

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Deregulation of Host Materials (Potatoes, Tomatoes and Eggplants) and Soil

I.D. No. AAM-08-12-00021-A

Filing No. 439

Filing Date: 2012-05-07

Effective Date: 2012-05-23

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

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Deregulation of host materials (potatoes, tomatoes and eggplants) and soil.

Purpose: Lifting the golden nematode quarantine in portions of Steuben and Livingston Counties.

Text or summary was published in the February 22, 2012 issue of the Register, I.D. No. AAM-08-12-00021-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2449

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Ash Trees, Nursery Stock, Logs, Green Lumber, Firewood, Stumps, Roots, Branches and Debris of a Half Inch or More

I.D. No. AAM-11-12-00001-A

Filing No. 438

Filing Date: 2012-05-07

Effective Date: 2012-05-23

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

Action taken: Amendment of sections 141.1(j) and 141.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more.

Purpose: To extend the emerald ash borer quarantine to Albany and Orange Counties to prevent the spread of this beetle to other areas.

Text of final rule: Subdivision (j) of Section 141.1 is amended to read as follows:

(j) Quarantined area. This term applies to *Albany, Orange, Niagara, Erie, Orleans, [Genessee] Genesee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties.*

Section 141.2 of 1 NYCRR is amended to read as follows:

Section 141.2. Quarantined area.

Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within *Albany, Orange, Niagara, Erie, Orleans, [Genessee] Genesee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties* to any point outside of said counties, except in accordance with this Part.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 141.1(j).

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

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

The nonsubstantive change to the amendments consists of a revision to the definition section of “quarantined area” (Section 141.1(j) of 1 NYCRR) to reflect the amendments to the extension of the quarantined area in section 141.2 of 1 NYCRR. Since this additional amendment merely makes the two sections consistent with one another, it is nonsubstantive in nature.

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-18-11-00001-P	May 4, 2011	May 3, 2012

State Commission of Correction

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

DOCCS Variances

I.D. No. CMC-21-12-00005-P

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

Proposed Action: Amendment of section 7603.2; and addition of section 7603.3(b)(5) to Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: DOCCS variances.

Purpose: To allow for a DOCCS variance to facility capacity regulations when necessary for inmate programming or other important needs.

Text of proposed rule: Section 7603.2 of Title 9 is amended to read as follows:

§ 7603.2 Conditions for applying for a variance

(a) The commissioner may apply to the commission for a variance to requirements of this Chapter when:

(1) compliance with a specific rule or regulation cannot be achieved by the effective date of such rule or regulation;

(2) due to a temporary condition or situation, compliance with a specific rule or regulation cannot be achieved; or

(3) compliance is to be achieved in a manner other than that which is specified in such rule or regulation.

(b) *In addition to the conditions cited in subdivision (a) of this section, the commissioner may apply to the commission for a variance to Part 7621 of this Title when the department has established that the programming or other important needs of one or more inmates cannot reasonably be met, or would be inordinately delayed, in the absence of such variance.*

([b]c) The provisions of this Part shall not apply to any requirements of this Chapter where it is specifically stated that variances to such requirements are prohibited.

A new paragraph (5) of subdivision (b) of section 7603.3 of Title 9 is added to read as follows:

(5) *when the application is made for reasons stated in section 7603.2(b) of this Part, the specific program(s) or need(s) in question shall be described in detail, together with an explanation as to why such program(s) or need(s) cannot reasonably be met, would be inordinately delayed, or cannot be established at an alternate correctional facility sufficient to meet the needs of the inmate population.*

Text of proposed rule and any required statements and analyses may be obtained from: Brian M. Callahan, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brian.Callahan@scoc.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:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing

minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to promulgate minimum standards to provide a mechanism by which the New York State Department of Corrections and Community Supervision (DOCCS) may apply for a variance to the Commission's regulations when situations exist or arise that would prevent or alter the department's ability to meet such requirements.

3.) Needs and benefits:

In 2011 alone, DOCCS closed a total of seven (7) correctional facilities. In the preceding years, DOCCS closed several other correctional facilities and numerous annexes. The residual inmate populations have been dispersed throughout the remaining facilities. Although these measures were understandably taken to improve economic efficiencies, it has resulted in a prison system that is undergoing a period of adjustment.

Notwithstanding this adjusting inmate population, DOCCS has continued to provide, and in some instances expand, an array of inmate programs. For example, with the passage of the Sex Offender Management and Treatment Act, DOCCS was required to significantly expand its residential sex offender treatment programs. Despite best efforts, the increased inmate populations caused by the influx of displaced prisoners has had a negative effect on the inmate programs situated at a certain few correctional facilities.

The Commission recognizes that, given the current population adjustment, strict enforcement of facility capacity regulations set forth in Part 7621 of Title 9 NYCRR would deny, or inordinately delay, the programming or other important needs of many DOCCS inmates. As presently constructed, the Commission's authority to grant a variance to DOCCS, as set forth in 9 NYCRR Part 7603, would not be available solely on the grounds of inmate programming or important need.

Provided that the Commissioner can provide a detailed description of the affected program, establish that inmate programming or other important needs cannot be met, or would be inordinately delayed, and explain why such a program or important need cannot reasonably be established at another correctional facility sufficient to meet the needs of the inmate population, the Commission submits that the proposed authority to grant a variance to facility capacity regulations would be in the best interest of the correctional system as a whole.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulation allows, but does not require, DOCCS to apply for a variance to facility capacity regulations when necessary to meet inmate programming or other important needs.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to local governments. As set forth above in subdivision (a), there will be no additional costs to state governments.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a county correctional facility.

5.) Local government mandates:

None.

6.) Paperwork:

This rule does not require any additional paperwork on regulated parties.

7.) Duplication:

This rule does not duplicate any existing State or Federal requirement.

8.) Alternatives:

The alternative, maintaining the current regulations relative to allowable DOCCS variances, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that the proposed amendment, allowing for a variance to facility capacity regulations to meet inmate programming or other important needs, would be in the best interest of the correctional system as a whole.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

DOCCS is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to allow the New

York State Department of Corrections and Community Supervision (DOCCS) to apply for a variance to facility capacity regulations when necessary to meet inmate programming or other important needs. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to allow the New York State Department of Corrections and Community Supervision (DOCCS) to apply for a variance to facility capacity regulations when necessary to meet inmate programming or other important needs. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to allow the New York State Department of Corrections and Community Supervision (DOCCS) to apply for a variance to facility capacity regulations when necessary to meet inmate programming or other important needs. As such, there will be no impact on jobs and employment opportunities.

Department of Corrections and Community Supervision

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

Inmate Correspondence Program

I.D. No. CCS-21-12-00003-P

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

Proposed Action: This is a consensus rule making to amend sections 720.3 and 720.4 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Correspondence Program.

Purpose: To expand exception to the five page limit for inmate receipt of printed or photocopied materials and other technical changes.

Text of proposed rule: The Department of Corrections and Community Supervision is amending subdivision 720.3(a), paragraphs 720.3(a)(1) and 720.3(b)(2), subdivision 720.3(i), paragraph 720.4(c)(2), adding a new paragraph 720.4(c)(4), and amending paragraph 720.4(i) as indicate below:

720.3(a) Negative correspondence and telephone list. Whenever the recipient of inmate correspondence indicates, in any manner, that he or she does not wish to receive further correspondence from the inmate, the correspondence unit, the package room, the Deputy Superintendent for Security, the *Supervising Offender Rehabilitation Coordinator* [Senior Correction Counselor], the *Facility Community Supervision* [Parole] Office and the inmate shall be notified. Departmental Form 3402 shall be used for notification. A copy will be filed.

720.3(a)(1) The negative correspondence and telephone list shall contain the name of any person or business that has indicated, in any manner, that further correspondence from the inmate is not desired. If a request to be removed from an inmate’s telephone or correspondence list is received, a confirmation letter shall be sent to the person making the request. If such a person indicates, at a later time, that further correspondence is not objectionable, the superintendent or his/her designee may, but need not, direct the name of that person or business be removed from the negative correspondence and telephone list. Upon receipt of a request to be placed on an inmate’s negative correspondence and telephone list, the requester is to be informed of the toll-free telephone number for the Office

of *Victim Assistance* [Services]. The requester should also be told that the Office of *Victim Assistance* [Services] is available to explain release notification options and access to Crime Victim Compensation funds, and when appropriate, to make referrals to support groups or community services such as those assisting victims of domestic violence or sexual assault.

720.3(b)(2) Persons under probation or *community* [parole] supervision. Authorization from the superintendent and the probation or parole officer must be obtained before the inmate may correspond with a probationer or parolee. Such correspondence will usually be limited to immediate family members.

720.3(i) It is the responsibility of each inmate to print or type his or her return address on the front upper-left-hand corner and on the back flap of each outgoing envelope exactly as illustrated below. The inmate shall use his or her commitment name unless it has been legally changed. Failure to include all return address information in the order indicated may result in the opening and return of the mail to the inmate. If the correspondence unit is unable to identify the inmate sender, the mail will be destroyed by the facility.

Great Meadow Correctional Facility
Box 51
Comstock, New York 12821-0051
John Doremi, 78-X-999

New York State

Department of Corrections and Community Supervision
[Great Meadow Correctional Facility]

John Doremi, 78-X-999

(Envelope - front - upper left)

(Envelope - back flap - centered)

Section 720.4 Incoming mail.

(c) Printed or photocopied materials.

(1) When, in the course of inspection, printed or photocopied materials are found, the entire contents of such correspondence may be delayed through the correspondence unit for up to six days while the materials are subject to media review guidelines (see Part 712 of this Title).

(2) A limit of five pages of printed or photocopied materials (an individual newspaper clipping will be considered one page) may be received within a piece of regular correspondence (except as provided in paragraphs (3) & (4) of this subdivision). In order to facilitate media review, pages or clippings must not be taped, glued, or pasted together or to other papers.

(3) Not to exceed once every four months, an inmate may make a written request to the superintendent to receive in excess of five pages of printed or photocopied legal papers specifically related to the inmate’s current legal matter (e.g., legal brief or trial transcript relating to the inmate’s active case) within a piece of regular correspondence. The inmate shall make the request in advance, specifically identifying the legal papers, including the approximate number of pages, and state why they cannot be obtained via the facility law library or privileged correspondence (e.g., from a court, attorney, or the New York State Law Library). If approved, the piece of correspondence must be received within 30 days thereafter. Upon timely receipt, it shall be processed in accordance with this section and shall not be deemed privileged correspondence.

(4) *The Five Page limit on printed or photocopied materials shall not apply to incoming mail from the entities listed in Part 721 paragraphs 721.2(b)(2) through (6) of this title.*

720.4(i) Inmates are authorized to retain all of their personal correspondence, subject only to the limitations expressed in Directive #4913, “Inmate [Personal] Property [Limits],” and any other applicable rule or regulation.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boli, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harri-man State Campus - Building 2, 1220 Washington Avenue, 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 Corrections and Community Supervision has determined that no person is likely to object to the proposed action. The amendments to this section make technical corrections to employee and office titles and also clarify Department policy by expanding exceptions to the limit of five pages of printed or photocopied materials that can be received by inmates through incoming correspondence. Therefore, the

Department has determined that this rulemaking makes technical and otherwise non-controversial changes to the regulation. See SAPA section 102(11)(c).

The proposed rule changes reflect office and employee title changes that came about due to the merger with the former Division of Parole. They also reflect the change from the Office of Victim Services to Office of Victim Assistance, so as to not be confused with the New York State Office of Victim Services. The amendments also reflect a revised Department directive title and an amended employee job title. The addition of the new paragraph 720.4(c)(4) was determined to be necessary to clarify for staff that materials received from specific entities as listed in 7 NYCRR paragraphs 721.2(b)(1) through (6) are not subject to the five page limit on printed or photocopied materials.

The Department's authority to make these changes resides in Correction Law, section 112 which grants the Commissioner the management and control of correctional facilities and the inmates therein, and provides the authority for the commissioner to make such rules and regulations, not in conflict with state statutes, as deemed necessary.

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is simply clarifying existing policy and procedure, and updating Department terminology, it has no adverse impact on jobs or employment opportunities.

Department of Environmental Conservation

NOTICE OF ADOPTION

Protected Native Plants List

I.D. No. ENV-03-12-00011-A

Filing No. 444

Filing Date: 2012-05-08

Effective Date: 2012-05-23

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

Action taken: Repeal of section 193.3 and addition of a new section 193.3 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 9-0105(1), (3) and 9-1503

Subject: Protected Native Plants List.

Purpose: To protect endangered, threatened, rare and exploitably vulnerable plants by updating the plant lists.

Substance of final rule: The existing Section 193.3 will be repealed and a new Section 193.3 will be adopted. The new section will update the lists of endangered, threatened, rare or exploitably vulnerable plants to reflect changes in plant populations since the lists were last updated in 2000. The updated lists are based upon the current existing definitions of endangered, threatened, rare and exploitably vulnerable plants, as defined in Section 193.3.

The regulations are authorized by Environmental Conservation Law (ECL), section 9-1503, which authorizes the Department to promulgate and adopt a list, or lists, of protected native plants which, by reason of their endangered, threatened, rare or exploitably vulnerable status, should not be picked or removed from their habitat.

Endangered species are listed in 6 NYCRR Section 193.3 subdivision (a), threatened species in subdivision (b), rare species in subdivision (c) or exploitably vulnerable species in subdivision (d) of this regulation. All of these plants are protected native plants pursuant to ECL section 9-1503. The common names contained on these lists are included for informational purposes only. The scientific names shall be used for the purpose of determining any violation. Site means a colony or colonies of plants separated from other colonies by at least one-half mile.

Endangered native plants listed are in danger of extirpation throughout all or a significant portion of their ranges within the State and require remedial action to prevent such extinction. Listed plants are those with five or fewer extant sites, or fewer than 1,000 individuals, or restricted to fewer than four U.S.G.S. 7 1/2 minute series maps, or species listed as endangered by the United States Department of Interior in the Code of Federal Regulations. (Please note: the list of 352 plants designated as endangered are omitted for this summary).

The listed threatened native plants are likely to become endangered within the foreseeable future throughout all or a significant portion of their ranges within the State. Listed plants are those with six to fewer than 20 extant sites, or 1,000 to fewer than 3,000 individuals, or restricted to not less than four or more than seven U.S.G.S. 7 1/2 minute series maps, or species listed as threatened by the United States Department of Interior in the Code of Federal Regulations. (Please note: The list of 155 plants designated as threatened are omitted for this summary).

Rare native plants have from 20 to 35 extant sites or 3,000 to 5,000 individuals statewide. (Please note: The list of 86 plants designated as rare are omitted for this summary).

Exploitably vulnerable native plants are likely to become threatened in the near future throughout all of a significant portion of their ranges within the State if causal factors continue unchecked. (Please note: The list of 148 plants designated as exploitably vulnerable are omitted for this summary).

It is a violation for any person, anywhere in the State, to pick, pluck, sever, remove, damage by the application of herbicides or defoliants, or carry away, without the consent of the owner, any protected plant. Each protected plant so picked, plucked, severed, removed, damaged or carried away shall constitute a separate violation.

The proposed revisions to the endangered, threatened, rare or exploitably vulnerable lists are the result of new information compiled by the Natural Heritage Program in its database. The Natural Heritage Program is a partnership between the New York State Department of Environmental Conservation and the Nature Conservancy. Through field inventories, analysis and a comprehensive database, the Natural Heritage Program keeps track of the status of rare plants in New York State. The Exploitably vulnerable list was originally developed through cooperation with the Department of Environmental Conservation, The Nature Conservancy, The Natural Heritage Program, State Garden Clubs, and many universities and colleges. The species on the Exploitably Vulnerable list have remained the same since 1989, other than a few plants that have been moved to another list, nomenclature changes and one species being removed from the list that was determined to be a misidentification and not native to New York State. When the regulation was proposed, the State Botanist's check list was used as a reference, however it had not been updated since 1997. It was not known that the Flora Atlas used by the Natural Heritage Program for nomenclature of scientific names had the updated scientific names for the Protected Plants List including the Exploitably Vulnerable List. This reference will be used for all future updates to the Protected Native Plants List.

The proposed rank changes are based on information contained in the Natural Heritage Program database and reflect the numbers of plants or the numbers of sites or locations of listed species. When new populations of species are found or when existing populations grow in number, plants may meet the criteria of a lower rank, or may be removed from the lists. Plants may increase in number due to the discovery of new sites or populations, environmental factors such as climate change, decrease of herbivores or better protection of habitat. Plants that were previously thought to have been extirpated in the State may have been re-discovered and then need to be added to one of the lists, based on their numbers. Two examples of this are plants that were re-discovered this past summer. Small whorled pagonia (*Isotria medeoloides*) had not been seen in the State for decades, even after years of searching the most likely sites. It is Federally listed as threatened. It has now been found again in New York. It will be added to the endangered list. Northeastern bulrush (*Scirpus ancistrochaetus*) is a Federally endangered plant that was thought to have been extirpated with little chance of ever finding it again in New York State. It was also found during a field survey this summer. It will be added to the endangered list. When existing populations decrease in numbers, or when entire sites or populations disappear, plants may meet the criteria of a higher rank. Plants may decrease in numbers due to environmental factors such as climate change, increase in herbivores, or destruction of habitats.

The proposed changes include 33 plants being moved from the endangered to the threatened list, two plants being moved from the endangered to the rare list, 30 plants from the endangered list being removed from all lists and 28 unlisted plants being added to the endangered list. Twenty plants are being moved from the threatened to the endangered list, 23 plants are being moved from the threatened to the rare list, seven threatened plants are being removed from all lists and nine unlisted plants are being added to the threatened list. Six plants are being moved from the rare to the threatened list, and 48 unlisted plants are being added to the rare list. One exploitably vulnerable plant is being moved to the threatened list and one is being removed from the list. There wasn't significant movement from one list to another. Most of the unlisted plants were added to the lists because of extensive field surveys and technological advances such as Geographic Information Systems and aerial mapping which allow better prediction of potential sites based on specific habitat requirements of plant species compared to the past when these tools were not available.

Many plants were removed from the lists due to an increase in their numbers, but many other plants were added to the lists because their populations have decreased. Plants that were thought to have been extirpated from the State have been found and are being added to the lists.

New York State is unique since it is a crossroads of plant distribution with a great variety of ecosystems, from the Long Island beaches to the Adirondack's high peaks. The State is on the boundary of many plant's ranges; the southern edge of many northern and even Arctic species; the northern limit for many southern species; and the eastern limit for many Midwestern prairie species. Because of this distribution, New York State has a long list of plants that, while common in many other locations, are rare in New York.

The new Protected Native Plants list has 162 scientific name changes. These changes were made to reflect new taxonomical information or the reclassification of plant families and genera, or to correct inaccurately listed plants. The International Code of Botanical Nomenclature is the internationally recognized authority for the naming of plants. The New York State Botanist at the State Museum also approves the names of plants in New York State, based on the international classification. The Natural Heritage Program uses the New York Flora Atlas, housed at the University of South Florida as the authority for scientific nomenclature.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 193.3.

Text of rule and any required statements and analyses may be obtained from: Doug Schmid, NYS DEC, 625 Broadway, Albany, NY 12233, (518) 402-9405, email: daschmid@gw.dec.state.ny.us

Additional matter required by statute: A Negative Declaration has been prepared in compliance with Article 8 of the ECL.

Revised Regulatory Impact Statement

1. Statutory authority:

The regulations are authorized by Environmental Conservation Law (ECL) section 9-1503, allowing the Department of Environmental Conservation (Department) to promulgate and adopt a list, or lists, of protected native plants which, by reason of their endangered, threatened, rare, or exploitably vulnerable status, should not be picked or removed from their natural habitat. The Department has adopted lists of protected native plants under this section of the law. This rule updates the lists to reflect changes in plant populations since the lists were last updated in 2000. These regulations are also authorized by ECL section 9-0105(1), which states that the Department has the power, duty, and authority to "exercise care, custody, and control" of certain State lands, and to "make necessary rules and regulations to secure proper enforcement" of the provisions of section 9-0105(3).

2. Legislative objectives:

The legislature recognized that historically, plants are the property of the landowner, unlike animals, which are the property of the State. Consequently, the legislature's objective in the statute was to give the landowner additional rights, over and above trespass laws, to approve or deny others the right to take plants from their property. The legislature further recognized that certain plants are threatened with extinction by unauthorized removal from landowner's lands. In giving the Department authority to give plants additional protection, the legislature recognized various classes of plants based on their rareness and exploitability. The legislature recognized that these classes of plants may require special protection.

3. Needs and benefits:

New York State has a Protected Native Plants list that lists endangered, threatened, rare or exploitably vulnerable plants. Plants of many species have become rare and some extirpated in New York due to exploitation and loss of habitat. The Protected Native Plants list was developed in 1989 to give landowners additional rights to prevent or prosecute unlawful taking of listed plants and to help in the conservation and preservation of plants. However, the status and knowledge of the distribution of many plant species has changed dramatically since the list was last revised eleven years ago. Many plants need additional protection over and above trespass laws of the State. Furthermore, as important as increasing landowner's rights to protect plants, official designation needs to be given to truly rare plants. An official list of endangered, threatened, rare or exploitably vulnerable plants under this section is beneficial to landowners and for plant conservation and preservation. The ability to enforce the regulation reduces the occurrence of unlawful taking of plants and, since the collection of plants contributes to their extirpation, the enforcement of the regulation leads to plant conservation and preservation.

The updated lists will be based upon the current existing definitions of endangered, threatened, rare or exploitably vulnerable plants, as defined in Section 193.3. The proposed revisions are the result of new information compiled by the Natural Heritage Program in its database.

The Natural Heritage Program is a partnership between the New York State Department of Environmental Conservation and the Nature

Conservancy. Through field inventories, analysis and a comprehensive database, the Natural Heritage Program keeps track of the status of rare plants in New York State. The Exploitably Vulnerable List was originally developed through cooperation with The Department of Environmental Conservation, The Nature Conservancy, The Natural Heritage Program, State Garden Clubs, and many universities and colleges. The species on the Exploitably Vulnerable list have remained the same since 1989, other than a few plants that have been moved to another list, nomenclature changes and one species being removed from the list that was determined to be a misidentification and not native to New York State. When the regulations were proposed, the State Botanist's Check list was used as a reference, however it had not been updated since 1997. It was not known that the Flora Atlas used by the Natural Heritage Program for nomenclature of scientific names had the updated scientific names for the Protected Native Plants List, including the Exploitably Vulnerable List. This reference will be used for all future updates to the Protected Native Plants List.

The proposed rank changes are based on information contained in the Natural Heritage Program database and reflect the numbers of plants or the numbers of sites or locations of listed species. When new populations of species are found or when existing populations grow in numbers, plants may meet the criteria of a lower rank, or may be removed from the lists. Plants may increase in numbers due to the discovery of new sites or populations, environmental factors such as climate change, decrease of herbivores or better protection of habitat. Plants that were previously thought to have been extirpated in the State may have been re-discovered and need to be added to one of the lists, based on their numbers. Two examples of this are plants that were re-discovered this past summer. Small whorled pagonia (*Isotria medeoloides*) had not been seen in the State for decades, even after years of searching the most likely sites. It is Federally listed as threatened. It has now been found again in New York. It will be added to the endangered list. Northeastern bulrush (*Scirpus ancistrochaetus*) is a Federally endangered plant that was thought to have been extirpated with little chance of ever finding it again in New York State. It was also found during a field survey this summer. It will be added to the endangered list.

When existing populations decrease in numbers, or when entire sites or populations disappear, plants may meet the criteria of a higher rank. Plants may decrease in numbers due to environmental factors such as climate change, increase in herbivores, or destruction of habitats. The State lists of endangered, threatened, rare or exploitably vulnerable plants have similar State rankings under the Natural Heritage Program.

The proposed changes include 33 plants being moved from the endangered to the threatened list, two plants being moved from the endangered to the rare list, 30 plants from the endangered list being removed and not being added to any other list and 28 unlisted plants being added to the endangered list.

Twenty plants are being moved from the threatened to the endangered list, 23 plants are being moved from the threatened to the rare list, seven threatened plants are being removed from all lists and nine unlisted plants are being added to the threatened list. Six plants are being moved from the rare to the threatened list, and 48 unlisted plants are now on the rare list that were previously unlisted. One exploitably vulnerable plant is being moved to the threatened list. Another is being removed from the list since the species was originally misidentified and it is not native to New York State. There wasn't significant movement from one list to another. Most of the unlisted plants were added to the lists because of extensive field surveys utilizing technological advances such as Geographic Information Systems and aerial mapping which allow better prediction of potential sites based on specific habitat requirements of plant species compared to the past when these tools were not available.

The new Protected Native Plants list has 162 scientific name changes. These changes were made to reflect new taxonomical information or the reclassification of plant families and genera or to correct inaccurately listed plants. The International Code of Botanical Nomenclature is the internationally recognized authority for the naming of plants. The New York State Botanist at the State Museum also approves the names of plants in New York State, based on the international classification. The Natural Heritage Program uses the New York Flora Atlas, housed at the University of South Florida as the authority for scientific nomenclature.

A letter informing interested parties of the Department's intent to revise the current list of protected native plants was sent out to provide an opportunity for individuals to comment about the proposal or to request information regarding the rulemaking process. This letter went out in March of 2011 to the following groups/institutions and organizations: NYS DOT-Eastern Zone, Adirondack Mountain Club, TNC-Eastern NY Chapter, Bard College Field Station, individuals at the Herbarium at the Brooklyn Botanic Garden, Van Cortlandt and Pelham Bay Parks, NYS-Office of Parks, Recreation and Historic Preservation, Institute of Ecosystem Studies, Millbrook, NY, Department of Biology at Queens College (CUNY), Biology Department at SUNY ESF, Herbarium at NY Botanical Garden,

Cornell University, Fresh Water Institute at Rensselaer Polytechnic Institute, Mohonk Preserve, Department of Biology at St. Johns University, NYC Parks Department Natural Resources Group, Bagdon Environmental Associates in Delmar, NY, NY, Buffalo Museum of Science, Finger Lakes Community College, Terrestrial Environmental Specialists, NYS Museum, Rice Creek Field Station at SUNY Oswego, Olive Natural Heritage Society, Biological Sciences at SUNY Albany, LA Group, Matthew D. Rudikoff Associates in Beacon, NY, Energy Environmental Analysts in Garden City, NY, Ecology and Environment in Lancaster, NY, APA, SUNY Oneonta Faculty and the Department of Biological Sciences at SUNY Plattsburgh. There were no responses received as a result of this outreach, except for one question that was procedural in nature.

4. Costs:

This rulemaking will impose no costs on the regulated public. It will impose no costs on the Department, since existing staff and public information and education programs will be used to publicize and enforce the regulation. There will be no cost to local government.

5. Local government mandates:

The regulations will impose no program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication:

Other rules and legal requirements of the State and Federal governments would not duplicate, overlap or conflict with the regulations.

8. Alternatives:

The no action alternative is not feasible since the existing regulation does not reflect the current population levels of numerous plants in New York State. Removal of plants that are not currently listed are not subject to penalties under the ECL. In the eleven years since the regulations were updated there have been numerous changes in the number of plants on the lists. Many plants currently identified as endangered, threatened, rare, or exploitably vulnerable need to be moved from one list to another or removed from the lists to properly show their current status.

9. Federal standards:

The proposed regulations do not exceed any minimum standards of the Federal government. Federally listed endangered and threatened plants are listed by definition as endangered or threatened under this regulation.

10. Compliance schedule:

The regulations will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations. Once the regulations are adopted they are effective immediately. The Department will seek to educate the public about the regulations through information posted on the Departments' web site. Regional office staff will be notified by e-mail.

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

No changes were made to previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

We received two comments from one person. They are as follows:

1. Comment:

It is a good idea to update the list with the new nomenclature, although sometimes the changes do not make sense to me, especially the genera changes. The problem is, what is the source of the nomenclature changes used? For the species listed as endangered, threatened, or rare, I assume the source is the NY Natural Heritage Program list. However, for those listed under exploitably vulnerable the "new" nomenclature (whatever the source is) is not used, especially for the ferns and clubmosses. If these name changes are important, then we should change them consistently and we should identify a source.

Response to Comment: It was brought to my attention that the scientific names of plants on the exploitably vulnerable list were not updated. This was due to confusion about the authority of naming the species. In the past, the New York State Museum has been the authority for the naming of species in New York State. Mitchell and Tucker's "Revised Checklist of New York State Plants", State Museum Bulletin 490, was used for scientific names of listed species. Due to the infrequency of updating this Publication; the last update was in 1997; the Natural Heritage Program has worked with the New York Flora Association, government agencies, herbaria, universities and conservation organizations in developing the New York Flora Atlas, housed in the Plant Atlas at the University of South Florida. This partnership allows a continual process to update the status and nomenclature of plant species. The scientific names on the exploitably vulnerable list have been corrected based upon the New York Flora Atlas.

2. Comment:

I also want to take this opportunity to reiterate my long standing concern with the definition of exploitably vulnerable. I know this definition is in the law not the regulations, but it is the source of great confusion. My concerns are as indicated in my attached NY Flora Association Newsletter article from 2006. As indicated in this article, I do not have a problem with the species listed as exploitably vulnerable, it is the definition that is of great concern to me. This definition is extremely misleading and should be changed.

Response to Comment: The term, exploitably vulnerable is defined in Environmental Conservation Law section 9-1503 and cannot be changed without a legislative amendment, therefore it was not addressed in this regulation.

Department of Financial Services

EMERGENCY RULE MAKING

Standards for the Management of the New York State Retirement Systems

I.D. No. DFS-21-12-00004-E

Filing No. 443

Filing Date: 2012-05-07

Effective Date: 2012-05-07

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, and February 7, 2012. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

In the interim, this version of Insurance Regulation 85 needs to remain effective for the general welfare.

Subject: Standards for the management of the New York State Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

Text of emergency rule: Section 136-2.2 is amended to read as follows:
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)](a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d)] OSC shall mean the Office of the State Comptroller.]

[(e)](b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[(f)] (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h)] Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i)] Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)] (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of

such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k)] Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4)] disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] Fund's investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.

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 August 4, 2012.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

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

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as a statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabili-

tation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (“the Fund”).

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (“the Fund”), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the DFS or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

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

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund (“the Fund”). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women- and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority (“FINRA”);
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association (“SIFMA”), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Department does not have jurisdiction over placement agents, which makes it difficult to implement and enforce requirements on them. The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining “placement agent” in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

9. Federal standards: The Securities and Exchange Commission issued a “Pay-To-Play” regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as the amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees’ Retirement System and New York State and Local Police and Fire Retirement System (collectively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”).

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (“the Fund”), conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the

Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and

professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

Department of Health

EMERGENCY RULE MAKING

Episodic Pricing for Certified Home Health Agencies (CHHA)

I.D. No. HLT-21-12-00002-E

Filing No. 435

Filing Date: 2012-05-02

Effective Date: 2012-05-02

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

Action taken: Amendment of section 86-1.44 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3614(13)

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 ensure an appropriate level of reimbursement to those Certified Home Health Agencies (CHHAs) that provide services to a special needs population of medically complex children, adolescents and young disabled adults and to those CHHAs that serve primarily patients who are eligible for OPWDD services.

Section 111 of Part H of Chapter 59 of the Laws of 2011 provides the Commissioner of Health with authority to issue regulations such as 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: Episodic Pricing for Certified Home Health Agencies (CHHA).

Purpose: To exempt services to a special needs population from the episodic payment system for CHHAs.

Text of emergency rule: Subdivisions (a) and (c) and the opening paragraph of subdivision (b) of section 86-1.44 of title 10 of NYCRR are amended to read as follows:

(a) Effective for services provided on and after [April 1] May 2, 2012, Medicaid payments for certified home health care agencies ("CHHA"), except for such services provided to children under eighteen years of age and except for services provided to a special needs population of medically complex and fragile children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department, shall be based on payment amounts calculated for 60-day episodes of care.

(b) An initial statewide episodic base price, to be effective [April 1]

May 2, 2012, will be calculated based on paid Medicaid claims, as determined by the Department, for services provided by all certified home health agencies in New York State during the base period of January 1, 2009 through December 31, 2009.

(c) The base price paid for 60-day episodes of care shall be adjusted by an individual patient case mix index as determined pursuant to subdivision (g) of this section; and also by a regional wage index factor as determined pursuant to subdivision (h) of this section. *Such case mix adjustments shall include an adjustment factor for CHHAs providing care primarily to a special needs patient population coming under the jurisdiction of the Office of People With Developmental Disabilities (OPWDD) and consisting of no fewer than two hundred such patients.*

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 30, 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 authority for implementation of an episodic payment system for Certified Home Health Agency services pursuant to regulations is set forth in section 3614(13) of the Public Health Law.

Legislative Objectives:

The Legislature chose to address the issue of over-utilization of Certified Home Health Agency services as a result of the recommendations submitted by the Medicaid Redesign Team and accepted by the Governor. Pursuant to statute, an episodic payment system based on 60-day episodes of care, with payments tied to patient acuity, was chosen as one of the vehicles to address this issue.

Needs and Benefits:

The proposed amendment will exempt services provided to a special needs population of medically complex children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department from the episodic payment system and will also provide for an adjustment of the case mix index for CHHAs serving primarily patients who are eligible for OPWDD services when such CHHAs have over 200 such patients. This amendment will help assure that agencies primarily serving certain special needs populations will receive a level of reimbursement from the Medicaid system to maintain both adequate access and quality of care for members of these populations.

Costs:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. It is anticipated there will be a slight decrease to the total state fiscal savings which were budgeted for the Episodic Payment System.

Local Government Mandates:

The proposed amendment 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:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

No significant alternatives are available. The Department is required by the Public Health Law section 3614(13) to promulgate implementing regulations.

Federal Standards:

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

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the rule change.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule is expected to initially affect two Certified Home Health Agencies. Neither agency is a small business and neither is government sponsored.

Compliance Requirements:

There are no additional reporting, recordkeeping or other affirmative acts that small businesses or local governments will need to undertake to comply with the proposed rule. A "small business regulation guide" is not required.

Professional Services:

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

Compliance Costs:

The proposed rule will not require providers or local government to incur any additional compliance costs.

Economic and Technological Feasibility:

Compliance by small businesses and local governments is not expected to have economic or technological implications.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Small Business and Local Government Participation:

The two affected Certified Home Health Agencies are not small businesses or government sponsored.

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	

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

No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal. No additional professional services will be required for compliance.

Costs:

Certified Home Health Agencies are not expected to incur any significant costs as a result of this rule change.

Minimizing Adverse Impact:

The proposed amendment reflects statutory intent and requirements.

Rural Area Participation:

The two affected Certified Home Health Agencies are not rural providers.

Job Impact Statement

Nature of Impact:

The proposed rule change will exempt services to a special needs population of medically complex children, adolescents and young adults from the episodic payment system for Certified Home Health Agencies (CHHAs) and will provide for a positive adjustment of the case mix index for CHHAs serving primarily patients who are eligible for OPWDD services.

These changes are not expected to have a negative impact on jobs or

employment opportunities and could slightly increase employment levels at the impacted CHHAs due to higher Medicaid reimbursement levels.

Categories and Numbers Affected:

There are five categories of direct care workers at CHHAs: home health aides, nurses, physical therapists, occupational therapists and speech pathologists. Statewide, 84% of CHHA claims dollars are for home health aide services. The proposed rule changes are not expected to negatively impact any of these five categories.

Regions of Adverse Impact:

No adverse impact is anticipated as a result of this rule change.

Minimizing Adverse Impact:

No adverse impact is anticipated as a result of this rule change.

Self-Employment Opportunities:

Not applicable.

Office of Medicaid Inspector General

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Withholding of Payments; Incorporation by Reference

I.D. No. MED-21-12-00001-P

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

Proposed Action: Amendment of sections 518.7 and 518.9 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 32

Subject: Withholding of payments; Incorporation by reference.

Purpose: To amend regulations governing the withholding of Medicaid payments in accordance with federal requirements.

Text of proposed rule: Section 518.7 of title 18 of NYCRR is amended to read as follows:

518.7 Withholding of payments.

(a) *Basis for withholding.*

(1) The department may withhold payments under the program, in whole or in part, when it has [reliable information that] *determined* that a provider [is involved in fraud or willful misrepresentation involving claims submitted to the program; or] *has* abused the program or *has* committed an unacceptable practice. [Reliable information] *The department's determination that a provider has abused the program, or has committed an unacceptable practice* may consist of preliminary findings by the department's audit or utilization review staff of unacceptable practices or significant overpayments, information from a State professional licensing or certifying agency of an ongoing investigation of a provider involving fraud, abuse, professional misconduct or unprofessional conduct, or information from a State investigating or prosecutorial agency or other law enforcement organization of an ongoing investigation of a provider for fraud or criminal conduct involving the program. The department may withhold payment of current and future claims to the provider and any affiliate.

(2) *The department must withhold payments under the program, in whole or in part, when it has determined or has been notified that a provider is the subject of a pending investigation of a credible allegation of fraud unless the department finds good cause not to withhold payments in accordance with 42 C.F.R. 455.23. A credible allegation of fraud is an allegation that has indicia of reliability and has been verified by the department, or the Medicaid fraud control unit, or another State agency, or law enforcement organization.*

(i) *Whenever the department initiates a withholding, in whole or in part, in relation to a pending investigation of a credible allegation of fraud, the department must make a fraud referral to the Medicaid fraud control unit. If the Medicaid fraud control unit does not accept the referral, then the department may refer the matter to another law enforcement organization.*

(ii) *The fraud referral made under this paragraph must be in writing and provided to the Medicaid fraud control unit or other law enforcement organization not later than the next business day after the withhold is enacted.*

(b) Notice of the withholding will [usually] be given [prior to or contemporaneously with the withholding; however, in no event will notice

of the withholding be given more than] *within* five days of [after the withholding of payments] *taking such action unless requested in writing by a law enforcement organization to delay such notice.* The notice will describe the reasons for the action, but need not include specific information concerning an ongoing investigation.

(c) The notice of withholding must:

(1)(i) state that the payments are being withheld in accordance with [42 C.F.R. 455.23 and] this section; *and*

(ii) *in cases where there is a pending investigation of a credible allegation of fraud state that the payments are being withheld in accordance with 42 C.F.R. 455.23;*

(2) state that the withholding is for a temporary period only and recite the circumstances under which the withholding will be terminated;

(3) specify whether the withholding applies to all or only some claims and identify which claims if not all claims are involved; and

(4) advise of the right to submit written arguments and documentation in opposition to the withholding and how to submit them *in accordance with subdivision (e) of this section.*

(d) The withholding may continue only temporarily.

(1) When initiated by the department prior to issuance of a draft audit report or notice of proposed agency action, the withholding will not continue for more than 90 days unless a written draft audit report or notice of proposed agency action is sent to the provider. Issuance of the draft report or notice of proposed action may extend the withholding until an amount reasonably calculated to satisfy the overpayment is withheld, pending a final determination on the matter.

(2) When initiated by the department after issuance of a draft audit report or notice of proposed agency action, the withholding will not continue for more than 90 days unless a written final audit report or notice of agency action is sent to the provider. Issuance of the report or notice of action may extend the withholding until an amount reasonably calculated to satisfy the overpayment is withheld, pending a final determination on the matter.

(3) When initiated by another State agency or law enforcement organization, the withholding may continue until the agency or prosecuting authority determines that there is insufficient evidence to support an action against the provider or its affiliate, or until the agency or criminal proceedings are completed.

(4) *When initiated by the department when it has determined or has been notified that a provider is the subject of a pending investigation of a credible allegation of fraud all withholding actions will be temporary and will not continue after either of the following:*

(i) *The department, or the Medicaid fraud control unit, or other law enforcement organization determines that there is insufficient evidence of fraud by the provider.*

(ii) *Legal proceedings related to the provider's alleged fraud are completed.*

(e) *Appeals.*

(1) *A provider or its affiliate that is the subject of the withholding is not entitled to an administrative hearing, but may, within 30 days of the date of the notice, submit written arguments and documentation that the withhold should be removed.*

(2) *Within 60 days of receiving written arguments or documentation in response to a withhold, the department will review the determination and notify the provider or its affiliate of the results of that review. After the review, the determination to impose a withhold may be affirmed, reversed or modified, in whole or in part.*

(3) *A decision by the department to affirm, reverse or modify a withhold on appeal shall not be a determination of the merits of any investigation initiated by another State agency, the Medicaid fraud control unit, or other law enforcement organization.*

Section 518.9 of title 18 of NYCRR is amended to read as follows:

518.9 Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the booklet entitled: Code of Federal Regulations, title 42, Parts 455.23, revised as of October 1, [2008] 2011, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, 99 Washington Ave, Albany, NY 12231 at the law libraries of the New York State Supreme Court and the New York State, and at the Office of the Medicaid Inspector General, Office of Counsel, 800 N. Pearl Street, Albany, New York 12204. They may also be purchased from the Superintendent of Documents, Government Printing Office Washington, DC 20402. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Text of proposed rule and any required statements and analyses may be obtained from: Michael T. D'Allaird, Esq., Office of the Medicaid Inspector General, 800 North Pearl Street, Albany, New York 12204, (518) 402-1434, email: Michael.D'Allaird@omig.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

Statutory authority:

The Office of the Medicaid Inspector General (OMIG) is an independent office within the Department of Health (DOH) responsible for the prevention, detection and investigation of fraud and abuse in New York State's medical assistance (Medicaid) program pursuant to Public Health Law § 31.

Public Health Law § 32 sets forth the functions, duties and responsibilities of the OMIG, and specifically authorizes the OMIG to "implement and amend, as needed, rules and regulations relating to the prevention, detection, investigation and referral of fraud and abuse within the medical assistance program and the recovery of improperly expended medical assistance program funds." PHL § 32(20).

Legislative objectives:

The legislative objective is to protect the integrity of the Medicaid program. The purpose of this rulemaking is to update State regulations to be consistent with federal requirements. In March 2010 Congress passed the Patient Protection and Affordable Care Act (ACA) which contains a number of provisions intended to enhance Medicaid program integrity. Specifically, section 6402(h)(2) of ACA amended section 1903(i)(2) of the Social Security Act to provide that Federal Financial Participation (FFP) in the Medicaid program shall not be made to a State with respect to any amount expended for items or services (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished by a provider to whom a State has failed to withhold payments under the plan during any period when there is pending an investigation of a credible allegation of fraud, unless the State determines that good cause exists not to withhold such payments. This rulemaking will bring New York's Medicaid program regulations into compliance with this provision of ACA.

Needs and benefits:

This rulemaking is required before the State's Medicaid program can implement the requirements of the ACA provision related to withholding of a provider's Medicaid payments where there is a pending investigation of a credible allegation of fraud against a provider.

This rulemaking makes several changes to 18 NYCRR § 518.7 entitled Withholding of payments.

Subdivision (a) of the regulation, relating to the basis for withholding, is amended to include the requirement that the Department must withhold Medicaid payments to a provider, in whole or in part, when it has determined or has been notified that a provider is the subject of a pending investigation of a credible allegation of fraud unless the Department finds good cause not to withhold payments. It is also amended to define the term credible allegation of fraud pursuant to federal guidance contained in 42 C.F.R. § 455.2 and outline the law enforcement referral process the department must follow whenever the department initiates a withholding in relation to a pending investigation of a credible allegation of fraud.

Subdivision (b) of the regulation, related to timing of the notice of withholding, is amended to provide that a notice of withholding will be given within five (5) days of its implementation unless law enforcement requests in writing that such notice be delayed.

Subdivision (d) of the regulation is amended to reflect that the withhold will be temporary and will not continue until after either the department, the Medicaid fraud control unit, or other law enforcement organization determines that there is insufficient evidence of fraud by the provider or legal proceedings related to the provider's alleged fraud are completed.

Subdivision (e) of the regulation clarifies a provider's appeal rights and the process for an administrative review of the withholding.

In addition, this rulemaking amends 18 NYCRR § 518.9 to reflect changes made to 42 C.F.R. § 455.23, the federal regulation that implements the payment withholding requirements under ACA.

Costs:

a. costs to regulated parties for the implementation of and the continuing compliance with this rulemaking:

Regulated parties are not anticipated to incur additional costs as a result of this rulemaking.

b. costs to state government:

State government is not expected to incur any additional costs as a result of this rulemaking.

c. costs to the state agency:

OMIG is not expected to incur any additional costs as a result of this rulemaking.

Local government mandates:

The proposed rulemaking does not impose any new program, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district in general.

Paperwork:

No additional paperwork requirement will imposed upon regulated parties, however, under the federal requirements the State must maintain for a period of 5 years from the date of issuance all materials documenting the life cycle of a payment suspension that is imposed, including: (1) all notices of payments withheld in whole or in part; (2) all fraud referrals to MFCU or other law enforcement agencies; (3) all quarterly certifications by MFCU or other law enforcement agencies that a matter continues to be under investigation; (4) all notices documenting the termination of a withhold; (5) all documentation justifying the exercise of the good cause exceptions, in whole or in part. In addition, the State is required to annually report to the federal government information regarding the life cycle of each withholding imposed and any determinations to exercise the good cause exceptions not to withhold, to withhold only in part, or to discontinue a withholding.

Duplication:

This rulemaking does not duplicate any other federal or State regulation.

Alternatives:

The State must, by law, implement the federal requirements under section 6402(h)(2) of the Patient Protection and Affordable Care Act or risk the loss of FFP. There are no reasonable alternatives to this rulemaking.

Federal standards:

This amendment implements, but does not exceed any minimum standards of the federal government.

Compliance schedule:

Federal regulations are now in effect, and this rulemaking will be effective at the earliest date possible, consistent with the State Administrative Procedure Act requirements.

Regulatory Flexibility Analysis

Effect of Rule:

This rulemaking will affect all providers participating in the medical assistance (Medicaid) program, including some small businesses and local governmental entities. The types of small business providers that may be subject to this rulemaking include, but are not limited to, pharmacies, physicians, dentists, durable medical equipment (DME) businesses, service bureaus, and transportation providers. A small percentage of local government providers, including some school districts that participate in the Medicaid program will be affected by this rulemaking.

Compliance Requirements:

There are no new reporting, recordkeeping, or other affirmative acts that a small business or local government will have to undertake to comply with this rulemaking.

Professional Services:

No professional services will be necessitated as a result of this rulemaking.

Compliance Costs:

This rulemaking does not impose any additional costs on any regulated business or industry or local government beyond those imposed by law. There is no annual cost anticipated for continuing compliance with the rulemaking. However, there may be an additional cost should a Medicaid provider fail to comply with existing federal and state laws, rules and regulations which would subject those providers to this proposed rulemaking.

Economic and Technological Feasibility:

This rulemaking would present no economic or technological difficulties to any small businesses or local governments that participate in the Medicaid program. This rulemaking does not impose a requirement for the purchase or use of new technologies.

Minimizing Adverse Impact:

This rulemaking will not have an adverse economic impact on the ability of small businesses or local governments to comply with Department requirements, as this rule does not change the substance of those requirements but instead may impose additional costs only upon Medicaid providers who are not in compliance with federal and state laws, rules and regulations.

Small Business and Local Government Participation:

In developing this rulemaking, the OMIG conducted extensive outreach specifically devoted to discussing this rulemaking by contacting trade groups, provider associations, other state agencies and other interested parties. Draft regulations, prior to filing with the Secretary of State, were shared with these groups and industry associations representing various providers, including members from small business and local government entities.

Small businesses and local government entities affected by this rulemaking will have the opportunity to submit written comments after publication of a general notice of proposed rulemaking.

Rural Area Flexibility Analysis

Effect on Rural Areas:

This rulemaking implements the provisions of the Patient Protection

and Affordable Care Act (ACA), under which it is mandatory for the State to withhold payments to medical assistance (Medicaid) program providers after the agency determines or is notified that a credible allegation of fraud exists involving the provider and for which there is a pending investigation. There are Medicaid providers located in rural, as well as suburban and metropolitan areas of the State.

Compliance Requirements:

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

Professional Services:

No additional professional services are required for providers to comply with this rulemaking.

Compliance Costs:

There are no costs associated with this rulemaking.

Minimizing Adverse Impact:

The proposed revisions to the regulation create consistency with existing federal rules and requirements. The rule applies uniformly to providers that do business in both rural and non-rural areas of New York State. The implementation of payment withholdings is mandated under federal requirements. ACA provides that Federal Financial Participation ("FFP") in the Medicaid program shall not be made to the State for items or services furnished by a provider (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) to whom a state has failed to withhold payments during any period when there is a pending investigation of a credible allegation of fraud against a provider, unless the State determines that good cause exists not to withhold such payments. This will have an adverse impact on providers that are the subject of a fraud investigation as their Medicaid payments will be withheld during the course of the investigation. The proposed revisions to the regulations create consistency with federal requirements.

Rural Area Participation:

In developing this rulemaking, the OMIG conducted extensive outreach specifically devoted to discussing this rulemaking by contacting trade groups, provider associations, other state agencies and other interested parties. Draft regulations, prior to filing with the Secretary of State, were shared with these groups and industry associations representing various providers, including members from rural areas.

In addition, public and private parties in rural areas affected by this rulemaking will have the same opportunity as public and private parties in suburban and metropolitan areas to submit written comments after publication of a general notice of proposed rulemaking.

Job Impact Statement

The Office of the Medicaid Inspector General (OMIG) finds that this rule will have little or no impact on jobs and employment opportunities. Under this proposed rulemaking the State must withhold Medicaid payments to a provider when it has determined or has been notified that a provider is the subject of a pending investigation of a credible allegation of fraud unless the State finds good cause not to withhold payments. Failure to withhold payments by the State will result in the loss of Federal Financial Participation (FFP) for items or services (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished by a provider to whom a State has failed to withhold payments under the plan during any period when there is pending an investigation of a credible allegation of fraud, unless the State determines that good cause exists not to withhold such payments. This proposed rulemaking may have an adverse effect on employees of providers against whom there is a credible allegation of fraud for which an investigation is pending, and the State imposes a full or partial withhold. Nevertheless, this proposed rulemaking is required in order to protect FFP, to comply with provisions of federal law, and to protect the integrity of New York's Medicaid program.

Office of Mental Health

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

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-21-12-00016-P

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

Proposed Action: This is a consensus rule making to amend Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: To freeze rates paid to residential treatment facilities consistent with the enacted 2012-2013 State Budget.

Text of proposed rule: Subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(a) The rate of payment shall consist of an operating cost per diem and a capital cost per diem, computed from allowable costs and subject to cost category standards. The rate year shall be the 12-month period from July 1st through June 30th. The rate of payment effective July 1, 1995 through June 30, 1996 shall be a continuance of the rate of payment effective July 1, 1994 through June 30, 1995. The rate of payment effective July 1, 2011 through June 30, 2012, and July 1, 2012 through June 30, 2013, shall be a continuance of the rate of payment in effect on June 30, 2011, except to the extent necessary to adjust such payments pursuant to the provisions of subdivision (o) of Section 578.14 of this Part.

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.

Consensus Rule Making Determination

This rule making is filed as a Consensus rule on the grounds that its purpose is to conform to non-discretionary statutory requirements.

Chapter 53 of the Laws of 2012 includes a series of programmatic changes and cost-containment measures that are expected to generate savings in fiscal year 2012-2013 and restrain growth in future years. The 2012-2013 enacted State Budget prohibits any cost of living adjustments for the purpose of establishing rates of payments, contracts or any other form of reimbursement for mental health providers. This proposed rule ensures consistency with the enacted State budget by amending 14 NYCRR Part 578 - Medical Assistance Rates of Payment for Residential Treatment Facilities (RTF) for Children and Youth. This rule making freezes rates paid to RTFs licensed pursuant to Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with 14 NYCRR Part 584. This rate freeze will be effective as of July 1, 2012, and shall continue the rate of payment in effect as of June 30, 2011.

Statutory Authority: Sections 7.09 and 43.02 of the Mental Hygiene Law grant 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 and to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities, licensed by the Office of Mental Health pursuant to Article 31 of the Mental Hygiene Law. All payments by such agencies shall be at rates certified by the Commissioner and approved by the Director of the Budget. Chapter 53 of the Laws of 2012 requires that Commissioner of Mental Health shall not apply any cost of living adjustment for the purpose of establishing rates of payments, contracts or any other form of reimbursement for mental health providers.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact upon jobs and employment opportunities. The rule is needed to provide consistency with the enacted 2012-2013 State budget by freezing rates of payments to residential treatment facilities for children and youth that are licensed under Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with 14 NYCRR Part 584. The rate freeze will be effective as of July 1, 2012.

Public Service Commission

NOTICE OF WITHDRAWAL

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-11-12-00009-W

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

Action taken: Notice of proposed rule making, I.D. No. PSC-11-12-00009-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on March 14, 2012.

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

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

NOTICE OF ADOPTION

Verizon New York Inc.'s Request for a Waiver of Performance Assurance Plan Results for August 2011

I.D. No. PSC-45-11-00013-A

Filing Date: 2012-05-03

Effective Date: 2012-05-03

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, in part, Verizon New York Inc.'s request for a waiver of Performance Assurance Plan results for August 2011.

Statutory authority: Public Service Law, section 91(1)

Subject: Verizon New York Inc.'s request for a waiver of Performance Assurance Plan results for August 2011.

Purpose: To approve Verizon New York Inc.'s request for a waiver of Performance Assurance Plan results for August 2011.

Substance of final rule: The Commission, on April 19, 2012, adopted an order approving, in part, Verizon New York Inc.'s request for a waiver of Performance Assurance Plan results for August 2011, 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.

(99-C-0949SA14)

NOTICE OF ADOPTION

Denying the Request for Rehearing of the Order Issued November 18, 2011

I.D. No. PSC-02-12-00011-A

Filing Date: 2012-05-04

Effective Date: 2012-05-04

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 New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation's request for rehearing of the Order issued November 18, 2011.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (5), (8) and (12)

Subject: Denying the request for rehearing of the Order issued November 18, 2011.

Purpose: To deny the request for rehearing of the Order issued November 18, 2011.

Substance of final rule: The Commission, on April 19, 2012 adopted an order denying New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation's request for rehearing of the Order issued November 18, 2011, which provided that customer credits compensating ratepayers for shortfalls in merger electric capital expenditures be reversed, because the customer credits were not adopted retroactively, are not a penalty, are not offset by benefits, and should not otherwise be excused; NYSEG's request for clarification is granted in part, to provide for the proper treatment of costs in evaluating its compliance with net plant targets for retaining a deferral for the benefit of shareholders, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0906SA8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Filing Requirements and Refunds

I.D. No. PSC-21-12-00006-P

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

Proposed Action: To consider various petitions for rehearing on whether or not certain telephone companies in New York violated the Public Service Law tariff filing requirements and whether or not the Commission can order refunds.

Statutory authority: Public Service Law, sections 91, 92(2) and 118(3)

Subject: Tariff filing requirements and refunds.

Purpose: To determine if certain agreements should be filed pursuant to the Public Service Law and if refunds are warranted.

Substance of proposed rule: The Commission is considering various requests for rehearing on whether certain telephone companies' agreements with long distance carriers violated the Public Service Law's tariff filing requirements and whether refunds are warranted. The Commission is considering whether to grant or deny, in whole or in part, these rehearing requests. The Commission may take other action related to tariff filing requirements and whether or not the Commission can require refunds in the absence of tariff filings.

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-C-0555SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

SAFE-T Program

I.D. No. PSC-21-12-00007-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 reviewing the selection by pole owners and cost of an alternative program for implementation of the Standardized Facility and Equipment Transfer Program (SAFE-T Program).

Statutory authority: Public Service Law, sections 2(12), (18), 4(1) and 5(1)

Subject: SAFE-T Program.

Purpose: To review the selection by pole owners and cost of an alternative program for implementation of the SAFE-T Program.

Substance of proposed rule: The Public Service Commission is reviewing the selection by pole owners and cost of an alternative program for

implementation of the Standardized Facility and Equipment Transfer Program (SAFE-T Program). The Commission, on May 19, 2011 adopted an Order approving the implementation of a standardized facility and equipment transfer (SAFE-T) program for all pole owners and attaching entities, subject to the terms and conditions set forth in the order. The pole owners and the software provider they selected were, however, unable to reach agreement on the terms of the program offered by the provider for an initial period at no cost. As a result, the pole owners determined to utilize the program offered by their provider of second choice and in order to expedite initiation of the SAFE-T program, to initially allocate the cost equally among themselves. The Commission may approve, reject, or modify, in whole or in part, the implementation of the alternative program selected by the pole owners.

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

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

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

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

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

(08-M-0593SP2)

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

Telecommunications Service Quality and Reporting Requirements for Verizon New York Inc.

I.D. No. PSC-21-12-00008-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 request by the New York State Attorney General to modify Verizon New York Inc.'s Service Quality Improvement Plan.

Statutory authority: Public Service Law, sections 91(1), 94(2) and 98

Subject: Telecommunications service quality and reporting requirements for Verizon New York Inc.

Purpose: To review Verizon New York Inc.'s telecommunications service quality and reporting requirements.

Substance of proposed rule: The Attorney General of the State of New York is requesting a modification of Verizon New York Inc.'s (Verizon) Service Quality Improvement Plan (SQIP). In general, the Attorney General is requesting that the Commission amend the SQIP to include all customers (business and residential), enforce certain service quality metrics and impose commensurate penalties and rebates. The Commission is considering whether to grant or deny, in whole or in part, approval of the Attorney General's request. The Commission may take other actions related to service quality including consideration of adding additional metrics to Verizon's SQIP like measuring average delay day performance.

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

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

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

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

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

(10-C-0202SP2)

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

Acquisition by Fortis, Inc., Through Subsidiaries, of CHEG And, Indirectly, CHG&E

I.D. No. PSC-21-12-00009-P

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

Proposed Action: The Commission is considering a joint petition for Fortis, Inc., of Newfoundland and Labrador, Canada, to acquire CH Energy Group, Inc. (CHEG) and its subsidiary, Central Hudson Gas & Electric Corporation (CHG&E).

Statutory authority: Public Service Law, sections 4, 5 and 70

Subject: Acquisition by Fortis, Inc., through subsidiaries, of CHEG and, indirectly, CHG&E.

Purpose: Transfer of 100% of outstanding stock of CHEG and, thus, indirectly, ownership of CHG&E to Fortis, Inc.

Substance of proposed rule: On April 20, 2012, Fortis Inc., a holding company based in St. Johns, Newfoundland and Labrador, Canada, its subsidiary FortisUS, Inc. a Delaware corporation, Cascade Acquisition Sub Inc. (Cascade), a New York corporation and wholly owned subsidiary of FortisUS Inc. (FortisUS), CH Energy Group, Inc., (CHEG), a New York corporation headquartered in Poughkeepsie, New York, and Central Hudson Gas & Electric Corporation (CHG&E), a New York gas and electric corporation and wholly-owned subsidiary of CHEG, filed a petition for approval, pursuant to Public Service Law § 70, of the sale of 100% of the outstanding stock of CHEG to FortisUS and an immediate merger, upon completion of the transaction, of CHEG and Cascade, with CHEG as the surviving corporation. By virtue of the proposed transaction, CHG&E would become, indirectly, a wholly-owned subsidiary of FortisUS and, effectively, of Fortis Inc.

CHG&E, also headquartered in Poughkeepsie, New York, serves about 300,000 electric and 75,000 natural gas customers in New York's mid-Hudson River area. CHG&E accounts for approximately 93% of the total assets of CHEG. CHEG also owns and operates Grif-fith Energy Services, Inc., an unregulated subsidiary comprising primarily a fuel delivery business serving about 56,000 customers in the Mid-Atlantic Region. CHEG also owns Central Hudson Enterprises Corporation.

The Public Service Commission may approve or reject the petition, in whole or in part, or modify the proposed terms and conditions of the proposed transaction.

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

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

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

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

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

(12-M-0192SP1)

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

Request Authorization to Defer Incremental Expenses Incurred in Storm Restoration Work

I.D. No. PSC-21-12-00010-P

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

Proposed Action: The PSC is considering a petition filed by Central Hudson Gas & Electric Corporation seeking authority to defer incremental

electric storm restoration expenses incurred related to October Nor'easter snow storm on October 29, 2011.

Statutory authority: Public Service Law, section 66(9)

Subject: Request authorization to defer incremental expenses incurred in storm restoration work.

Purpose: To allow the company to defer incremental expenses incurred in storm restoration work.

Substance of proposed rule: Central Hudson Gas & Electric Corporation (Central Hudson or Company) has requested permission to defer for future rate recovery, with carrying charges, \$8.6 million in incremental electric storm restoration expense related to October Nor'easter snow storm on October 29, 2011. The Company proposes to defer such expenses and the associated deferred income taxes as a regulatory asset in Account 182.xx. If the Commission approves this deferral, there is a reasonable assurance the company will be allowed to recover these costs. The Commission may adopt, reject or modify, in whole or in part, Central Hudson's request, and may also consider any related matters.

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

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

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

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

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

(12-M-0204SP1)

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

**Whether to Grant, Deny or Modify, in Whole or Part, the
Petition for Waiver of Tariff Rules 8.6 and 47**

I.D. No. PSC-21-12-00011-P

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

Proposed Action: The Public Service Commission is considering the petition of Niagara Mohawk Power Corp. d/b/a National Grid for waiver of electric tariff Rules 8.6 and 47 filed on behalf of Beechwood/The Eddy Retirement Living Community at the Beechwood Place Facility.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47.

Purpose: Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), filed on behalf of Beechwood/The Eddy Retirement Living Community at the Beechwood Place Facility (Beechwood Place), for a limited waiver of tariff Rules 8.6 and 47 contained in National Grid's tariff for electric service. The waiver is requested so that Beechwood Place may aggregate 59 delivery points of its facility so that the currently directly metered living units may be master-metered without incurring the applicable charges under Rules 8.6 and 47 for such aggregation.

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-0203SP1)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-21-12-00013-P

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

Proposed Action: The PSC is considering a Petition of the Town of Hardenburgh, New York, to waive 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process for the Town of Hardenburgh, New York.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To allow the Town of Hardenburgh to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject the Petition of Town of Hardenburgh to waive 16 NYCRR sections 894.1, 894.2, 894.3, and 894.4 regarding franchising procedures for the Town of Hardenburgh, Ulster County, New York.

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-V-0024SP2)

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

**Ability to Set Rates and Approval of Stocks, Bonds and Other
Forms of Indebtedness for a Water-Works Corporation**

I.D. No. PSC-21-12-00014-P

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

Proposed Action: The Commission is considering whether to accept, reject or modify a petition from Gipsy Trail Club, Inc., for approval of a \$460,000 loan from the Environmental Facilities Corporation and authorization for a customer surcharge to pay for the loan.

Statutory authority: Public Service Law, sections 89c and 89f

Subject: Ability to set rates and approval of stocks, bonds and other forms of indebtedness for a water-works corporation.

Purpose: Approval of loan and customer surcharge.

Substance of proposed rule: On April 26, 2012, Gipsy Trail Club, Inc. submitted a petition requesting Commission approval for a Drinking Water State Revolving Fund loan from the Environmental Facilities Corporation (EFC) in the amount of \$460,000 to finance certain improvements to its privately owned water system. This petition also seeks approval by the Commission for a revenue surcharge in an amount sufficient to cover the debt service related to the EFC loan. The Commission may approve, modify or reject, in whole or in part, the petition of Gipsy Trail Club, Inc. and may resolve related matters, and may take this action for other utilities.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secre-

tary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(12-W-0207SP1)

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

Water Rates and Charges

I.D. No. PSC-21-12-00015-P

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

Proposed Action: The Commission is considering a tariff filing by Mt. Ebo Water Works, Inc., requesting approval to increase its annual revenues by approximately \$109,105 or 50% in P.S.C. No. 1—Water, to become effective July 1, 2012.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by approximately \$109,105 or 50%.

Substance of proposed rule: Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Mt. Ebo Water Works, Inc., requesting approval to increase its annual revenues by approximately \$109,105 or 50% to P.S.C. No. 1—Water. The proposed filing has an effective date of July 1, 2012. The Commission may resolve related matters and may take this action for other utilities.

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

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

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

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

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

(12-W-0210SP1)