reimbursement methodology for nursing homes implemented by this regulation will be phased-in over a five year period (full implementation in the sixth year). Of the 60 nursing homes, 36 nursing homes that are subject to this regulation will experience a decrease in Medicaid revenues. The losses in Medicaid revenues will occur gradually - and will increase from .473% of total operating revenue in year to 5.4% of total operating revenue in year six. Twenty-four nursing homes that are subject to this regulation will experience an increase in Medicaid revenues. The gains in Medicaid revenues will occur gradually - and will increase from 1.2% of total operating revenue in year to 2% of total operating revenue in year six. In addition, the new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. The Department worked closely with the Nursing Home Associations to develop the details of the pricing methodology to be implemented by the regulation. In addition, contact information for the Department was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster

Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:
There are no new compliance requirements as a result of the proposed rule.

Professional Services:
No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:
No additional compliance costs are anticipated as a result of this rule.
Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Rural Area Participation:
The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the key components of the statewide pricing methodology. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to establish a new Medicaid reimbursement methodology for Nursing Homes will have a material impact on jobs or employment opportunities across the Nursing Home industry. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included in the proposed regulations to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year.

**EMERGENCY
RULE MAKING**

Reduction to Statewide Base Price

I.D. No. HLT-20-12-00014-E

Filing No. 434

Filing Date: 2012-05-01

Effective Date: 2012-05-01

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

Action taken: Amendment of section 86-1.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to achieve targeted savings.

Public Health Law section 2807-c(35)(b) specifically provides the Commissioner of Health with authority to issue hospital inpatient rate-setting regulations as emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Reduction to Statewide Base Price.

Purpose: Continues a reduction to the statewide base price for inpatient services.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35)(b) of the Public Health Law, Subdivision (c) of section 86-1.16 of Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective May 1, 2012, to read as follows:

(c)(1) For the period effective July 1, 2011 through March 31, 2012, the statewide base price shall be adjusted such that total Medicaid payments are decreased by \$24,200,000.

(2) For the period May 1, 2012 through March 31, 2013, the statewide base price shall be adjusted such that total Medicaid payments are decreased for such period by \$19,200,000.

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 July 29, 2012.

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

Regulatory Impact Statement

Statutory Authority:

The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in section 35 of part B as added by Chapter 58 of the laws of 2009. Section 2807-c(35) of the Public Health Law states that the Commissioner has the authority to set emergency regulations for general hospital inpatient rates and such regulations shall include but not be limited to a case-mix neutral Statewide base price. Such Statewide base price will exclude certain items specified in the statute and any other factors as may be determined by the Commissioner.

Legislative Objectives:

The Legislature and Medicaid Redesign Team adopted a proposal to reduce unnecessary cesarean deliveries to promote quality care and reduce unnecessary expenditures. Due to industry concerns with the initial proposal, it was determined that a more clinically sound method needed to be developed. To generate immediate savings, however, a \$24.2 million gross (\$12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop a more clinically sound approach to meet Legislative objectives. Based on the results of workgroup meetings, a new proposal was developed which achieved less savings than required by the Financial Plan (\$5 million gross/\$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at \$19.2 million gross (\$9.6 million State share) to account for the difference through March 31, 2013.

Needs and Benefits:

The proposed amendment appropriately implements the provisions of Public Health Law section 2807-c(35)(b)(xii), which authorizes the Commissioner to address the inappropriate use of cesarean deliveries. Cesarean deliveries are surgical procedures that inherently involve risks; however, elective cesarean deliveries increase the risks unnecessarily. Therefore, high rates of cesarean deliveries are increasingly viewed as indicative of quality of care issues.

Due to industry concerns with the initial proposal, it was determined that a more clinically sound approach to meeting Legislative objectives needed to be developed. To generate immediate savings, however, a \$24.2 million gross (\$12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop such an approach. Based on the results of those meetings, a new proposal was developed which achieved less savings than required by the Financial Plan (\$5 million gross/\$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at \$19.2 million gross (\$9.6 million State share) to account for the difference through March 31, 2013.

COSTS:

Costs to State Government:

There are no additional costs to State government as a result of this amendment.

Costs of Local Government:

There will be no additional cost to local governments as a result of these amendments.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this amendment.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

No significant alternatives are available at this time. In collaboration with the hospital industry, the State developed a more clinically sound method to achieve savings. However, this amount was less than was required by the Financial Plan. Thus, there is no option to not act on this initiative since the Enacted Budget assumed savings that total \$24.2 million.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

Section 86-1.16 requires that the statewide base price be reduced by \$19,200,000 for the period May 1, 2012, through March 31, 2013.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Health care providers subject to the provisions of this regulation under section 2807-c(35) of the Public Health Law will see a minimal decrease in funding as a result of the reduction in the statewide base price.

This rule will have no direct effect on Local Governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

As a result of the new provision of 86-1.16, overall statewide aggregate hospital Medicaid revenues for hospital inpatient services will decrease in an amount corresponding to the total statewide base price reduction.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Small Business and Local Government Participation:

Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County

Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Compliance Requirements:

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Rural Area Participation:

This amendment is the result of discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed emergency regulation revises the final statewide base price for the period beginning May 1, 2012, through March 31, 2013.

Department of Law

NOTICE OF WITHDRAWAL

Freedom of Information Law

I.D. No. LAW-08-12-00003-W

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

Action taken: Notice of proposed rule making, I.D. No. LAW-08-12-00003-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 22, 2012.

Subject: Freedom of Information Law.

Reason(s) for withdrawal of the proposed rule: The Department of Law received one objection to the proposed consensus rule.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Determining When Funds Escrowed in Connection with the Offer or Sale of Cooperative Interests in Realty May be Released

I.D. No. LAW-50-11-00002-RP

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

Proposed Action: Amendment of sections 18.3, 20.3, 21.3, 22.3, 23.3, 24.3 and 25.3 of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(2)(b) and (6)

Subject: Determining when funds escrowed in connection with the offer or sale of cooperative interests in realty may be released.

Purpose: Elimination of the Attorney General's role in adjudicating such disputes.

Substance of revised rule: The proposed amendments eliminate the Attorney General's role in adjudicating contractual disputes between sponsors of cooperatives, condominiums, homeowners' associations, timeshares, and senior residential communities and contract vendees, thereby leaving such matters to be adjudicated in court, as is done in the case of analogous disputes concerning contracts to purchase private homes and transactions between non-sponsor sellers and purchasers. The revised regulation clarifies the conditions under which the escrow agent holding the down payments may release the funds to the sponsor, and also provides that the previous version of the regulation will remain in effect for purchase agreements between sponsors and purchasers signed on or before September 4, 2012.

Revised rule compared with proposed rule: Substantial revisions were made in sections 18.3, 20.3, 21.3, 22.3, 23.3, 24.3 and 25.3.

Text of revised proposed rule and any required statements and analyses may be obtained from Lewis A. Polishook, New York State Department of Law, 120 Broadway, 23rd Floor, New York, New York 10271, (212) 416-8372, email: lewis.polishook@ag.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory Authority. New York General Business Law ("GBL") Section 352-e(6) authorizes the Attorney General to adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the legislative mandates of Section 352-e of the General Business Law. GBL § 352-e(2-b) further authorizes the Attorney General to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of this subdivision, including, but not limited to, determining when escrow funds may be released."

2. Legislative Objectives. GBL 352-e requires that, "[i]n the case of offerings of cooperatives, condominiums, interest in homeowners association and other cooperative interests in realty, . . . the attorney general may refuse to issue a letter of acceptance unless the offering statement, prospectus or plan shall provide that all deposits, down-payments or advances made by purchasers of residential units shall be held in a special escrow account" or other appropriate form of security "pending delivery of the completed apartment or unit and a deed or lease whichever is applicable." The Attorney General has promulgated detailed regulations, codified at 13 NYCRR § 18.3(p), 20.3(o)(3), 21.3(l), 22.3(k), 23.3(q), and 24.3(m) concerning escrow accounts or other suitable substitutes. Although the statute authorizes the Attorney General to issue regulations concerning "when escrow funds may be released," it does not direct the Attorney General to be the arbiter of such disputes.

3. Needs and Benefits. In 1992, the Attorney General amended Title 13, Parts 18, 20, 21, 22, 23, and 24 to require sponsors, and permit purchasers and escrow agents, to apply to the Attorney General for a determination on the disposition of a down payment and any interest earned thereon in connection with the purchase of residential units. At the time, the vast majority of offering plans involved the conversion of tenanted buildings from rental to cooperative or condominium ownership. The escrow deposits in such offerings were generally for small sums, and disputes over the release of these funds generally involved the question of whether the sponsor had complied with the requirements set forth in the procedure to purchase section of the offering plan. Primarily, those disputes involved procedural requirements such as whether the sponsor gave proper notification that the funds had been deposited into escrow, adequately noticed the closing date, or properly demanded payment.

In recent years, however, the down payment disputes submitted to the Attorney General have both broadened in their scope and multiplied in number. In particular, the individualized and fact-specific nature of these disputes has required the expenditure of significant resources in areas not exclusively within the province of the Attorney General's jurisdiction. For example, purchasers submitting disputes often contend that the units as constructed materially deviate from representations in the offering plan or are defective in ways not apparent without review by an engineer. Other disputes raise contested factual issues as to representations sponsors or selling agents allegedly made to purchasers and whether the unit was in fact ready for occupancy. Some disputes concern compliance with statutes over which the Attorney General has no jurisdiction, such as the federal Interstate Land Sales Full Disclosure Act and the Building Code of the

City of New York. Furthermore, the submitted disputes more often than not involve deposits of hundreds of thousands, and sometimes millions of dollars, with the purchasers being persons of substantial means. The severe downturn in the real estate market in 2008 accelerated the volume of disputes submitted to the Attorney General from 15 disputes in 2005 to a high of 473 in 2009.

Unlike the limited scope of disputes envisioned by the 1992 regulation, most of the down payment disputes involving cooperatives, condominiums, interests in homeowners' associations, timeshares, and senior residential communities that have been submitted to the Attorney General in recent years involve fact-specific issues similar to those regularly addressed as part of an adversarial process in courts of law. The Attorney General believes that such disputes more appropriately should be addressed by the court system, which has the capacity and procedures necessary for conducting evidentiary hearings that traditionally form the core of the judicial system.

Over the years, escalating real estate prices have obviated another intended purpose of the 1992 regulation: Providing a means of legal redress for purchasers and sellers who, because of personal economic circumstances or the amount in controversy, would not have ready access to legal representation or judicial relief. The Attorney General notes in this regard that the cost of purchasing cooperatives, condominiums and interests in homeowners' associations is comparable to and often higher than the cost of purchasing private homes. Contracts for the purchase and sale of private homes typically require that the parties or escrow agent seek a judicial or arbitral determination as to the entitlement to escrowed funds. The Attorney General's proposed regulations would leave purchasers and sellers of cooperatives, condominiums, interests in homeowners' associations, timeshares, and interests in senior residential communities similarly situated to purchasers and sellers of private homes – a result congruous with their similar costs.

Based on public comments, the Attorney General has modified the proposed rule making to clarify the conditions under which the escrow agent holding the down payments may release the funds to the sponsor.

The proposed regulations will not apply to existing purchase agreements, all of which currently provide that in case of a dispute the escrow agent will hold the escrowed funds pending a joint written direction by the parties, a judicial order, or a determination by the Attorney General, and the Attorney General will continue to adjudicate escrow disputes concerning the disposition of down payments for purchase agreements entered into on or before September 4, 2012. For such disputes, the previous version of these regulations will remain in effect. The Attorney General anticipates requiring that all offering plans, form purchase agreements, and escrow agreements be amended on or shortly after September 4, 2012, to eliminate references to the Attorney General's role in making such determinations. The Attorney General further anticipates providing a model amendment to address the necessary changes to offering plans, escrow agreements, and form purchase agreements, and to provide further guidance by policy memorandum as to the procedure for the submission of such amendments.

4. Costs. The proposed regulations impose no additional costs to either the regulated parties or local and state governments. Purchasers and sellers might incur increased filing and attorneys' fees in connection with participating in court proceedings. However, the Attorney General notes that retaining counsel in connection with the submission of applications for the disposition of down payments is costly, and, under the current system, the losing party may still pursue judicial review of such determinations pursuant to Article 78 of the New York Civil Practice Law and Rules ("Article 78"), which adds to the cost of the dispute determination process. As a result of this change, the courts may experience a slight increase in case load as a result of disputes being filed in court rather than before the Attorney General. Again, however, some of these matters are already brought in court as petitions for review pursuant to Article 78.

The adoption of the rule will impose no additional costs on the Department of Law.

5. Local Government Mandates. The proposed regulations do not impose any programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district. However, local courts may experience a minimal increase in the number of cases filed as a result of the proposed regulations.

6. Paperwork. There are no additional reporting or paperwork requirements as a result of the proposed regulations.

7. Duplication. The proposed regulations will not duplicate any existing state or federal rule.

8. Alternatives. The Attorney General has considered alternatives, including preserving the existing regulation or limiting the dispute resolution function to cases that fall below a jurisdictional maximum dollar amount. As the accompanying reasons underlying the Attorney General's finding of necessity make clear, the Attorney General believes that maintenance of the status quo is unnecessary for disputes involving more

expensive properties. Moreover, the vast majority of disputes concerning cooperative interests in realty submitted to the Attorney General in recent years are more amenable to resolution in a judicial forum, because of the nature of the issues, the amounts in controversy, and the fact that the parties in most of the disputes currently before the Department of Law are ordinarily represented by counsel highly capable of litigating the matter in court as part of the adversarial process.

The Attorney General also considered and rejected preserving the dispute resolution function for disputes involving sums that fall under a jurisdictional maximum dollar amount. The Attorney General rejected that possibility for two reasons. First, any jurisdictional limit would be arbitrary, especially given the different percentages of the total purchase price required as a deposit in different contracts. For example, a \$100,000 deposit could represent either 10 percent of the purchase price of a million-dollar unit or 25 percent of the purchase price of a \$400,000 unit. Although the sum in dispute is the same, the purchasers of those two units are not similarly situated. Second, the Attorney General believes that dispute resolution for transactions concerning the sale and purchase of private homes or transactions between non-sponsor sellers of cooperatives, condominiums, homeowners' associations, timeshares, and interests in senior residential communities are currently resolved in the courts regardless of amount in dispute, and that those fora provide a reasonably efficient system for dispute resolution. Third, courts have the capacity and procedures necessary for conducting evidentiary hearings that traditionally form the core of the judicial system. Finally, for very small sums, the courts of limited jurisdiction are available for ease of access and lower cost.

Finally, the Attorney General considered applying the proposed regulations retroactively to all pending applications. However, the Attorney General has determined that because the parties to such disputes have already expended significant time and effort in presenting their positions to the Attorney General, it would not be appropriate to require those parties to start anew in litigation. Accordingly, the proposed amendments to the regulations will apply only to disputes submitted after the regulations become effective, but will not apply to disputes submitted pursuant to purchase agreements signed before September 4, 2012, the effective date of these regulations.

9. Federal Standards. The proposed regulations do not exceed any minimum standards of the federal government for the same or similar subject.

10. Compliance Schedule. The proposed regulations will go into effect upon the publication of a Notice of Adoption in the New York State Register.

Revised Regulatory Flexibility Analysis

The revisions to the regulation first proposed in the December 14, 2012 Notice of Proposed Rule Making do not alter the amended regulations' impact on compliance obligations, economic or technical feasibility, jobs, or small business or local government participation. The revisions will reduce slightly the amended regulations' already-minimal impact on professional services and costs by preserving the right of purchasers and sponsors who signed purchase agreements before the effective date of the amended regulations to seek to resolve their disputes via a determination of the Attorney General.

Revised Rural Area Flexibility Analysis

The revisions to the regulation first proposed in the December 14, 2012 Notice of Proposed Rule Making do not alter the amended regulations' impact on reporting, record keeping, and other compliance requirements in rural areas or rural area participation. The revisions will reduce slightly the amended regulations' already-minimal impact on costs by preserving the right of purchasers and sponsors who signed purchase agreements before the effective date of the amended regulations to seek to resolve their disputes via a determination of the Attorney General.

Assessment of Public Comment

The Department of Law received comments from two individuals. The comments fall into four categories. The first category concerns the need to update offering plans to reflect the revised language. The second category concerns the possibility of explicitly referring to arbitration as a means of dispute resolution. The third category identifies difficulties in the proposed language concerning release of escrowed funds on notice to purchasers. The final comment is that the Attorney General should retain its escrow dispute determination function for matters below a jurisdictional cap. These comments are addressed in turn below.

Amendment to Existing Plans

One commenting party asked whether immediate amendment of all offering plans would be required under the revised regulations. The previous regulatory impact statement did not address this issue, but the new regulatory impact statement clarifies that all offering plans, including the forms of purchase agreement used in connection therewith, will have to be amended to reflect the elimination of the escrow dispute resolution

function. However, to give offerors and the Department of Law adequate time to prepare the new purchase agreements and offering materials and process the new amendments, amendments updating the escrow language of offering plans should not be submitted before September 4, 2012.

Additionally, the original proposed amendments contemplated the elimination of the dispute resolution function even as to existing purchase agreements that call for dispute resolution by the Attorney General. The revised proposed amendments clarify the implementation date for the revised regulations—September 4, 2012—and also make clear that the Attorney General will entertain applications concerning disputes where the purchase agreement was signed before September 4, 2012.

The Attorney General further anticipates providing a model amendment to address the necessary changes to offering plans, escrow agreements, and form purchase agreements, and to provide further guidance by policy memorandum as to how to the submission of such amendments.

Arbitration

One commenter suggested that the revised regulations explicitly authorize arbitration of disputes under purchase agreements. The Department of Law will not address the issue of the interplay between the Department's dispute resolution regulations and arbitration clauses in purchase agreements in connection with this rule making. The issue appears to be one of first impression in New York and should be addressed, if at all, by the Courts of this State in the first instance.

Escrow Release Language

Both commenting parties commented on the language in the proposed amendments concerning the conditions under which the escrow agent would release the escrowed funds. One commenter found the phrasing of the timing of the release of such funds to be awkward, and also believed that the modified regulations might deter purchasers from pursuing meritorious claims to deposits because they would have to seek preliminary injunctive relief in Court. The other commenter stated that the proposed language did not give escrow agents sufficient guidance or authority to release funds.

In revising the proposed amendments to the regulations, the Department of Law has modified the language of the subsections governing the release of funds. The revised proposed amendments track the standard form contracts (the "Form Contracts") for cooperative, condominium, and home sales prepared by the New York City and New York State Bar Associations by providing that the escrow agent may release funds to the sponsor upon prior written notice to the purchaser unless the purchaser provides timely notice of objection to the release of funds, in which case the escrow agent must retain the funds in escrow until receipt of a further written directive signed by the parties to the purchase agreement or final non-judicial adjudication of the merits of the dispute. This revised language is consistent with the existing practices in the resale market and provides greater protection to purchasers (and sponsors) by allowing them to preserve the status quo by simply putting the escrow agent on notice of the dispute.

Both the original regulations and the Form Contracts give the objecting parties only 10 business days to object to the release of funds. The Department of Law has seen several situations in which purchasers were unaware of the impending release of funds or may even have been misled by ongoing settlement negotiations. For this reason, both the original proposed amendments and the revised proposed amendments require written notice 30 days before the release of escrowed funds.

Jurisdictional Threshold

One commenter noted that the Attorney General should consider retaining the determination function for disputes falling below an unspecified jurisdictional threshold. The Attorney General considered and rejected this alternative, for the reasons explained in the Regulatory Impact Statement, and sees no reason to revisit those conclusions. Simply put, in this regard purchasers of units from sponsors are similarly-situated to purchasers of units at resale and purchasers of private homes, who must resort to other fora to resolve such disputes.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rights of Patients

I.D. No. OMH-20-12-00003-P

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

Proposed Action: Amendment of Part 527 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07 and 7.09; Correction Law, section 401

Subject: Rights of Patients.

Purpose: Extend rights in Part 527 to inmates receiving services at DOCCS regional medical units/residential crisis treatment programs.

Text of proposed rule: 1. Paragraph (1) of subdivision (a) of section 527.1 of Title 14 NYCRR is amended as follows:

(1) Except as otherwise indicated by the specific context, and with the exception of sections 527.4 and 527.6, this Part shall apply to all psychiatric hospitals operated by the Office of Mental Health, all residential treatment facilities for children and youth, and to all psychiatric hospital services required to have an operating certificate from the Office of Mental Health, and provided further that section 527.8 of this Part shall also apply to all secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law. *Only section 527.8(c)(5) of this Part shall apply to regional medical units operated by the Department of Corrections and Community Supervision at which the Office of Mental Health provides outpatient psychiatric treatment, and to correctional facilities operated by the Department of Corrections and Community Supervision at which the Office of Mental Health operates a residential crisis treatment program, except to the extent such provisions are not inconsistent with the Correction Law or Department of Corrections and Community Supervision regulations.*

2. Subdivision (b) of section 527.1 of Title 14 NYCRR is amended as follows:

(b) The intent of this Part is to define the rights of patients receiving treatment at psychiatric hospitals and to extend certain rights provided in section 527.8 of this Part to persons confined or committed to secure treatment facilities operated by the Office of Mental Health as defined in section 10.03 of the Mental Hygiene Law. *Only section 527.8(c)(5) of this Part shall apply to the regional medical units operated by the Department of Corrections and Community Supervision at which the Office of Mental Health provides outpatient psychiatric treatment, and to correctional facilities operated by the Department of Corrections and Community Supervision at which the Office of Mental Health operates a residential crisis treatment program, except to the extent such provisions are not inconsistent with the Correction Law and Department of Corrections and Community Supervision regulations.*

3. A new subdivision (g) is added to section 527.2 of Title 14 NYCRR and subdivisions (g) and (h) are relettered as (h) and (i) as follows:

(g) *Section 401 of the Correction Law provides that the Office of Mental Health and the Department of Corrections and Community Supervision shall be jointly responsible for the administration and operation of programs for the care and treatment of inmates with mental illness who are in need of psychiatric services but who do not require hospitalization for the treatment of mental illness.*

[(g)] (h) Article 29-C of the Public Health Law establishes the right of competent adults to appoint an agent to make health care decisions in the event they lose decisionmaking capacity. Article 29-C further empowers the Office of Mental Health to establish regulations regarding the creation and use of health care proxies in mental health facilities.

[(h)] (i) The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, sections 4206 and 4751) requires that institutional providers participating in the Medicare or Medical Assistance programs inform patients about their rights, under State law, to express their preferences regarding health care decisions.

4. A new paragraph (8) is added to subdivision (a) of section 527.8 of Title 14 NYCRR as follows:

(8) *Inmate patient means a person committed to the custody of the Department of Corrections and Community Supervision who is an outpatient of Central New York Psychiatric Center at the regional medical units operated by the Department of Corrections and Community Supervision at which the Office of Mental Health provides outpatient psychiatric treatment, and at correctional facilities operated by the Department of Corrections and Community Supervision at which the Office of Mental Health operates a residential crisis treatment program.*

5. A new paragraph (5) is added to subdivision (c) of section 527.8 of Title 14 NYCRR and the existing paragraph (5) is amended and renumbered as paragraph (6) as follows:

(5) *Inmate Patients.*

(i) *Except in emergency circumstances as provided in paragraph (1) of this subdivision, an inmate patient may not be given a psychotropic medication over his or her objection without court authorization.*

(ii) *Prior to requesting court authorization to administer psychotropic medication to an objecting inmate patient, the clinical director, or his or her designee, of Central New York Psychiatric Center, must determine that the administration of psychotropic medication is in the inmate patient's best interests and that the inmate patient lacks capacity*

to make a reasoned decision concerning administration of such medication. In making such determination, the clinical director, or his or her designee, shall ensure compliance with the procedures described below. In the interest of prompt resolution of conflicts regarding administration of psychotropic medication over objection, each of the evaluations of an inmate patient described below should be completed within 24 hours.

(a) *Evaluation by treating physician. Upon an inmate patient's objection to the proposed administration of psychotropic medication, the treating physician shall formally evaluate whether the administration of psychotropic medication is in the inmate patient's best interests, in light of all relevant circumstances including the risks, benefits and alternatives to the inmate patient of the administration of psychotropic medication, and the nature of the inmate patient's objection thereto, and whether the inmate patient has the capacity to make a reasoned decision concerning the administration of such medication. If the physician finds that administration of psychotropic medication is in the inmate patient's best interests and the inmate patient lacks capacity to make a reasoned decision concerning administration of such medication, he or she shall personally inform the inmate patient of his or her determination. If the inmate patient continues to object to the proposed psychotropic medication, the physician shall forward his or her evaluation and findings to the clinical director with a request for further review. He or she shall also notify in writing the inmate patient, Mental Hygiene Legal Service, and any other representative of the inmate patient of his or her determination and request, if any, for further review.*

(b) *Review by the clinical director or his or her designee.*

(1) *Upon receipt of the treating physician's request for further review, the clinical director shall appoint a physician to evaluate whether the proposed administration of psychotropic medication is in the inmate patient's best interests, and whether the inmate patient has the capacity to make a reasoned decision concerning treatment. The reviewing physician may be any physician of suitable expertise relative to the proposed administration of psychotropic medication and may be an employee of the facility, including the clinical director, or independent of the facility. In performing his or her evaluation, such physician shall review the inmate patient's record and personally examine the inmate patient. If the reviewing physician's determination is administration of psychotropic medication over objection is appropriate, he or she shall personally inform the inmate patient of his determination.*

(2) *If there is a substantial discrepancy between the opinions of the treating physician and reviewing physician regarding the inmate patient's capacity or whether administration of psychotropic medication is in the inmate patient's best interests, the clinical director may, at his or her option, appoint a third physician to conduct an evaluation pursuant to this subparagraph.*

(3) *If, after completion of the evaluation by the reviewing physician (or physicians), the inmate patient continues to object to the proposed administration of psychotropic medication, the clinical director shall make a determination on behalf of the facility whether the inmate patient has capacity to make a reasoned decision concerning the administration of psychotropic medication and whether such medication is in the inmate patient's best interests. If the clinical director finds that the inmate patient has capacity to make a reasoned decision concerning the administration of psychotropic medication or that such medication would not be in the inmate patient's best interests, he or she shall uphold the inmate patient's objections and so notify the inmate patient, Mental Hygiene Legal Service, and any other representative of the inmate patient. If the clinical director's determination is that the inmate patient lacks capacity, and psychotropic medication over objection is in the inmate patient's best interests, he or she may apply for court authorization of administration of psychotropic medication, and so notify the inmate patient, Mental Hygiene Legal Service, and any other representative of the inmate patient.*

[(5)](6) *Nothing in this subdivision shall prevent a treating physician, treatment team, or others involved in the patient's or inmate patient's care from continuing to explain the proposed treatment to the patient or inmate patient as described in subdivision (a) of this section[,] and to seek his or her voluntary agreement thereto[.]. Further, the facility [to] shall ensure that any such efforts are made in a clinically appropriate manner. A patient or inmate patient may at any time withdraw his or her objection to the proposed treatment, and the treating physician may at any time substitute another professionally acceptable course of treatment to which the patient or inmate patient does not object. Upon the withdrawal of the patient's or inmate patient's objection or his or her agreement to a substituted course of treatment, the physician shall immediately notify by telephone Mental Hygiene Legal Service and the patient's or inmate patient's attorney, if any. Unless the patient or inmate patient, Mental Hygiene Legal Service or the patient's or inmate patient's attorney [renew] renews the objection, treatment may be commenced 24 hours after notice has been provided. If the Mental Hygiene Legal Service or the patient's or inmate patient's attorney [agree] agrees, treatment may be*

commenced immediately. Notwithstanding a patient's or inmate patient's withdrawal of his or her objection to a proposed treatment, nothing in this paragraph shall diminish or supersede the need for obtaining informed consent for the proposed treatment when so required under section 27.9 of this Title or under other provisions of law.

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

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction. Section 7.07 of the Mental Hygiene Law gives the Office of Mental Health (Office) the responsibility for seeing that the personal and civil rights of persons with mental illness, who are receiving care and treatment, are adequately protected. Section 401 of the Correction Law provides that the Office shall be responsible for the administration and operation of programs for the care and treatment of inmates with mental illness who are in need of psychiatric services but who do not require hospitalization for the treatment of mental illness.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. In establishing Section 7.07 of the Mental Hygiene Law, the Legislature charged the Office with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

3. Needs and Benefits: Section 527.8 of Part 527 of Title 14 was promulgated to safeguard the right of involuntarily committed patients to refuse psychotropic medication. The regulation set forth under what circumstances a person held involuntarily at psychiatric facilities pursuant to Article 9 of the Mental Hygiene Law could be treated with psychotropic medication over their objection. The regulation establishes that first, a court must find that the person lacks the mental capacity to make a reasoned decision with respect to proposed treatment, and second, the proposed treatment must be narrowly tailored to give substantive effect to the patient's liberty interest. Section 527.8 has been amended since it was originally promulgated to further protect this right to refuse psychotropic medication. The most recent amendment applied Section 527.8 to individuals committed to secure treatment facilities under Article 10 of the Mental Hygiene Law, supporting the idea that individuals confined in a secure treatment facility should have the same right to refuse treatment as individuals involuntarily committed to a psychiatric hospital. Consistent with its statutory responsibility for seeing that the personal and civil rights of persons with mental illness who are receiving care and treatment are adequately protected, the Office has determined that 14 NYCRR Section 527.8 should be further amended to extend the right to object to the administration of psychotropic medication to persons receiving mental health care provided by the Office at Department of Corrections and Community Supervision (DOCCS) regional medical units and in DOCCS correctional facilities at which the Office operates a residential crisis treatment program. Currently individuals, who are receiving mental health care at such facilities who would benefit from psychotropic medication but do not meet the criteria for inpatient hospitalization or are unable to be committed to a psychiatric hospital due to an unstable medical condition, would not receive effective and quality mental health care as is required by 7.07 of the Mental Hygiene Law. This amendment would safeguard those individuals' rights.

4. Costs:

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

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

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

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

6. Paperwork: No increased paperwork is anticipated as a result of these amendments.

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

8. Alternatives: The only alternative to the regulatory amendment which was considered was inaction. Since inaction would continue to deprive

persons in a regional medical unit or receiving mental health care at a correctional facility where the Office operates a residential crisis treatment program from utilizing the treatment over objection process currently available to persons who are involuntarily committed through Articles 9 and 10 of the Mental Hygiene Law, that alternative was necessarily rejected.

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

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

Regulatory Flexibility Analysis

The proposed amendments will extend the rights established in 14 NYCRR Part 527 to inmates receiving services at regional medical units operated by the Department of Correctional Services and Community Supervision and residential crisis treatment programs within correctional facilities. As there will be no adverse economic impact on small businesses or local governments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rule will not impose any adverse economic impact on rural areas. The proposed amendments will extend the rights established in 14 NYCRR Part 527 to inmates receiving services at regional medical units operated by the Department of Correctional Services and Community Supervision and residential crisis treatment programs within correctional facilities. This rule will not result in a negative impact on any rural areas.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have no impact on jobs and employment opportunities. The proposed amendments will extend the rights established in 14 NYCRR Part 527 to inmates receiving services at regional medical units operated by the Department of Correctional Services and Community Supervision and residential crisis treatment programs within correctional facilities. These regulatory amendments will not result in any impact on jobs and employment opportunities.

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NFTA's Procurement Guidelines

I.D. No. NFT-20-12-00001-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 section 1159.4 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e(5) and 1299-t

Subject: NFTA's Procurement Guidelines.

Purpose: To amend the NFTA's Procurement Guidelines to make a technical change.

Text of proposed rule: Subsection (v) to subsection (3) to subdivision (h) of section 1159.4 is amended as follows:

(v) The published selection criteria shall be as follows: Professional Services, 40% qualifications and experience, 30% technical criteria and 30% cost; Revenue Generating and Other Services, 20% qualifications and experience, 30% technical criteria and 50% cost; Technical/Operation Sensitive Services, 20% qualifications and experience, 40% technical criteria and 40% cost; [Transit Buses] *Specialty Vehicles, Equipment and Technical Products*, 20% qualifications and experience, 50% technical criteria and 30% cost.

Text of proposed rule and any required statements and analyses may be obtained from: Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14222, (716) 855-7398, email: Ruth_Keating@nfta.com

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

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

Consensus Rule Making Determination

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being amended for the following reasons:

1. The only change is to the title of a category of procurement.
2. The changes are not controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The change to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Subject: Denying West Valley Crystal Water Company, Inc.'s petition for emergency funding.

Purpose: To deny West Valley Crystal Water Company, Inc.'s petition for emergency funding.

Substance of final rule: The Commission, on April 19, 2012 adopted an order denying West Valley Crystal Water Company, Inc.'s petition for emergency funding because of unauthorized past expenses and departure from its rate plan; and an extraordinary event did not occur to justify deferral accounting, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-W-0357SA1)

Public Service Commission

NOTICE OF ADOPTION

Petition of 119 Third Avenue Associates LLP to Submeter Electricity at 181 East 119th Street, Manhattan, New York

I.D. No. PSC-32-09-00017-A

Filing Date: 2012-04-25

Effective Date: 2012-04-25

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

Action taken: On 4/19/12, the PSC adopted an order approving the petition of 119 Third Avenue Associates LLP to submeter electricity at 181 East 119th Street, Manhattan, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(2), (3), (4), (12) and (14)

Subject: Petition of 119 Third Avenue Associates LLP to submeter electricity at 181 East 119th Street, Manhattan, New York.

Purpose: To approve the petition of 119 Third Avenue Associates LLP to submeter electricity at 181 East 119th St., Manhattan, New York.

Substance of final rule: The Commission, on April 19, 2012 adopted an order approving the petition of 119 Third Avenue Associates LLP to submeter electricity at 181 East 119th Street, Manhattan, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0561SA1)

NOTICE OF ADOPTION

Denying West Valley Crystal Water Company, Inc.'s Petition for Emergency Funding

I.D. No. PSC-33-11-00006-A

Filing Date: 2012-04-25

Effective Date: 2012-04-25

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

Action taken: On 4/19/12, the PSC adopted an order denying West Valley Crystal Water Company, Inc.'s petition for emergency funding because of unauthorized past expenses; departure from its rate plan and an extraordinary event did not occur to justify deferral accounting.

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

NOTICE OF ADOPTION

Permit the Use of the Schneider Electric ION8650 Meter for Use in Substation Applications

I.D. No. PSC-45-11-00014-A

Filing Date: 2012-04-25

Effective Date: 2012-04-25

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

Action taken: On 4/19/12, the PSC adopted an order approving the application of Schneider Electric to permit the use of the Schneider Electric ION8650 meter for use in substation applications.

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

Subject: Permit the use of the Schneider Electric ION8650 meter for use in substation applications.

Purpose: To permit the use of the Schneider Electric ION8650 meter for use in substation applications.

Substance of final rule: The Commission, on April 19, 2012, adopted an order approving the application of Schneider Electric to permit the use of the Schneider Electric ION8650 meter for use in substation applications.

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

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

Assessment of Public Comment

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

(11-E-0578SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of the Transfer of Ownership Interest in Caithness and Its 326 MW Electric Generation Facility

I.D. No. PSC-20-12-00006-P

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

Proposed Action: The Commission is considering a petition requesting the approval of the transfer of ownership interests in Caithness Long Island LLC (Caithness), which owns and operates a 326 MW electric generation facility located in the Town of Brookhaven.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Approval of the transfer of ownership interest in Caithness and its 326 MW electric generation facility.

Purpose: Consideration of approval of the transfer of ownership interest in Caithness and its 326 MW electric generation facility.

Substance of proposed rule: The Public Service Commission is considering a petition filed on April 24, 2012 by Caithness Long Island LLC (Caithness) and others, requesting the approval of the transfer of ownership interests in Caithness and the 326 MW electric generation facility it owns and operates in the Town of Brookhaven. The transfer is a feature of a corporate reorganization resulting in a change in the ownership interests in Caithness itself and a re-financing of debt upstream from Caithness. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(12-E-0197SP1)

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

Con Edison's Report on 2011 Performance Under Electric Service Reliability Performance Mechanism

I.D. No. PSC-20-12-00007-P

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

Proposed Action: The Public Service Commission is considering whether Consolidated Edison Company of New York, Inc. (Con Edison) met its 2011 performance standards under the Electric Service Reliability Performance Mechanism.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's Report on 2011 Performance under Electric Service Reliability Performance Mechanism.

Purpose: To consider whether Con Edison has met its performance standards as prescribed by the Commission in Con Edison's rate plan.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to Consolidated Edison Company of New York, Inc. (Con Edison) Report on 2011 Performance under Electric Service Reliability Performance Mechanism (2011 RPM Report). Specifically, the Commission will consider whether Con Edison has met all of the required performance standards set forth in the utility's rate plan. Con Edison states that a revenue adjustment of \$9 million is not applicable for its failure to meet its network duration and network outages per 1000 customers threshold standards given that interruptions were caused by excludable overhead major storms that have impacted its network system. In addition, Con Edison states that a revenue adjustment of \$5 million is not applicable for its failure to meet its radial duration threshold standard due to outages beyond its control. The utility states that it has met all the remaining performance metrics, which includes the radial frequency threshold standards, summer network feeder open automatics, major outages, radial restoration, pole repairs, shunt removals, no current streetlight and traffic signal repairs, remote monitoring system and over duty circuit breaker replacements.

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.

(09-E-0428SP4)

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

Approval, Under Lightened Regulation, of a Financing by Emkey in the Amount of \$11.0 Million

I.D. No. PSC-20-12-00008-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 petition from Emkey Gathering LLC and Emkey Transportation, Inc. (together, Emkey) requesting the approval, under lightened regulation, of a financing in the amount of \$11.0 million.

Statutory authority: Public Service Law, section 69

Subject: Approval, under lightened regulation, of a financing by Emkey in the amount of \$11.0 million.

Purpose: Consideration of approval, under lightened regulation, of a financing by Emkey in the amount of \$11.0 million.

Substance of proposed rule: The Public Service Commission is considering a petition filed on April 24, 2012 by Emkey Gathering LLC and Emkey Transportation, Inc. (together, Emkey) requesting the approval, under lightened regulation, of a financing in the amount of \$11.0 million. The financing will be comprised of a \$8,000,000 Revolving Credit Loan and a \$3,000,000 Term Loan and will be supported by a lien on the 320-mile natural gas gathering system located in Chautauqua and Cattaraugus Counties in New York and in Erie, Crawford and Warren Counties in Pennsylvania that Emkey owns. 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-G-0196SP1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

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

I.D. No. RWB-20-12-00005-E

Filing No. 406

Filing Date: 2012-04-30

Effective Date: 2012-05-09

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

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

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

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

Specific reasons underlying the finding of necessity: The Board has determined that immediate adoption of this rule is necessary for the pres-

ervation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

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

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

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government. Claiming races play an essential part of thoroughbred racing and pari-mutuel wagering. This rule is necessary to ensure integrity in the claiming process, and in turn promote the situation that when a horse steps onto a race track, it is fit to compete in the race in which it is entered.

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

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

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

4038.2. Minimum price for claim.

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 28, 2012.

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

Regulatory Impact Statement

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

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

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

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

The rule as written does not take into account principles of propor-

tional economics in relation to current purses. Purses have increased due in part to the advent of video lottery terminals (VLTs). Video lottery terminals opened up at Aqueduct on October 28, 2011, making Aqueduct an attractive venue for owners to race their horses. This year, purses at the NYRA have increased substantially. As reported by The Saratogian newspaper on March 17, 2012, NYRA spokesman Dan Silver said that for the first two months of 2012, purses at Aqueduct have averaged \$396,000 per day, which is up from \$266,000 per day over the same period last year. Subsequently, doubts have been raised publicly in the pari-mutuel wagering community as to whether the quality of horses has kept pace with the growth of claiming race purses.

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

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

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

4. Costs:

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

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

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

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities. This rulemaking does not impose any obligations on local governments.

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

7. Duplication: None.

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

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately upon publication as an adopted rule.

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

As is evident by the nature of this rulemaking, this proposal affects the entry of horses in claiming races proportional to the value of the horse.

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