RULE MAKING ACTIVITIES

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

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

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

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-45-12-00001-E
Filing No. 1040
Filing Date: 2012-10-17
Effective Date: 2012-10-17

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

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; L. 2010, ch. 59; L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010 and recently amended by Chapter 61 of the Laws of 2011. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. Recent amendment to the law extends the current benefit period from five to ten years and offers an enriched package of tax credits. It is imperative that the amended Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This emergency rule is necessary because, in addition to establishing the application process, standards for application evaluation and procedures for businesses claiming the tax credit, it now incorporates recent statutory amendments which are designed to strengthen the Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Excelsior Jobs program.

Purpose: Administer the Excelsior Jobs Program.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the ''Program''). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the ''Department''); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. Per recent statutory changes to the Program, when determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility

determinations based on such activity. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. Of note are the following changes made as a result of recent changes to the statute: the Excelsior Jobs Program Credit has been amended to be calculated as the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit has been increased from ten to fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is now based on the value of the property after improvements have been made. Under the amended program, a participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits has been lengthened from five years to ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 14, 2013.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program. Chapter 61 of the Laws of 2011 recently amended the statute to strengthen the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating and recently amending the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, per-

formance and adherence to commitments by businesses choosing to participate in the Program. The rule implements the amendments to the statute which extend the current tax benefit period from five to ten years and offer an enriched package of tax credits. In addition, the rule adds the recommendation of the relevant regional council as an evaluation criterion for determining whether to admit an applicant into the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

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

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

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes record-keeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-45-12-00004-E

Filing No. 1059

Filing Date: 2012-10-22

Effective Date: 2012-10-22

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

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

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

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

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

Subject: Empire Zones reform.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

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

Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 19, 2013.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

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

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

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

PAPERWORK:

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

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

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

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new recordkeeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact,

the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Renewals of a Provisional SAS Certificate and Reissuances of Initial Certificates

I.D. No. EDU-45-12-00011-P

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

Proposed Action: Amendment of sections 80-1.7 and 80-1.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Renewals of a provisional SAS certificate and reissuances of initial certificates.

Purpose: Change requirements for renewal of a SAS certificate and requirements for a reissuance of an initial certificate.

Text of proposed rule: 1. Subdivision (c) of section 80-1.7 of the Regulations of the Commissioner of Education is repealed and a new subdivision (c) is added, effective September 1, 2013, to read as follows:

(c) The commissioner shall not accept an application for the renewal of a provisional school administrator and supervisor certificate submitted to the commissioner after September 1, 2013 unless the certificate holder has achieved a satisfactory score on the school building leader assessment(s) that is required at the time the renewed provisional certificate is issued.

2. Section 80-1.8 of the Regulations of the Commissioner of Education is amended, effective January 30, 2013, to read as follows:

§ 80-1.8 Reissuance of an initial certificate.

(a) The holder of an initial certificate whose certificate has expired and who has not successfully completed three school years of teaching experience, or its equivalent, as is required for a professional certificate, shall be [issued] *reissued* an initial certificate on one occasion only, for a period of five years from the date of reissuance [,provided that the candidate has met the requirements in subdivision (b) of this section].

(1) For candidates applying for a reissuance on or before September 1, 2013, any candidate whose certificate has been expired for two or more years at the time of application for the reissuance shall meet the requirements in subparagraphs (i) and (ii) of this paragraph. For candidates applying for a reissuance on or after September 1, 2013, all candidates applying for a reissuance shall meet the requirements in the following paragraphs:

(i) The candidate shall successfully complete 75 clock hours of acceptable professional development within one year of applying to the department for the reissued initial certificate. The definition of acceptable professional development and the measurement of professional development study shall be that prescribed in section 80-3.6 of this Part.

(ii) The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area required for the certificate sought or, where applicable, the New York State assessment for school building leadership required for a certificate as a school building leader, which shall be taken within one year of the candidate's applying to the department for the reissuance of the initial certificate.

(b) Notwithstanding the above, an initial certificate as a school building leader may be reissued a second time if the certificate holder has met all of the requirements for the professional certificate except the experience requirement and has been employed in a school district or BOCES to provide instructional support services as defined in section 80-5.21 of this Part during three of the past five school years.

[(b) Any candidate whose certificate has been expired for two of more years at the time of application for the reissuance shall meet the requirements in both of the following paragraphs:

(1) The candidate shall successfully complete 75 clock hours of acceptable professional development within one year of applying to the department for the reissued initial certificate. The definition of acceptable professional development and the measurement of professional development study shall be that prescribed in section 80-3.6 of this Part.

(2) The candidate shall submit evidence of having achieved a satisfactory level of performance on the new York State Teacher Certification Examination content specialty test(s) in the area required for the certificate sought or the New York State assessment for school building leadership required for a certificate as a school building leader, which shall be taken within one year of the candidate's applying to the department for the reissuance of the initial certificate.]

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, Office of Counsel, Room 148, Washington Avenue, Albany, NY 12234, (518) 474-6400, email: mgammon@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, Office of Higher Education, Room 979, Washington Avenue, Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by amending the requirements for renewal of a provisional school administrator and supervisor certificate and the reissuance of an initial certificate.

3. NEEDS AND BENEFITS:

Reissuance of the Initial Certificate

Currently, an initial certificate is valid for five years. During those five years, the teacher is required to complete his/her master's degree and three years of teaching experience in order to qualify for the professional certificate. If the teacher is unable to complete the required three years of classroom teaching experience during the five year validity period of the initial certificate and his/her initial certificate has expired, he/she may apply for a reissuance of his/her initial certificate, which is valid for an additional five years. Any candidate whose certificate has been expired for two or more years from the date of his/her reissuance application shall be required to re-take the Content Specialty Test in the certificate area and complete 75 clock hours of acceptable professional development within one year of his/her application for reissuance.

The proposed amendment would allow all candidates applying for a reissuance of an initial certificate on or after September 1, 2013 to apply for a reissuance if they re-take the Content Specialty Test and complete 75 clock hours of acceptable professional development.

Renewal of the School Administrator and Supervisor certificate

This regulatory change would allow the Department to renew the provisional School Administrator and Supervisor (SAS) certificate for those certificate holders that have not been able to complete the two years of school leadership experience required for the permanent SAS certificate. We currently allow for the reissuance of the initial certificate for the School Building Leader (SBL) and in limited circumstances (i.e., where the certificate holder has been employed in a school district or BOCES to devote a substantial portion of his/her time to instructional support services during three of the past five school years). The proposed amendment allows all candidates with a provisional SAS that have not completed their experience to apply for a renewal of their certificate if they receive a passing score on the School Building Leader examination(s) prior to the issuance of the SAS renewal.

4. COSTS:

(a) Costs to State government: The amendment will not impose any ad-

ditional costs on State government including the State Education Department.

(b) Costs to local governments: The amendment will not impose any additional costs on local governments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the January Regents meeting and will become effective on January 30, 2013.

Regulatory Flexibility Analysis

The purpose of the proposed rule is to change the requirements for the renewal of a school administrator and supervisor certificate and the requirements for reissuance of an initial certificate for holders of an initial certificate whose certificate has expired and who have not successfully completed three years of teaching experience. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect certified teachers that apply for a teaching or school building leader certificate in another certificate area in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Reissuance of the Initial Certificate

Currently, an initial certificate is valid for five years. During those five years, the teacher is required to complete his/her master's degree and three years of teaching experience in order to qualify for the professional certificate. If the teacher is unable to complete the required three years of classroom teaching experience during the five year validity period of the initial certificate and his/her initial certificate has expired, he/she may apply for a reissuance of his/her initial certificate, which is valid for an additional five years. Any candidate whose certificate has been expired for two or more years from the date of his/her reissuance application shall be required to re-take the Content Specialty Test in the certificate area and complete 75 clock hours of acceptable professional development within one year of his/her application for reissuance.

The proposed amendment would allow all candidates applying for a reissuance of an initial certificate on or after September 1, 2013 to apply for a reissuance if they re-take the Content Specialty Test and complete 75 clock hours of acceptable professional development.

Renewal of the School Administrator and Supervisor certificate

This regulatory change would allow the Department to renew the provisional School Administrator and Supervisor (SAS) certificate for those certificate holders that have not been able to complete the two years of school leadership experience required for the permanent SAS certificate. We currently allow for the reissuance of the initial certificate for the School Building Leader (SBL) and in limited circumstances (i.e., where the certificate holder has been employed in a school district or BOCES to devote a substantial portion of his/her time to instructional support services during three of the past five school years). The proposed amendment allows all candidates with a provisional SAS that have not completed their experience to apply for a renewal of their certificate if they receive a passing score on the School Building Leader examination(s) prior to the issuance of the SAS renewal.

3. COSTS:

There are no additional costs imposed beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The purpose of the proposed amendment is to amend the requirements for renewal of a school administrator and supervisor certificate and the requirements for reissuance of an initial certificate for holders of an initial certificate whose certificate has expired and who have not successfully completed three years of teaching experience. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Individual Evaluation and Experience Requirements for Level III Teaching Assistant Certificates

I.D. No. EDU-45-12-00012-P

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

Proposed Action: Amendment of sections 80-5.6, 80-3.7 and 80-3.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), 3001(2), 3006(1)(b) and 3009(1)

Subject: Individual evaluation and experience requirements for level III teaching assistant certificates.

Purpose: To extend the sunset date for individual evaluation and amend experience requirements for level III teaching assistant certificate.

Text of proposed rule: 1. Item (iii) of subclause (1) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 80-5.6 of the Regulations of the Commissioner of Education is amended, effective January 30, 2013, to read as follows:

(iii) Experience. The candidate shall submit adequate evidence substantiating satisfactory employment as *a teacher in the classroom teaching service as defined in section 80-1.1 of this Part*, a teaching assistant for one school year under a level I teaching assistant certificate or a level II teaching assistant certificate or under a temporary license authorizing employment as a teaching assistant.

2. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective January 30, 2013, to read as follows:

Section 80-3.7 Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service [by September 1, 2013] *on or before April 30, 2014*, and who upon application qualify for such certificate. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under subclause (a)(3)(ii)(c)(3) of this section may continue to meet the education requirements for classroom teaching certificates through individual evaluation after [September 1, 2013] *May 1, 2014*. The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

(a) . . .

(b) . . .

(c) . . .

3. Subparagraph (iii) of paragraph (3) of subdivision (a) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective January 30, 2013, as follows:

(iii) The option to complete the education requirements for the certificates specified in subparagraphs (i) and (ii) of this paragraph through

equivalent study, as determined by individual evaluation in accordance with the requirements of section 80-3.7 of this Subpart will continue to be available for individuals who hold an initial, professional, provisional or permanent certificate in the classroom teaching service. For candidates who do not already hold an initial, professional, provisional or permanent certificate in the classroom teaching service, this option will only be available to candidates who apply for a certificate in childhood education by February 1, 2007 or for any other certificate in the classroom teaching service [by February 1, 2009] *on or before April 30, 2014*, and who upon application qualify for such certificate.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, Office of Counsel, Room 148, Washington Avenue, Albany, NY 12234, (518) 474-6400, email: mgammon@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, Office of Higher Education, Room 979, Washington Avenue, Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by extending the sunset date for individual evaluation and amending the experience requirements for the Level III teaching assistant certificate.

3. NEEDS AND BENEFITS:

Experience Requirements for Level III Teaching Assistant Certificate

The purpose of the proposed amendment is to amend the experience requirements for a Level III teaching assistant certificate to allow a candidate who has one year of teaching experience in the classroom teaching service to satisfy the experience requirement. Some school districts require a certified teacher to hold a certificate as a teaching assistant in order to work as a teaching assistant. The current regulation requires one year of teaching assistant experience in order to be granted the Level III certificate. In order to allow teachers to also be employed as teaching assistants in districts that require teachers to also hold a certificate as a teaching assistant, we are proposing to allow certain teachers to be eligible for a Level III teaching assistant certificate by accepting one year of teaching experience in the classroom teaching service to satisfy the experience requirement for the Level III certificate.

Individual Evaluation Pathway to Teacher Certification

In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of course work and field experience to the State Education Department for evaluation and issuance of the certificate.

The provision regarding individual evaluation included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service.

In 2008, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2009 to February 1, 2012. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

In June 2011 the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2012 to September 1, 2013. The purpose in establishing the extension to September 2013 was to coincide with the implementation of the new exams.

In January 2012 the Regents approved a change in the date the new teacher certification examinations to May 1, 2014.

With the scheduled sunset of the Individual Evaluation pathway for new teachers (including career changers) in 2013; and the new reforms effective in May 2014; staff recommends that the Individual Evaluation pathway be extended until May 1, 2014. This would allow:

(1) the Regents to have time to evaluate the implementation of the reforms to teaching and the impact such changes may have on an Individual Evaluation pathway to certification;

(2) SED staff time to prepare policy options and research on the effectiveness of the Individual Evaluation pathway in addressing subject shortage areas especially in high need schools;

(3) candidates with applications pending through the Individual Evaluation pathway to have more certainty in making plans for college study.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government including the State Education Department.

(b) Costs to local governments: The amendment will not impose any additional costs on local governments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teacher assistants for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the January Regents meeting and will become effective on January 30, 2013.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to amend the sunset date for individual evaluation and the experience requirements for a Level III teaching assistant certificate to allow a candidate who has two years of teaching experience in the classroom teaching service to satisfy the experience requirement. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect certified teachers that apply for a teaching assistant certificate in another certificate area in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Experience Requirements for Level III Teaching Assistant Certificate

The purpose of the proposed amendment is to amend the experience requirements for a Level III teaching assistant certificate to allow a candidate who has one year of teaching experience in the classroom teaching service to satisfy the experience requirement. Some school districts require a certified teacher to hold a certificate as a teaching assistant in order to work as a teaching assistant. The current regulation requires one year of teaching assistant experience in order to be granted the Level III certificate. In order to allow teachers to also be employed as teaching assistants in districts that require teachers to also hold a certificate as a teaching assistant, we are proposing to allow certain teachers to be eligible for a Level III teaching assistant certificate by accepting one year of teaching experience in the classroom teaching service to satisfy the experience requirement for the Level III certificate.

Individual Evaluation Pathway to Teacher Certification

In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of course work and field experience to the State Education Department for evaluation and issuance of the certificate.

The provision regarding individual evaluation included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service.

In 2008, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2009 to February 1, 2012. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

In June 2011 the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2012 to September 1, 2013. The purpose in establishing the extension to September 2013 was to coincide with the implementation of the new exams.

In January 2012 the Regents approved a change in the date the new teacher certification examinations to May 1, 2014.

With the scheduled sunset of the Individual Evaluation pathway for new teachers (including career changers) in 2013; and the new reforms effective in May 2014; staff recommends that the Individual Evaluation pathway be extended until September 1, 2014.

This would allow:

(1) the Regents to have time to evaluate the implementation of the reforms to teaching and the impact such changes may have on an Individual Evaluation pathway to certification;

(2) SED staff time to prepare policy options and research on the effectiveness of the Individual Evaluation pathway in addressing subject shortage areas especially in high need schools;

(3) candidates with applications pending through the Individual Evaluation pathway to have more certainty in making plans for college study.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements for teachers and teaching assistants should be consistent across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The purpose of the proposed amendment is to extend the sunset date for individual evaluation for certain teachers and to amend the experience requirements for a Level III teaching assistant certificate to allow a candidate who has one year of teaching experience in the classroom teaching service to satisfy the experience requirement. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Licensure of Non-Degree Granting Private Proprietary Schools

I.D. No. EDU-45-12-00013-P

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

Proposed Action: Amendment of Part 126 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1) and 5001-5010; and L. 2012, ch. 381

Subject: Licensure of non-degree granting private proprietary schools.

Purpose: To implement the provisions of chapter 381 of the Laws of 2012.

Substance of proposed rule (Full text is posted at the following State website:www.acces.nysed.gov/bpss/): The Commissioner of Education proposes to amend Part 126 of the Commissioner's Regulations to implement Education Law sections 5001 through 5010, as amended by Chapter 381 of the Laws of 2012, effective January 30, 2013.

The following is a summary of the major provisions of the proposed rule.

The title of this Part has been amended to read ''Licensed Private Career Schools or Licensed Private Schools''.

Section 126.1 is amended to clarify the definitions for curriculum, course, gross tuition, school, reviewed financial statement, audited financial statement and Certified English as a Second Language School to be consistent with the new law. This section also adds new definitions for practical experience and occupationally required credential.

Section 126.2(d) is amended to clarify that scholarship funds must be collected and applied according to the disbursement method as set forth in Section 5002(1)(b-1) of the Education Law.

Section 126.3 is amended to eliminate the references to registration.

Section 126.4(a) is amended to make clear that where the department retains an expert or outside consultant to review the curriculum of a school, the school shall bear the expense, in addition to any curriculum or course application fee.

Section 126.6(a) is amended to indicate that each applicant instead of the school shall submit teaching and management personnel applications. Section 126.6(c) of the Commissioner's Regulations is amended to indicate that all teacher licenses issued after December 15, 2012 would no longer be restricted to a single school location as private career schools licenses presently are.

Section 126.6(d) of the Commissioner's Regulations is amended to allow a school director to apply for a private school agent certificate without incurring the agent application fees. This section also clarifies the preparation requirements for directors; eliminates the references to registered business schools consistent with the new law; and eliminates the references to directors whose education and practical experience were approved prior to July 1, 1973.

Section 126.6(e) eliminates the reference to registered schools.

Section 126.6(f) sets forth the requirements for teacher licenses and permits in licensed private career schools, as appropriate, and eliminates the requirements for registered business schools/computer training facilities.

Section 126.6(n) indicates that in cases where the curricula/courses offered require the assistance of a vendor demonstrator, the need for a demonstrator must be included and approved in the specific course or curriculum approval.

Section 126.7 is amended to require that the enrollment agreement include a provision for the method or methods of payment, including, as appropriate, the disbursement schedule for each type of financial assistance available which shall meet the requirements set forth in section 5002(1)(b-1) of the Education Law.

Section 126.8(a) is amended to indicate that schools that are not financially viable are subject to having their licenses suspended or revoked, or the Commissioner may require the cessation of student enrollment. This section is also amended to eliminate the prior requirements and to require schools to submit to the Commissioner an annual financial statement that requires schools that receive $500,000 or more or whose combined State and Federal student financial aid is $100,000 or more to submit an audited financial statement. For schools which receive less than $500,000 and less than $100,000 in combined Federal and State student financial aid in a school fiscal year shall submit an unaudited reviewed financial statement or an audited financial statement to the commissioner for that fiscal year, provided that a reviewed financial statement

cannot be submitted for two consecutive fiscal years. An audited financial statement must also be filed for the year following the fiscal year for which a reviewed financial statement was filed.

Section 126.9 is amended to require schools to include in their catalog a weekly tuition chart for each program that indicates the amount of a refund due a student upon withdrawal and the disbursement schedule for each type of financial assistance available. It also eliminates the option of allowing a school to submit an attestation that the catalog or bulletin meets all of the requirements.

Section 126.10 is amended to delete the references to registration and the requirement that the commissioner shall act on an initial application for a license or registration within 120 days of receipt of a complete application. This section also requires that upon transfer or assignment of any interest totaling 25 percent or more, the school shall be deemed a new school required to submit a new school application and obtain a new license pursuant to the requirements of this Part. The previous school license shall remain in effect until the new license is issued or denied or the previous license expires or is revoked, whichever comes first. This section also requires any school which received $500,000 or more in gross tuition in a school fiscal year to submit to the commissioner an annual audited statement of revenue prepared in accordance with generally accepted accounting principles for that fiscal year. In addition, this section clarifies the requirements for an English as a Second Language school.

Section 126.12 is amended to reflect that the certificate will be effective for three years instead of two and to require a $200 fee instead of $100, except that the school director may apply for an agent's certificate without incurring the application fee.

Section 126.17 is amended to provide that new schools, which did not operate in the year prior to licensure, will have no gross tuition upon which to be assessed until either the end of their first fiscal year or March 31 of the year after the school was licensed, whichever comes first. For schools whose fiscal year end comes before March 31 of the year after the school was licensed, the school shall submit a complete financial statement in compliance with the provisions set forth in Education Law section 5001(4)(e) is required. For schools whose fiscal year ends later than March 31 after their initial licensure date, the school shall submit an unaudited reviewed income statement for the time period between initial licensure and March 31 detailing the amount of gross tuition received during that period. Thereafter, complete financial statements shall be required.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, NYS Education Department, Office of Counsel, Room 148, Washington Avenue, Albany, NY 12234, (518) 474-6400, email: mgammon@mail.nysed.gov

Data, views or arguments may be submitted to: Carole Yates, NYS Education Department, Bureau of Proprietary School Supervision, Room 1613, 99 Washington Avenue, Albany, NY 12234, (518) 474-3969, email: cyates@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Article 101 of the Education Law (Sections 5001 through 5010 of the Education Law), as amended by Chapter 381 of the Laws of 2012, authorizes the State Education Department to license and regulate non-degree granting proprietary schools consistent with the requirements in Article 101 of the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Chapter 381 of the Laws of 2012.

3. NEEDS AND BENEFITS:

Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010) to eliminate the distinction between licensed private schools and registered business schools, replace the phrase ''licensed private schools'' with the more descriptive ''licensed private career schools'', adjust fees, which have not changed since 1990, and establish a candidate school category that would allow a school to operate legally while it is in the process of obtaining a non-degree-granting proprietary school license.

Section 5001 of the Education Law provides for the consolidation of registered business schools and licensed private schools into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of training programs offered at these schools. This section also clarifies the exemptions for certain schools from the licensure requirements and exempts conferences, trade shows, workshops and such other courses of study from the licensing requirements. Candidate school status is also allowed as a practical means for prospective schools to operate legally prior to meeting all the requirements of full licensure. This section also amends the specific fees for initial and renewal applications for such licensure. Renewal fees are increased to reflect the State Education Department's current cost of supervising these schools and to meet the prospective costs for reimbursing tuition for a significant number of students when these students' schools close due to fiscal failure or non-compliance. Initial application fees are set at certain amounts and fees for renewal are based on the school's gross annual tuition income. Renewal fees are accrued to the credit of the proprietary vocational school supervision account.

Section 5001 sets forth procedures for working with schools that are not financially viable to protect the tuition reimbursement account. The method of assessing schools is changed from more complicated regular and special assessment formulas to one based on the number of quarterly assessments paid, whereby newer schools with the potential to fail would pay a higher assessment than schools with a history of satisfactory licensed operation. Section 5001(4)(e), relating to annual audited financial statements, is amended to change the gross tuition criteria for submission of such statements to the commissioner and the filing schedule for such statements to bring the non-degree sector into parity with schools in the degree-granting and public school sectors. This section also authorizes the commissioner to deny, suspend, revoke or decline to renew any license if the Commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds. If the Commissioner determines that the financial condition may result in interruption or cessation of instruction or jeopardize student tuition funds, the Commissioner may place the school on probation for a period of no more than one year and the school shall be required to submit a report on its financial condition to the Commissioner.

Section 5002 is amended to restrict the amount of private loan payments for tuition that a school could receive on behalf of a student prior to their completing a program, thereby limiting students' loan liability as well as the tuition reimbursement account's liability for payment of loan funds for tuition payments, which is the most significant portion of the loan. This section also increases the maintenance of record requirement from 6 to 7 years. Section 5002(1)(d)(1) also relates admission of students under the ability to benefit provision is amended to authorize the Commissioner to accept other entrance requirement documentation, such as prerequisite coursework, professional or vendor certifications, personal interviews and/or attestations of equivalent knowledge in lieu of the examination requirement. Section 5002(3)(h) is amended to require schools to submit for approval a school catalog that contains a weekly tuition liability chart for each program that indicates the amount of refund due a student upon withdrawal. This section emphasizes that in addition to paying the curriculum application fee, schools will be required to pay the cost of an expert or independent consultant for an outside evaluation of a particular course or facility of the school. This section is also amended to establish a curriculum/course application fee to fund the State Education Department's curriculum unit. Fees from school and personnel license applications do not cover the cost of curriculum review, as some schools have only a handful of courses or curricula that require approval while others have between 400 and 700. Schools requiring the most evaluation would pay more, those with few programs would pay less. Section 5002(6) is also amended so that all teacher licenses would no longer be restricted to a single school location, as private career school teacher licenses currently are. This will result in a more mobile and efficient teacher pool for schools to draw from for faculty members, reduced expense for processing teacher applications and a reduced workload for the State Education Department's Bureau of Proprietary School Supervision (''the Bureau'').

Section 5003 is amended to establish more practical timeframes for disciplinary proceedings by prescribing procedures for handling written complaints by students attending candidacy schools alleging failure of the school to disclose its candidacy status and the implications and to obtain the required attestation from the student. If such a violation is found, the school is required to provide the student a full refund of all monies received from the student. Section 5003(6) is also amended to increase the fines established in 1990 so they reflect the State Education Department's current cost of school oversight and expands the list of violations that may result in the imposition of a civil penalty, including failure to offer an approved course or program.

Section 5004 is amended to increase the amount of gifts and other non-monetary consideration a school may provide to students or former students from $25 to $75. Subdivision 4 of section 5004 would be amended to increase private school agent fees from $100 to $200, while extending the term of a private school agent's certificate from 2 years to 3 years.

Section 5006 is amended to allow the State Education Department to

intervene more effectively when a private career education school ceases instruction. Currently, schools that are closing are required to develop teachout plans that arrange to have students continue to receive instruction from other private career schools upon closure of the school. The State Education Department's experience is that schools that must close have little incentive to establish teachouts, so authorizing the State Education Department to arrange for a teachout plan would provide greater protection for students. This section also authorizes the Commissioner to prescribe the educational qualifications and practical experience for teachers and directors in these schools.

Section 5007 is amended to expand the expenses eligible for reimbursement for students whose schools are closing. This section provides refunds of tuition, fees and book charges paid by or on behalf of the students in cash or through loans, excluding funding obtained through government agencies and authorizes the Commissioner to refund expenditures for fees, books and tuition to students of schools that have closed. The provisions for special assessments for new schools in section 5007(10) are also amended to be consistent with the assessment changes in section 5001, and to reflect the State Education Department's experience with assessing schools that have not been in operation for an entire year. The requirement in section 5007(11) for an annual fund audit of the tuition reimbursement account would be changed to mandate a two-year audit.

The proposed amendment implements these provisions.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government including the State Education Department beyond those imposed by statute.

(b) Costs to local governments: The amendment will not impose any additional costs on local governments.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those imposed by statute.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment implements Chapter 381 of the Laws of 2012. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teacher assistants for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the January Regents meeting and will become effective on January 30, 2013.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF THE RULE: This rule will affect all private, non-degree granting proprietary schools that seek to be licensed by the State Education Department pursuant to Article 101 of the Education Law. Approximately 200 schools are pending licensure under this section. It is anticipated that almost all will be small businesses. In addition, the rule will affect all certified English as a Second Language (ESL) schools, most of which are small businesses.

2. COMPLIANCE REQUIREMENTS: There are no compliance requirements beyond those imposed by Chapter 381 of the Laws of 2012.

Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010) to eliminate the distinction between licensed private schools and registered business schools, replace the phrase ''licensed private schools'' with the more descriptive ''licensed private career schools'', adjust fees, which have not changed since 1990, and establish a candidate school category that would allow a school to operate legally while it is in the process of obtaining a non-degree-granting proprietary school license.

Section 5001 of the Education Law provides for the consolidation of registered business schools and licensed private schools into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of training programs offered at these schools. This section also clarifies the exemptions for certain schools from the licensure requirements and exempts conferences, trade shows, workshops and such other courses of study from the licensing requirements. Candidate school status is also allowed as a practical means for prospective schools to operate legally prior to meeting all the requirements of full licensure. This section also amends the specific fees for initial and renewal applications for such licensure. Renewal fees are increased to reflect the State Education Department's current cost of supervising these schools and to meet the prospective costs for reimbursing tuition for a significant number of students when these students' schools close due to fiscal failure or non-compliance. Initial application fees are set at certain amounts and fees for renewal are based on the school's gross annual tuition income. Renewal fees are accrued to the credit of the proprietary vocational school supervision account.

Section 5001 sets forth procedures for working with schools that are not financially viable to protect the tuition reimbursement account. The method of assessing schools is changed from more complicated regular and special assessment formulas to one based on the number of quarterly assessments paid, whereby newer schools with the potential to fail would pay a higher assessment than schools with a history of satisfactory licensed operation. Section 5001(4)(e), relating to annual audited financial statements, is amended to change the gross tuition criteria for submission of such statements to the commissioner and the filing schedule for such statements to bring the non-degree sector into parity with schools in the degree-granting and public school sectors. This section also authorizes the commissioner to deny, suspend, revoke or decline to renew any license if the Commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds. If the Commissioner determines that the financial condition may result in interruption or cessation of instruction or jeopardize student tuition funds, the Commissioner may place the school on probation for a period of no more than one year and the school shall be required to submit a report on its financial condition to the Commissioner.

Section 5002 is amended to restrict the amount of private loan payments for tuition that a school could receive on behalf of a student prior to their completing a program, thereby limiting students' loan liability as well as the tuition reimbursement account's liability for payment of loan funds for tuition payments, which is the most significant portion of the loan. This section also increases the maintenance of record requirement from 6 to 7 years. Section 5002(1)(d)(1) also relates admission of students under the ability to benefit provision is amended to authorize the Commissioner to accept other entrance requirement documentation, such as prerequisite coursework, professional or vendor certifications, personal interviews and/or attestations of equivalent knowledge in lieu of the examination requirement. Section 5002(3)(h) is amended to require schools to submit for approval a school catalog that contains a weekly tuition liability chart for each program that indicates the amount of refund due a student upon withdrawal. This section emphasizes that in addition to paying the curriculum application fee, schools will be required to pay the cost of an expert or independent consultant for an outside evaluation of a particular course or facility of the school. This section is also amended to establish a curriculum/course application fee to fund the State Education Department's curriculum unit. Fees from school and personnel license applications do not cover the cost of curriculum review, as some schools have only a handful of courses or curricula that require approval while others have between 400 and 700. Schools requiring the most evaluation would pay more, those with few programs would pay less. Section 5002(6) is also amended so that all teacher licenses would no longer be restricted to a single school location, as private career school teacher licenses currently are. This will result in a more mobile and efficient teacher pool for schools to draw from for faculty members, reduced expense for processing teacher applications and a reduced workload for the State Education Department's Bureau of Proprietary School Supervision (''the Bureau'').

Section 5003 is amended to establish more practical timeframes for disciplinary proceedings by prescribing procedures for handling written complaints by students attending candidacy schools alleging failure of the school to disclose its candidacy status and the implications and to obtain the required attestation from the student. If such a violation is found, the school is required to provide the student a full refund of all monies received from the student. Section 5003(6) is also amended to increase the fines established in 1990 so they reflect the State Education Department's current cost of school oversight and expands the list of violations that may result in the imposition of a civil penalty, including failure to offer an approved course or program.

Section 5004 is amended to increase the amount of gifts and other non-monetary consideration a school may provide to students or former students from $25 to $75. Subdivision 4 of section 5004 would be amended to increase private school agent fees from $100 to $200, while extending the term of a private school agent's certificate from 2 years to 3 years.

Section 5006 is amended to allow the State Education Department to intervene more effectively when a private career education school ceases instruction. Currently, schools that are closing are required to develop teachout plans that arrange to have students continue to receive instruction from other private career schools upon closure of the school. The State Education Department's experience is that schools that must close have little incentive to establish teachouts, so authorizing the State Education Department to arrange for a teachout plan would provide greater protection for students. This section also authorizes the Commissioner to prescribe the educational qualifications and practical experience for teachers and directors in these schools.

Section 5007 is amended to expand the expenses eligible for reimbursement for students whose schools are closing. This section provides refunds of tuition, fees and book charges paid by or on behalf of the students in cash or through loans, excluding funding obtained through government agencies and authorizes the Commissioner to refund expenditures for fees, books and tuition to students of schools that have closed. The provisions for special assessments for new schools in section 5007(10) are also amended to be consistent with the assessment changes in section 5001, and to reflect the State Education Department's experience with assessing schools that have not been in operation for an entire year. The requirement in section 5007(11) for an annual fund audit of the tuition reimbursement account would be changed to mandate a two-year audit.

The proposed amendment implements these provisions.

3. PROFESSIONAL SERVICES: The proposed amendment will not require schools to obtain professional services in order to comply, beyond those imposed by the statute.

4. COMPLIANCE COSTS: The proposed amendment will not impose any additional costs beyond those imposed by Chapter 381 of the Laws of 2012, except that the proposed amendment increases the application for teachers' permits and licenses, directors' permits and licenses, renewals thereof, and amendments of temporary permits and licenses from $50 to $100.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY: The proposed amendment does not impose any additional technological requirements on small businesses.

6. MINIMIZING ADVERSE IMPACT: The proposed amendment implements Chapter 381 of the Laws of 2012 relating to the licensure of private non-degree proprietary schools. The statutory amendments make no exception for schools that are located in rural areas of the State. Moreover, the State Education Department believes that uniform requirements are needed, regardless of the location of the school, to ensure that all proprietary schools comply with the current best practices for this sector and to preserve the tuition reimbursement account in accordance with Chapter 381 of the Laws of 2012. Because of the nature of the proposed rule, alternative approaches for small businesses were not considered.

7. SMALL BUSINESS PARTICIPATION: The State Education Department posted the proposed regulation on its website and will ask for comments from all interested parties, including representatives from non-degree granting proprietary schools that may represent small businesses.

(b) Local Governments:

The proposed amendment relates to the licensure of private proprietary schools. It is clear from the nature of the proposed amendment that it does not impose any adverse economic impact, reporting, recordkeeping or other compliance requirements on local governments. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and none has been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule will apply to all rural areas, including the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. This rule will apply to all licensed private career schools. Currently, there are more than 450 licensed, registered or certified schools. Of these, approximately 20 are located in a rural area of the state.

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

Chapter 381 of the Laws of 2012 amended Article 101 of the Education Law (sections 5001 through 5010) to eliminate the distinction between licensed private schools and registered business schools, replace the phrase ''licensed private schools'' with the more descriptive ''licensed private career schools'', adjust fees, which have not changed since 1990, and establish a candidate school category that would allow a school to operate legally while it is in the process of obtaining a non-degree-granting proprietary school license.

Section 5001 of the Education Law provides for the consolidation of registered business schools and licensed private schools into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of training programs offered at these schools. This section also clarifies the exemptions for certain schools from the licensure requirements and exempts conferences, trade shows, workshops and such other courses of study from the licensing requirements. Candidate school status is also allowed as a practical means for prospective schools to operate legally prior to meeting all the requirements of full licensure. This section also amends the specific fees for initial and renewal applications for such licensure. Renewal fees are increased to reflect the State Education Department's current cost of supervising these schools and to meet the prospective costs for reimbursing tuition for a significant number of students when these students' schools close due to fiscal failure or non-compliance. Initial application fees are set at certain amounts and fees for renewal are based on the school's gross annual tuition income. Renewal fees are accrued to the credit of the proprietary vocational school supervision account.

Section 5001 sets forth procedures for working with schools that are not financially viable to protect the tuition reimbursement account. The method of assessing schools is changed from more complicated regular and special assessment formulas to one based on the number of quarterly assessments paid, whereby newer schools with the potential to fail would pay a higher assessment than schools with a history of satisfactory licensed operation. Section 5001(4)(e), relating to annual audited financial statements, is amended to change the gross tuition criteria for submission of such statements to the commissioner and the filing schedule for such statements to bring the non-degree sector into parity with schools in the degree-granting and public school sectors. This section also authorizes the commissioner to deny, suspend, revoke or decline to renew any license if the Commissioner determines that a school's financial condition may result in the interruption or cessation of instruction or jeopardize student tuition funds. If the Commissioner determines that the financial condition may result in interruption or cessation of instruction or jeopardize student tuition funds, the Commissioner may place the school on probation for a period of no more than one year and the school shall be required to submit a report on its financial condition to the Commissioner.

Section 5002 is amended to restrict the amount of private loan payments for tuition that a school could receive on behalf of a student prior to their completing a program, thereby limiting students' loan liability as well as the tuition reimbursement account's liability for payment of loan funds for tuition payments, which is the most significant portion of the loan. This section also increases the maintenance of record requirement from 6 to 7 years. Section 5002(1)(d)(1) also relates admission of students under the ability to benefit provision is amended to authorize the Commissioner to accept other entrance requirement documentation, such as prerequisite coursework, professional or vendor certifications, personal interviews and/or attestations of equivalent knowledge in lieu of the examination requirement. Section 5002(3)(h) is amended to require schools to submit for approval a school catalog that contains a weekly tuition liability chart for each program that indicates the amount of refund due a student upon withdrawal. This section emphasizes that in addition to paying the curriculum application fee, schools will be required to pay the cost of an expert or independent consultant for an outside evaluation of a particular course or facility of the school. This section is also amended to establish a curriculum/course application fee to fund the State Education Department's curriculum unit. Fees from school and personnel license applications do not cover the cost of curriculum review, as some schools have only a handful of courses or curricula that require approval while others have between 400 and 700. Schools requiring the most evaluation would pay more, those with few programs would pay less. Section 5002(6) is also amended so that all teacher licenses would no longer be restricted to a single school location, as private career school teacher licenses currently are. This will result in a more mobile and efficient teacher pool for schools to draw from for faculty members, reduced expense for processing teacher applications and a reduced workload for the State Education Department's Bureau of Proprietary School Supervision (''the Bureau'').

Section 5003 is amended to establish more practical timeframes for disciplinary proceedings by prescribing procedures for handling written complaints by students attending candidacy schools alleging failure of the school to disclose its candidacy status and the implications and to obtain the required attestation from the student. If such a violation is found, the school is required to provide the student a full refund of all monies received from the student. Section 5003(6) is also amended to increase the fines established in 1990 so they reflect the State Education Department's current cost of school oversight and expands the list of violations that may result in the imposition of a civil penalty, including failure to offer an approved course or program.

Section 5004 is amended to increase the amount of gifts and other non-monetary consideration a school may provide to students or former students from $25 to $75. Subdivision 4 of section 5004 would be amended to increase private school agent fees from $100 to $200, while extending the term of a private school agent's certificate from 2 years to 3 years.

Section 5006 is amended to allow the State Education Department to intervene more effectively when a private career education school ceases instruction. Currently, schools that are closing are required to develop teachout plans that arrange to have students continue to receive instruction from other private career schools upon closure of the school. The State Education Department's experience is that schools that must close have little incentive to establish teachouts, so authorizing the State Education Department to arrange for a teachout plan would provide greater protection for students. This section also authorizes the Commissioner to prescribe the educational qualifications and practical experience for teachers and directors in these schools.

Section 5007 is amended to expand the expenses eligible for reimburse-

ment for students whose schools are closing. This section provides refunds of tuition, fees and book charges paid by or on behalf of the students in cash or through loans, excluding funding obtained through government agencies and authorizes the Commissioner to refund expenditures for fees, books and tuition to students of schools that have closed. The provisions for special assessments for new schools in section 5007(10) are also amended to be consistent with the assessment changes in section 5001, and to reflect the State Education Department's experience with assessing schools that have not been in operation for an entire year. The requirement in section 5007(11) for an annual fund audit of the tuition reimbursement account would be changed to mandate a two-year audit.

The proposed amendment implements these provisions.

3. COSTS:

The proposed amendment will not impose any additional costs beyond those imposed by Chapter 381 of the Laws of 2012, except that the proposed amendment increases the application for teachers' permits and licenses, directors' permits and licenses, renewals thereof, and amendments of temporary permits and licenses from $50 to $100.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements Chapter 381 of the Laws of 2012 relating to the licensure of proprietary schools. The amendments make no exception for schools that are located in rural areas on the State. The State Education Department believes that uniform requirements are needed, regardless of the location of the school, to ensure that all proprietary schools comply with the current best practices for this sector and to preserve the tuition reimbursement account in accordance with Chapter 381 of the Laws of 2012. Because of the nature of the proposed rule, alternative approaches for schools located in rural areas were not considered.

5. RURAL AREA PARTICIPATION:

The State Education Department has posted the proposed regulation on its website and will ask for comments from all interested parties, including proprietary schools located in the rural areas of the State.

Job Impact Statement

The purpose of the proposed amendment is to amend the licensure requirements for private, non-degree granting proprietary schools to implement Chapter 381 of the Laws of 2012. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

NOTICE OF ADOPTION

Special Risk Insurance

I.D. No. DFS-25-12-00003-A

Filing No. 1041

Filing Date: 2012-10-18

Effective Date: 2012-11-07

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

Action taken: Amendment of Part 16 (Regulation 86) of Title 11

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307 and 308 and art. 63

Subject: Special Risk Insurance.

Purpose: To revise the parameters established for writing risks in the ''free trade zone.''

Substance of final rule: Insurance Regulation 86 (11 NYCRR Part 16) addresses the regulation of special risk insurance.

Section 16.1 is amended by reducing the Class 1 risk minimum billed annual premium from $200,000 to $150,000 for more than one kind of insurance where the premium for any one kind of insurance does not exceed $100,000.

Section 16.2 is amended by simplifying certain of the calculations set forth in the current rule and reducing the number of compliance calculations from four times each year to annually. This section is also amended by permitting an insurer writing in the free trade zone to request an exemption to exceed the rule's specified limitations if the insurer demonstrates to the Superintendent that it is financially able to write more free trade zone business.

Section 16.3 is amended by revising the circumstances under which the disclosure notice is required and revising the manner of measuring the minimum size of the disclosure notice from a minimum height requirement to a minimum font size (fourteen point).

Section 16.6 is amended to specify the timeframe for submission of free trade zone renewal applications. The free trade zone licenses expire on August 31 of each year. The revision requires insurers to submit their renewal applications at least 30 days prior to the expiration of the license.

Section 16.9 is amended to include electronic access to the underwriting files.

Section 16.12 is updated by adding the definitions of various risks and exposures that have previously been added to the Class 2 risk list by public notice, pursuant to section 16.8 of the regulation.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 16.12(e) - Code 2-50003.

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

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

The Department of Financial Services is making a non-substantive change to section 16.12(e) by correcting the Class Code 2-50003 (Directors and Officers Liability Insurance) minimum limit to read $5,000,000 in order to be written as special risk insurance. The Department had inadvertently specified a limit of $2,000,000 in the proposed regulation, published in the State Register for comment on June 20, 2012. However, the correct minimum limit that the Department intended is $5,000,000, as set forth in the Public Notice to Add Several Class 2 Risks to Regulation 86 and Revise the Definitions of Several Class Codes (''Public Notice''), which was published in the State Register on May 9, 2012. The Public Notice has been posted on the Department's website since that time, and the industry is aware that the $5,000,000 limit is the minimum threshold the Department had intended. Because this change has no effect upon the last published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement, it is not necessary to revise the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Excess Line Placements Governing Standards

I.D. No. DFS-45-12-00002-P

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

Proposed Action: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307, 308, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 5907, 5909, 5911 and 9102

Subject: Excess Line Placements Governing Standards.

Purpose: To update the ''Export List'' of coverages pursuant to Insurance Law section 2118(b)(4).

Text of proposed rule: Section 27.3(g) is hereby amended to read as follows:

(g) Exceptions.

(1)(i) Pursuant to the provisions of Section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker shall not be required to comply with the provisions of subdivisions (a), (b) and (c) of this section with regard to the placement of any of the following coverages:

[Coverage

]*Asbestos, Fungi and Water Damage Remediation and Removal - Liability and Property Damage*

Amusement Parks and Carnivals

Property and/or liability coverage for the owners/operators of amusement parks, theme parks and carnivals.

Amusement Rides and Devices

Property and/or liability coverage for the owners/operators of amusement rides and devices including bumper cars, go-carts and go-cart tracks, giant slides, skateboard tracks, roller-blade tracks, etc.

Animal Mortality
Coverage against the death of any domesticated or wild animal from any cause.
Armored Car, Couriers or Check Cashing Operations
Crime coverage for armored car services, couriers transporting valuable documents and securities, and check cashing operations.
Auto Racing and Automobile Race Track Liability
Coverage for claims of spectators, participants or other third parties in connection with the operation of an automobile race track or drag strip, or the staging or conduct of an automobile race.
Automobile Personal Injury Protection (PIP) Excess of $150,000
First party, New York No-Fault PIP benefits, excess of $150,000[.]
Blood Banks; Blood and Organ Facilities Liability
Liability coverage for facilities that primarily deal with the collection, storage and distribution of blood, blood products and human organs.
Boats and Yachts
1. High Speed Boats - Property and liability coverage for the owners and operators of boats capable of attaining speeds in excess of 40 miles per hour.
2. Boat Rentals - Property and liability coverage for the owners and operators of boat rental facilities.
Builders Risk Insurance
Coverage for construction projects where the total insured values exceed $10,000,000.
Commercial Excess and Umbrella Liability
1. Coverage for commercial excess liability where the underlying policy limits or self-insured retention is at least $10,000,000 per occurrence.
2. Coverage for commercial umbrella liability where the underlying automobile and general liability policies or self-insured retentions contain limits of at least $10,000,000 per occurrence.
Commercial Property
1. Coverage for commercial excess property insurance where the policy provides in excess of $50,000,000 in underlying coverage.
2. Primary or excess property insurance coverage for property used for business purposes when the total insured values exceed $200,000,000.
Contract Frustration
Coverage as defined in section 1113(a)(17)(E) of the Insurance Law.
Elevator Service and Maintenance Contractors - Liability and Property Damage
Employed Lawyers Liability
Employed lawyer's liability insurance for lawyers who are employed as lawyers by a business entity and not a law firm.
Environmental Impairment/Pollution Liability
Liability coverage and/or pollution clean-up expense risks or coverages for the following:
Asbestos Abatement Contractors*;*
General Pollution Liability*;*
Environmental Impairment*;*
Lead Abatement Contractors*;*
Hazardous Waste Disposal Sites*;*
Hazardous Waste Haulers and Shippers*;*
Hazardous Waste Site Mitigation Contractors*;*
Radon Mitigation Contractors*;*
Radon Testing Firms*;*
Underground Storage Tanks - Marketers*; and*
Underground Storage Tanks - Non-Marketers.
Excess Professional/Errors & Omissions Liability - All Classes
Excess liability coverage where the underlying policy limits and/or self-insured retention is at least $10,000,000 per occurrence.
Excess Salary Protection (Disability) Insurance as a monoline policy.
Insurance pursuant to Insurance Law section 1113(a)(31)(A) against financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury, in an amount up to that portion of an individual's annual earned income, which is in excess of the amount of in-force disability insurance from an authorized insurer, in an amount not to exceed 75% of the individual's annual earned income in total based upon the sum of the in-force disability insurance and salary protection insurance when the benefits are payable to the individual or the individual's beneficiary.
Explosives, Munitions or Fireworks - Manufacturing or Display
Property and/or liability coverage for the manufacturer of explosives, munitions or fireworks and firms that produce fireworks displays and exhibitions.
Fine Arts Dealers
All-risk or named perils coverage for property held for sale by fine arts dealers.
Flood Insurance
1. Flood Insurance Excess of Maximum Limits available from the Federal Flood Program.
2. Primary coverage on [Property] *property* not eligible for Federal Flood Program.
General Liability, Owners, Landlords and Tenants and/or Manufacturers and Contractors
1. Primary or excess liability coverage for general contractors[,] *and* subcontractors, [and] *in* all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure.
2. Owners Contractors Protective - primary or excess liability coverage purchased by a contractor to protect the interests of the property owner relating to a specific construction project.
Golf Driving Range Liability
Personal injury or property damage liability coverage associated with the operation of a driving range, *e.g. for damage caused by* flying golf balls, improperly wielded golf clubs, etc.
Horseback Riding Establishments
Coverage for riding academies and pony rides.
House Movers and Building Demolition Contractors
Coverage for liability arising out of the moving of a house or the demolition of a building. For example, injury caused by falling brick, flying debris, etc., and structural or other damage to a house being moved.
Large Law Firm Lawyers' Professional Liability Insurance (LPL)
Professional liability for a law firm that has more than 100 attorneys.
Lead Liability Insurance
Coverage for personal injury resulting from the ingestion or inhalation of lead or lead dust.
Liquor Law Liability Coverage
Monoline liquor law liability coverage for taverns and restaurants only where liquor sales exceed 75 percent of total sales revenue.
Prize Indemnification
Coverage as defined in section 1113(a)(27) of the Insurance Law.
Product Liability Insurance
Product Liability Coverage for the following classes of risks or coverages only:
Aircraft Parts Manufacturers*;*
Automobile Parts Manufacturers*;*
Bioengineered Products*;*
Farm Equipment Parts Manufacturers*;*
Firearms Manufacturers*;*
Helmet Manufacturers*; and*
Pharmaceutical Products Manufacturers.
Product Recapture or Recall Insurance
Coverage for damages associated with the withdrawal, inspection, repair, replacement or loss of use of the insured's products or work, if such products, work or property are withdrawn from the market or use due to known or suspected defect or deficiency.
Recreational Guide Services
Coverage for outfitters and guides for [camping]*Camping*, [hiking]*Hiking*, [rafting]*Rafting, Bungee Jumping, Parachuting, Hunting and Fishing Clubs, Shooting Ranges, Hunting and Fishing* and similar recreational activities.
Security Guards - Armed and/or Using Dogs
Professional liability coverage for security guard firms which provide guards using firearms or dogs.
Skating Rinks
Liability coverage for injury to participants and spectators in ice and roller skating rinks.
Ski Area Liability
Liability coverage for owners and operators of ski resorts, ski lifts, ski equipment sales and rental, ski lessons, ski trail maintenance, snowmaking operation, etc.
Special Events
Primary or excess liability coverage for unique exposures of limited duration, which require varied and specialized terms, conditions and coverages generally issued to sponsors, organizers, performers and participants of trade shows, parades, flea markets, concerts, fairs and other similar events.
Special Multi Peril Coverages
Primary or excess liability coverage for general contractors[,] *and* subcontractors, [and] *in* all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure when the coverage is packaged along with property coverage.
Tractor Pulls/Mud Bogs
Liability coverage for claims of spectators, participants or other third parties in connection with the operation of organized exhibitions, races or demonstrations primarily involving ''Monster'' trucks, tractors and similar off-road vehicles.
Vacant Commercial Property
Primary or excess property insurance for vacant or unoccupied buildings used for commercial purposes.
Vacant or Unoccupied Buildings
Primary and/or Excess ''Liability'' Insurance for vacant or unoccupied Buildings.

Warehouseman's Liability

Coverage for the liability of a warehouse owner or operator for loss *of* or damage to the lawful goods of others in owner's or operator's care, custody or control.

(ii) Pursuant to the provisions of section 2118(b)(4) of the Insurance Law, the superintendent has determined that an excess line broker need only obtain two declinations from authorized [insureds]*insurers* for the following risks or exposures:

Primary or Excess Errors and Omissions/Miscellaneous Professional Liability Coverage (other than Medical Malpractice Insurance as described in [subparagraph] *subsection* [[e][1][ii]] *(e)(1)(ii)* of this section), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:

Alcohol and/or drug rehabilitation centers*;*

Alcohol and/or drug rehabilitation programs*;*

Residential facilities including convalescent centers, nursing homes, and assisted care facilities*;*

Day care centers for adults, children or the physically or mentally disabled*;*

Group homes for adults, children or the physically or mentally disabled*;*

Halfway houses for adults, children and/or the physically or mentally disabled*;*

Hospices care service providers*;*

Social services agencies*;*

Foster care service providers*; and*

Home health care providers.

Text of proposed 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

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

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law Sections 202, 301 and 302 and Insurance Law Sections 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 9102 and Article 59.

Section 301 of the Insurance Law and sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the ''Superintendent'') to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Article 21 of the Insurance Law sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses, or, pursuant to section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer. Section 2118 sets forth the duties of excess line brokers in placing insurance with eligible foreign and alien insurers, including the duty to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York (''ELANY'').

Insurance Law section 3103 provides that, subject to certain exceptions, insurance policies or annuity contracts that are delivered or issued for delivery in this state in violation of the Insurance Law are valid and binding upon the issuing insurer as though the policies complied with the Insurance Law.

Article 59 of the Insurance Law governs the formation and operation of purchasing groups. A purchasing group is a group formed pursuant to federal law that (1) has as one of its purposes the purchase of liability insurance on a group basis; (2) purchases liability insurance only for its group members to cover their similar or related liability exposures; (3) is composed of members whose businesses or activities are similar or related with respect to the liability exposure being insured; and (4) is domiciled in any state. Section 5907 provides that purchasing groups are subject to all applicable laws of this state, except that a purchasing group and its insurer are exempt from certain laws described therein. Purchasing groups are permitted to purchase liability insurance on a group basis in compliance with 11 NYCRR Part 153 (Insurance Regulation 135), and may purchase such coverage in the excess line market through licensed excess line brokers.

Insurance Law section 9102 establishes rules regarding the allocation of direct premiums taxable in New York where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, an unauthorized insurer may not do an insurance business in this state. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from unauthorized insurers, the Legislature established statutory requirements to protect persons seeking insurance in this state. An excess line broker must exercise due care and make a diligent effort to obtain insurance from authorized insurers before placing coverage with an unauthorized insurer. Generally, an excess line broker must obtain declinations from three authorized insurers before placing coverage with an unauthorized insurer. However, the regulation sets forth an ''export'' list of coverages that are not readily available in the authorized market and these may be placed through an excess line broker without obtaining the requisite three declinations.

The Legislature has recognized that in certain instances a different number of declinations may be appropriate and thus has permitted the Superintendent, after a public hearing, to change the number of necessary declinations. The proposed rule adds a number of coverages that will not require declinations to the export list.

3. Needs and benefits: Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from excess line insurers. By adding to the export list coverages that are hard to place and whose declinations become pro forma (since New York authorized companies are not writing adequate coverage), the proposed rule will increase efficiency in the placement of risks by excess line brokers with eligible excess line insurers.

4. Costs: The rule is not expected to impose any additional compliance costs on excess line brokers. In fact, the proposed rule should produce a cost savings, because it eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer. The proposed rule also should benefit New York insurance consumers, who will be able to obtain more quickly coverages not readily available in New York.

5. Local government mandates: This amendment does not impose any program, service, duty or responsibility upon any city, town or village, or school or fire district.

6. Paperwork: There is no additional paperwork required. In fact, the proposed rule should reduce paperwork, because excess line brokers will not have to complete the declination sections of the affidavits they are required to file with ELANY pursuant to section 27.5 of this regulation for every policy or policy renewal procured from an unauthorized insurer for the coverages on the export list.

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

8. Alternatives: Pursuant to Insurance Law section 2118(b)(4), the Department is tasked with reviewing the export list annually. In its review of the state of markets for difficult-to-place insurance coverages, the Department considers, among other things, the following: (1) complaints received regarding availability of coverages; (2) supporting documentation of requests to add coverages to the export list; and (3) responses to the Department's availability survey conducted every year pursuant to section 308 of the Insurance Law. The availability survey is sent to all authorized property/casualty insurance companies annually. The primary purpose of the survey is to ascertain the existence of markets for difficult-to-place insurance coverages.

In 2009, ELANY and a trade association submitted to the Department requests to add coverages to the export list. After publishing a notice in the State Register on July 7, 2010, the Department held a public hearing at its New York City offices on August 20, 2010. All interested parties, including authorized property/casualty insurance companies, were invited to testify orally or submit written comments. Additionally, on April 12, 2011, the Department performed outreach by posting the proposed rule on its website for additional comment.

After careful consideration of the written comments and oral testimonies received from the public hearing, publication of the proposed rule on the Department's website, and discussions with ELANY (the association representing excess line brokers), the Superintendent has determined that certain coverages should be added to the export list.

The review of ELANY's requested additions to the export list started with the fundamental premise that the authorized market is the preferred market. The excess line market exists specifically to meet the needs of New York residents only as a last resort. The Department's review of the proposal included an analysis of the annual availability survey, consultations with Department staff responsible for the particular lines of business, analysis of the Department's experience in processing inquiries from the

public with respect to availability concerns, and a thorough review of all testimony, both oral and written, that was provided by interested parties. The Department now proposes to add to the export list many of the coverages requested by ELANY. If the proposed rule is adopted, it will increase the number of coverages on the export list that will not require declinations. ELANY will provide the Department with data regarding the effect the amendments to the export list have had on the availability of coverage(s) in New York.

The proposed additional coverages to the export list are as follows:

• Asbestos, Fungi and Water Damage Remediation and Removal - Liability and Property Damage

This coverage was added based on the Department's analysis of information and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited and that addition to the export list is appropriate.

• Builders Risk Insurance: Coverage for construction projects where the total insured values exceed $10,000,000.

This coverage was added based on the Department's analysis of information and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited for these high capacity risks, which require large limits, and that addition to the export list is appropriate.

• Elevator Service and Maintenance Contractors - Liability and Property Damage

This coverage was added based on the Department's analysis of information and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited and that addition to the export list is appropriate.

• Excess Professional/Errors & Omissions Liability - All Classes: Coverage for excess liability where the underlying policy limits and/or self insured retention is at least $10,000,000 per occurrence.

The Department, based on information provided at the hearing, and in consultation with experienced Property Bureau staff, concluded that the availability of this coverage through admitted channels is limited due to the unusual nature of these high capacity risks. The Department further concluded that the characteristics of this type of coverage are unique and that the coverage generally needs to be customized or manuscripted to the features of the specific exposure. For these reasons, the Department favors adding this coverage to the export list.

• Excess Professional/Excess Salary Protection (Disability) Insurance as monoline policy: Coverage for high excess disability.

Coverage is provided pursuant to Insurance Law section 1113(a)(31)(A), insuring against financial loss caused by the cessation of earned income due to disability from sickness, ailment or bodily injury, in an amount up to that portion of an individual's annual earned income that is in excess of the amount of in-force disability insurance from an authorized insurer, in an amount not to exceed 75% of the individual's annual earned income in total based upon the sum of the in-force disability insurance and salary protection insurance when the benefits are payable to the individual or the individual's beneficiary; or (B) where such underlying disability insurance cannot be obtained by an individual from an authorized insurer, in an amount not to exceed seventy-five percent of the individual's annual earned income when the benefits are payable to the individual or the individual's beneficiary.

Coverage for high excess disability, as defined in Insurance Law section 1113(a)(31)(B), was added based on the Department's analysis of information provided and in consultation with experienced Property Bureau staff. The Department further concluded that availability of this coverage through admitted channels is limited. For these reasons, the Department favors adding this coverage to the export list.

• Large Law Firm Lawyers' Professional Liability Insurance (LPL): Coverage for professional liability for a large law firm that employs more than 100 attorneys.

This coverage was added based on the Department's analysis of information provided at the public hearing and after consultation with Property Bureau staff. The Department concluded that the availability of this coverage through admitted channels is limited and that addition to the export list is appropriate.

• Recreational Guide Services: Coverage for bungee jumping, parachuting, hunting and fishing, hunting and fishing clubs, and shooting ranges was added.

The Department, based on information provided at the hearing and in consultation with experienced Property Bureau staff, concluded that the availability of this coverage through admitted channels is limited. The Department further concluded that the characteristics of this type of coverage are unique and that the coverage generally needs to be customized or manuscripted to the features of the specific exposure. For these reasons, the Department favors adding this coverage to the export list.

• Vacant or Unoccupied Buildings: Coverage for primary and/or excess liability insurance for vacant or unoccupied buildings.

The Department proposes adding this coverage to the export list based on its analysis of information provided at the public hearing and after consultation with experienced Property Bureau staff. The Department concluded that the availability of the coverage through admitted channels is extremely limited. For this reason, the Department favors adding this coverage to the export list.

Other Coverages:

The Department opted not to expand the export list with regard to the following coverages:

• Auto Physical Damage: Coverage for commercial trucks, black cars, limousines and other commercial passenger transportation vehicles.

Initially the Department considered adding only medallion taxis; however, following testimony that indicated such coverage is available from several admitted insurers, and ELANY's withdrawal of the request to add this coverage, the proposed rule does not add Auto Physical Damage coverage to the export list.

• Used Car Dealers - Liability and Physical Damage

The Department concluded that there is sufficient capacity for this coverage in the authorized market based on information provided and in consultation with experienced Property Bureau staff. For this reason, the proposed rule does not add Used Car Dealers - Liability and Physical Damage coverage to the export list.

With respect to the following coverage types, which currently are on the export list requiring two declinations, the Department opted not to reduce the number of declinations to zero:

• Primary or Excess Errors and Omissions/Miscellaneous Professional Liability: Coverage (other than Medical Malpractice Insurance), including general liability coverage (if included in the same policy) with respect to the following risks or coverages:

Alcohol and/or drug rehabilitation centers;

Alcohol and/or drug rehabilitation programs;

Residential facilities including convalescent centers, nursing homes, and assisted care facilities;

Day care centers for adults, children or the physically or mentally disabled;

Halfway houses for adults, children and/or the physically or mentally disabled;

Hospice care service providers;

Social services agencies;

Foster care service providers; or

Home health care providers.

The Department concluded that there is sufficient capacity for these coverages in the authorized market based on information provided and in consultation with Property Bureau staff. The proposed rule does not reduce the number of declinations from two to zero for Primary or Excess Errors and Omissions/Miscellaneous Professional Liability coverages on the export list.

• Primary and/or excess liability coverage for general contractors and subcontractors in all construction trades for damages that arise out of the construction, building, demolition or renovation of any building or structure.

The proposed rule amended the language of this coverage to clarify that it pertains to contactors and subcontractors in construction trades.

The Department conducted further outreach by posting the proposed amendment on its web site to solicit feedback on the proposed changes from interested parties. The Department received one outreach comment from the Excess Line Association of New York (''ELANY''), a non-profit industry advisory association representing excess line brokers. ELANY requested a reduction in the number of declinations from two to zero for certain coverages currently on the export list. ELANY explained that this class of coverage is very difficult to place in the licensed market. Specifically, ELANY commented that the extremely restrictive underwriting criteria of the limited number of licensed insurers that write this coverage severely limits the number of risks that are acceptable to them. This coverage is generally unavailable to New York brokers; consequently, a substantial volume of this business must be placed by wholesale excess line brokers on behalf of these retail brokers. ELANY also indicated that it is encountering programming difficulties in accommodating two declination transactions. The Department contends that the issue of amending the requisite number of declinations was not a part of this proposed rule. The Department received other comments in support for keeping the declinations at two. A commentator stated that a competitively priced admitted market exists in New York for the type of coverage requiring two declinations, which makes the need to reduce the requirement to zero declinations unnecessary. Therefore, the rule was not so modified.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

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

Regulatory Flexibility Analysis

1. Small businesses: Most excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Proce-

dure Act. The Department of Financial Services finds that this rule will not have any adverse economic impact on these small businesses and will not impose any reporting, recordkeeping or other compliance requirements on these small businesses because the proposed rule liberalizes the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

The proposed rule will streamline the process for obtaining coverage for difficult-to-place risks in the excess line market, because excess line brokers will not have to complete the declination sections of the affidavit with respect to coverages on the ''export'' list.

2. Compliance requirements: None.

3. Professional services: No additional professional services are anticipated to be needed to comply with the proposed rule.

4. Compliance costs: This rule would impose no additional compliance costs on excess line brokers. In fact, the proposed rule should produce a cost savings for excess line brokers inasmuch as they no longer will have to obtain declinations for the coverages added to the ''export'' list.

5. Economic and technological feasibility: Compliance with the rule is economically and technologically feasible as the rule merely eases the requirement of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

6. Minimizing adverse impact: There is no adverse impact and, in fact, the rule should produce a cost savings for excess line brokers because the rule eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

7. Small business and local government participation: In 2009, the Excess Line Association of New York (''ELANY'') and a trade association provided a list of coverages to the Department on behalf of excess line brokers for consideration as additions to the ''export'' list. The Department held a public hearing on August 20, 2010 at its New York City offices regarding the adding of coverages to the ''export'' list. Prior notice of the hearing had been published in the State Register on July 7, 2010. The public had been invited to testify orally or submit written comments. The regulation resulting from the public hearing was posted to the Department's website on April 12, 2011 as an outreach draft, and the public was provided an opportunity to submit comment on the draft proposal until April 26, 2011. The Department received one outreach comment, which was submitted by ELANY, requesting a reduction in the required number of declinations for certain of the coverages included on the ''export'' list.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Excess line brokers licensed in New York State and subject to the provisions of the proposed rule do business in most, if not all, of the counties in this state including rural areas as defined in section 102(13) of the State Administrative Procedure Act. Some of these licensees may have offices in rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The present rule requires that excess line brokers obtain three declinations from authorized insurers before procuring a policy from an unauthorized insurer, except for those coverages that are set forth on the ''export'' list, which do not require declinations. The proposed rule adds coverages that will not require declinations to the ''export'' list.

There are no additional reporting, recordkeeping, or other compliance requirements.

3. Costs: Implementation of the proposed rule will not cause excess line brokers any additional costs. In fact, the proposed rule should produce a cost savings for excess line brokers, because it eases the requirements of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

4. Minimizing adverse impact: The proposed rule does not impose any adverse impact on excess line brokers, because it eases the requirement of obtaining declinations from authorized insurers for certain types of coverages before procuring a policy from an unauthorized insurer.

The rule will not have an adverse impact on the excess line market, or the ability of insureds to obtain coverage in the excess line market in any area of New York, including rural areas.

5. Rural area participation: In 2009, the Excess Line Association of New York (''ELANY'') and a trade association provided a list of coverages to the Department for consideration as additions to the ''export'' list. The Department held a public hearing on August 20, 2010 at its New York City offices regarding the adding of coverages to the ''export'' list. Prior notice of the hearing had been published in the State Register on July 7, 2010. The public had been invited to testify orally or submit written comments. The regulation resulting from the public hearing was posted to the Department's website on April 12, 2011 as an outreach draft, and the public was provided an opportunity to submit comment on the draft proposal until April 26, 2011. The Department received one outreach comment, which was submitted by ELANY, requesting a reduction in the number of declinations for certain of the coverages included on the ''export'' list.

Job Impact Statement

The Department of Financial Services has determined that this rule will have no impact on jobs and employment opportunities because it merely adds coverages that will not require declinations to the ''export'' list.

Department of Health

EMERGENCY RULE MAKING

Medicaid Managed Care Programs

I.D. No. HLT-43-11-00019-E
Filing No. 1057
Filing Date: 2012-10-19
Effective Date: 2012-10-19

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

Action taken: Repeal of Subparts 360-10 and 360-11 and sections 300.12 and 360-6.7; and addition of new Subpart 360-10 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; Social Services Law, sections 363-a, 364-j and 369-ee

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment take effect April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

Subject: Medicaid Managed Care Programs.

Purpose: To repeal old and outdated regulations and to consolidate all managed care regulations to make them consistent with statute.

Substance of emergency rule: The proposed rule repeals various sections of Title 18 NYCRR that contain managed care regulations and replaces them with a new Subpart 360-10 that consolidates all managed care regulations in one place and makes the regulations consistent with Section 364-j of the Social Services Law (SSL). Section 364-j of the SSL contains the Medicaid managed care program standards. The new Subpart 360-10 will also apply to the Family Health Plus (FHP) program authorized in Section 369-ee of the Social Services Law. FHP-eligible individuals must enroll in a managed care organization (MCO) to receive services and FHP MCOs must comply with most of the programmatic requirements of Section 364-j of the SSL.

The new Subpart 360-10 identifies the Medicaid populations required to enroll and those that are exempt or excluded from enrollment, defines good cause reasons for changing/disenrolling from an MCO, or changing primary care providers (PCPs), adds enrollee fair hearing rights, adds marketing/outreach and enrollment guidelines, and identifies unacceptable practices and the actions to be taken by the State when an MCO commits an unacceptable practice.

The proposed rule repeals the existing Subparts 360-10 and 360-11 and Sections 300.12 and 360-6.7 of Title 18 NYCRR. Section 300.12 applied to the Monroe County Medicap program, a managed care demonstration project that was undertaken in the mid-1980s and that no longer exists. Section 360-6.7 addresses processes and timeframes for disenrollment from the various types of MCOs and these provisions are included in the new Subpart 360-10. Subpart 360-11 implemented provisions relating to special care plans formerly contained in SSL Section 364-j; these provisions were added by Chapter 165 of the Laws of 1991 and later removed by Chapter 649 of the Laws of 1996.

360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the

Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

360-10.4 Individuals required to enroll in a Medicaid managed care organization

This section identifies the individuals who will be required to enroll in an MCO.

360-10.5 Individuals exempt or excluded from enrolling in a Medicaid mandatory managed care organization

This section identifies the good cause reasons for a Medicaid recipient to be exempt or excluded from enrollment in a mandatory managed care program. The section also includes the procedures for requesting an exemption or exclusion and the timeframes for processing the request. This section also describes the notices that must be provided to a Medicaid recipient if his/her request is denied.

360-10.6 Good cause for changing or disenrolling from an MCO

This section describes the good cause reasons for an enrollee to change MCOs and the process for requesting a change or disenrollment. This section also identifies the timeframes for processing the request and the notices that must be provided to the enrollee regarding his/her request.

360-10.7 Good cause for changing primary care providers

This section describes the good cause reasons for a managed care enrollee to change primary care providers, the process through which the enrollee may request such a change and the timeframes for processing the request.

360-10.8 Fair Hearing Rights

This section identifies the circumstances under which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its utilization review agent about services. The section describes the notices that must be sent to advise the enrollee of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

360-10.9 Appeal Rights for Recipients Enrolled in Medicaid Advantage

This section identifies the Medicaid and Medicare appeal rights that are available for recipients enrolled in a Medicaid Advantage plan.

360-10.10 Marketing/Outreach

This section defines marketing/outreach and establishes marketing/outreach guidelines for MCOs including requiring MCOs to submit a marketing/outreach plan, requiring MCOs to get approval of materials before distribution, and establishing limits for marketing/outreach representative reimbursement.

360-10.11 MCO unacceptable practices

This section identifies additional unacceptable practices for MCOs. These are generally related to marketing/outreach.

360-10.12 MCO sanctions and due process

This section identifies the actions the Department is authorized to take when an MCO commits an infraction.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-43-11-00019-P, Issue of October 26, 2011. The emergency rule will expire December 17, 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:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance (''Medicaid'') program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 364-j of the SSL governs the Medicaid managed care program, under which certain Medicaid recipients are required or allowed to enroll in and receive services through managed care organizations (MCOs). Section 369-ee of Social Services Law authorized the State to implement the Family Health Plus (FHP) program, a managed care program for individuals aged 19 to 64 who have income too high to qualify for Medicaid. The intent of the Legislature in enacting these programs was to assure that low-income citizens of the State receive quality health care and that they obtain necessary medical services in the most effective and efficient manner.

Chapter 59 of the Laws of 2011 amended SSL section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the exemptions and exclusions from enrollment previously contained in the statute.

Needs and Benefits:

The proposed regulations reflect current program practices and requirements, consolidate all managed care regulations in one place, and conform the regulations to the provisions of SSL section 364-j, including the recent amendments made by Chapter 59 of the Laws of 2011. The proposed regulations identify the individuals required to enroll in Medicaid managed care and identify the populations who are exempt or excluded from enrollment.

The proposed regulations also contain provisions, which apply to both the Medicaid managed care and the FHP programs: specifying good cause criteria for an enrollee to change MCOs or to change their primary care provider; explaining enrollees' rights to challenge actions of their MCO or social services district through the fair hearing process; establishing marketing/outreach guidelines for MCOs; and identifying unacceptable practices and sanctions for MCOs that engage in them.

Costs:

The proposed regulations do not impose any additional costs on local social services districts beyond those imposed by law. The current managed care program operates under a federal Medicaid waiver pursuant to section 1115 of the Social Security Act. Through the waiver, the State receives federal dollars for its Safety Net and FHP populations. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

Local Government Mandates:

The proposed regulations do not create any additional burden to local social services districts beyond those imposed by law.

Paperwork:

Social Services Law requires that Medicaid recipients be advised in writing regarding enrollment, benefits and fair hearing rights. In compliance with the law, the proposed regulations describe the circumstances under which a Medicaid managed care participant should be provided with such notices, who is responsible for sending the notice and what should be included in the notice. There are reporting requirements associated with the program for social service districts and MCOs. The social services district is required to report on exemptions granted, complaints received and other enrollment issues. MCOs must submit network data, complaint reports, financial reports and quality data. These requirements have been in existence since 1997 when the mandatory Medicaid managed care program began. There are no new requirements for the social services districts or the MCOs in the proposed regulations.

Duplication:

The proposed regulations do not duplicate any State or federal requirements unless necessary for clarity.

Alternatives:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

Federal Standards:

Federal managed care regulations are in 42 CFR 438. The proposed regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The mandatory Medicaid managed care program has been in operation since 1997. As a result, all counties in the State have some form of managed care. The requirements in the proposed rules have been implemented through the contract between the State or eligible social services and participating MCOs.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997 the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to

receive services through managed care organizations (MCOs). Currently, all counties have implemented some form of managed care. As of April, 2011, forty-nine counties have a mandatory Medicaid managed care program; nine counties have a voluntary Medicaid managed program. All counties have a FHP program.

As a result of the implementation of the Medicaid managed care program and FHP programs, most Medicaid recipients and all FHP eligible persons are required to enroll and receive services from providers who contract with a managed care organization (MCO). MCOs must have a provider network that includes a sufficient array and number of providers to serve enrollees, but they are not required to contract with any willing provider. Consequently, local providers may lose some of their patients. However, this loss may be offset by an increase in business as a result of the implementation of FHP.

The proposed regulations do not impose any additional requirements beyond those in law and the benefits of the program outweigh any adverse impact.

Compliance Requirements:

No new requirements are imposed on local governments beyond those included in law and there are no requirements for small businesses.

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap. Additionally, the 1115 waiver reduced local government costs by authorizing Federal participation for the Safety Net and Family Health Plus (FHP) populations.

Economic and Technological Feasibility:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Minimizing Adverse Impact:

The mandatory Medicaid managed care program is implemented only when there are adequate resources available in a local district to support the program. No new requirements are imposed beyond those included in law.

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has fourteen years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Small Business and Local Government Participation:

The regulations do not introduce a new program. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Rural Area Flexibility Analysis

Effect on Rural Areas:

All rural counties with managed care programs will be affected by this rule. As of April 2011, all rural counties have a Medicaid managed care and Family Health Plus (FHP) program.

Compliance Requirements:

This rule imposes no additional compliance requirements other than those already contained in Section 364-j of the Social Services Law (SSL).

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in 2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Feasibility Assessment:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Rural Area Participation:

The proposed regulations do not reflect new policy. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of the SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Job Impact Statement

Nature of Impact:

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Authority to Collect Pharmacy Acquisition Cost

I.D. No. HLT-40-12-00003-E

Filing No. 1056

Filing Date: 2012-10-19

Effective Date: 2012-10-19

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

Action taken: Amendment of section 505.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201(1)(v) and 206; and Social Services Law, sections 363-a(2) and 367-a(9)(b)

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The change to

SSL section 367-a, which incorporates the use of Average Acquisition Cost (AAC) in the drug reimbursement methodology takes effect April 1, 2011. Without actual acquisition cost data, the Department is unable to move forward with development of AAC. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file this regulation on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions.

Subject: Authority to Collect Pharmacy Acquisition Cost.

Purpose: Establishes a requirement that each enrolled pharmacy report actual acquisition cost of a prescription drug to the Department.

Text of emergency rule: Paragraphs (3) through (6) of subdivision (a) of section 505.3 are renumbered as paragraphs (4) through (7) and new paragraph (3) is added to read as follows:

(3) Drug acquisition cost means the invoice price to the pharmacy of a prescription drug dispensed to a Medicaid recipient, minus the amount of all discounts and other cost reductions attributable to such dispensed drug.

Paragraph (4) is added to subdivision (f) of section 505.3 to read as follows:

(4) Each pharmacy enrolled in the Medicaid program shall provide the department, in such manner, for such periods, and at such times as the department may require, with the drug acquisition cost, as defined in paragraph 505.3(a)(3), of prescription drugs.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-40-12-00003-P, Issue of October 3, 2012. The emergency rule will expire December 17, 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:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance (''Medicaid'') program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

On April 1, 2011, the Legislature and Medicaid Redesign Team adopted a proposal to amend Medicaid drug payment methodology, as defined in SSL section 367-a(9)(b), to include average acquisition cost (AAC), when available. To meet Legislative objectives, a rule is needed to require each enrolled pharmacy to report actual acquisition cost of a prescription drug to the Department in a manner specified by the Department. This rule will enable the Department to collect actual acquisition cost, analyze the data and establish a statistically valid and transparent AAC.

Needs and Benefits:

The requirement to report acquisition cost is necessary in order to effectuate the inclusion of AAC in the New York State Medicaid drug reimbursement methodology. Under the fee-for-service pharmacy program, Medicaid reimburses pharmacy services based on a ''lower of'' methodology that includes the pharmacy's usual and customary charge; Estimated Acquisition Cost (EAC); Federal Upper Limit (FUL); State Maximum Allowable Cost (SMAC); Average Wholesale Price (AWP) minus a percentage; Wholesale Acquisition Price (WAC) plus a percentage; or AAC, if available.

Once a valid AAC and appropriate dispensing fee is established, the Department intends to seek approval to replace the ''lower of'' methodology with AAC as the pricing threshold. The rationale for moving to AAC is to establish a transparent pharmacy reimbursement system and to do so with stakeholder involvement and support. There are numerous rulings in both state and federal courts that solidly establish a pattern of inflated, inaccurate or fraudulent pricing resulting from current standard reimbursement benchmarks supplied by drug manufacturers, such as AWP or WAC. Once established, use of AAC allows the State to set reimbursement rates based on an actual acquisition cost (invoice data) and an appropriate dispensing fee. The comprehensive, statewide data collection resulting from the reporting of acquisition cost will allow for a thorough, statistically valid analysis of pricing, including an evaluation of outliers, and the development of a legitimate AAC. Without this data, AAC cannot be established.

COSTS:

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

Regulated entities could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments.

Costs to the Department of Health:

The Department could incur minimal administrative costs related to the collection, analysis and maintenance of acquisition costs.

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:

This amendment could potentially impose additional paperwork for regulated entities if collection of acquisition cost is done through the use of a hard copy survey tool rather than electronic submission.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The only potential alternative to requiring the reporting of acquisition cost is a voluntary survey, which is not considered feasible as it would not provide a statistically valid sample of costs.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

The Department will work closely with regulated entities to ensure they are able to comply with the proposed regulation when it becomes effective.

Regulatory Flexibility Analysis

Effect of Rule:

This amendment affects the approximately 4,400 pharmacy providers enrolled in the Medicaid program that actively bill Medicaid for drugs. This amendment will require these businesses, some of which are small, to identify and report the acquisition cost of drugs dispensed to fee-for-service Medicaid beneficiaries. Medicaid will ultimately address additional costs with the development of an increased dispensing fee that regulated entities will participate in establishing.

The fifty-eight local social services districts share in the costs of services provided to eligible beneficiaries who receive Medicaid through their districts and would therefore benefit from a more transparent pharmacy reimbursement benchmark.

Compliance Requirements:

Small businesses will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. This amendment does not impose any new reporting, recordkeeping or other compliance requirements on local governments.

Professional Services:

No new professional services are required as a result of this amendment.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule. However, regulated entities, which include small businesses, could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs for regulated entities will vary and will be dependent on each entity's product wholesalers and/or software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated small businesses will participate in establishing.

There are no direct costs associated with this amendment for local governments.

Economic and Technological Feasibility:

The amendment requires regulated entities to submit additional information for drugs billed under the fee-for-service Medicaid program but will not affect the way local districts contribute their local share of Medicaid expenses for drugs. Therefore, there should be no technological difficulties associated with compliance with the proposed regulation for local governments and minimal, if any, technological difficulties for small businesses.

Minimizing Adverse Impact:

By engaging regulated entities in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact on small businesses. Additionally, the Department will work with small businesses to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

Small Business and Local Government Participation:

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). Both of these groups have been informed of the proposed

changes and have expressed concerns over administrative burdens. However, representatives of regulated entities have also welcomed the opportunity to collaborate with the Department in development of the proposed process. Upon promulgating the regulation, the Department will continue to work with the industry and assist as necessary with implementation of the new requirement.

Local government officials have consistently urged the Department to implement Medicaid cost savings programs.

Rural Area Flexibility Analysis

Effect on Rural Areas:

The proposed amendment will apply to approximately 4,400 Medicaid enrolled pharmacy providers. These regulated entities are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Regulated entities in rural areas will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by the Department. No new professional services will be required as a result of this amendment.

Costs:

Regulated entities in rural areas could potentially incur minimal costs related to this amendment; such costs would be limited to administrative costs of identifying acquisition cost and any system updates needed to report such costs. Initial administrative costs and compliance costs will vary and will be dependent on each entity's product wholesalers and software vendors. Medicaid will address compliance costs with the development of an increased dispensing fee that regulated entities in rural areas will participate in establishing.

Minimizing Adverse Impact:

By engaging regulated entities in rural areas in the development of procedures for reporting acquisition cost, the Department will minimize any adverse impact. Additionally, the Department will work with regulated entities in rural areas to develop an appropriate dispensing fee that accurately reflects the costs associated with this amendment.

Rural Area Participation:

The Department meets on a regular basis with provider groups representing regulated entities, such as the Pharmacists Society of the State of New York (PSSNY) and the National Association of Chain Drug Stores (NACDS). While both of these groups have expressed concerns over administrative burdens, representatives of regulated entities have welcomed the opportunity to collaborate with the Department in development of the proposed process and an appropriate dispensing fee. Upon promulgating the regulation, the Department will continue to work with the regulated entities in rural areas and assist as necessary with implementation of the new requirement.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulation, that there will not be a substantial adverse impact on jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Orthodontic Screening

I.D. No. HLT-40-12-00005-E

Filing No. 1061

Filing Date: 2012-10-22

Effective Date: 2012-10-22

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

Action taken: Repeal of section 85.45 of Title 10 NYCRR; and amendment of section 506.4 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a and 365-a(2)

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

Specific reasons underlying the finding of necessity: In 2011, the Medicaid Redesign Team established by the Governor recommended changes to the Medicaid program to reduce costs and increase quality and efficiency in the Medicaid program. Included in the adopted proposals, MRT 1458's focus is to integrate populations and benefits into Medicaid managed care over a three year period. As part of this plan, new orthodontia cases will be integrated into the Medicaid managed care benefit package effective October 1, 2012 and existing cases will be managed by the Department until treatment completion. Due to the nature and timeline of initial orthodontic evaluation and subsequent treatment for several years, the transition process will need to begin July 1, 2012. The new regulations update the Medicaid review and administrative procedures to be consistent with the MRT goals and standards of clinical practice. The Commissioner has determined it necessary to file these regulations on an emergency basis to facilitate an efficient benefit transition and provide for continuity of care.

Subject: Orthodontic Screening.

Purpose: Orthodontic Screening Provider Qualifications and Recipient Eligibility Criteria.

Text of emergency rule: Section 85.45 of Title 10 is repealed.

Section 506.4 of Title 18 is amended to read as follows:

(a) [Authorization of the social services official for orthodontic] *Orthodontic* care shall be provided*, in accordance with criteria and procedures set forth in the Medicaid Dental Provider Manual, athttps://www.emedny.org/ProviderManuals/Dental/index.aspx,* only:

(1) for a [child] *person under twenty-one years of age* with a *severe* physically handicapping malocclusion*, up to a maximum of three years of active orthodontic care, plus one year of retention care, provided that treatment was approved and active therapy begun prior to the person's twenty-first birthday* [, if such care is approved by the county medical director of the physically handicapped children's program upon the recommendation of an orthodontic screening center approved by the New York State Department of Health]; or

(2) [for a young adult if the malocclusion presents a serious psychological problem, determined from a written report by a qualified psychiatrist and if such care is approved by the dental director upon the recommendation of an orthodontic screening center approved by the New York State Department of Health] *for a person twenty-one years of age or older, in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment)*.

(b) [All cases accepted for orthodontic care shall be reviewed annually for progress to determine the need for continuing care.

(c) Social services districts shall provide and pay for orthodontic care for an eligible recipient of medical assistance, in any one case, for a maximum period of three years of active orthodontic care and one year of retention care. However, for a patient with cleft palate, active care beyond such three-year period may be approved and authorized when supported by adequate justification.

d)] *(b)* Orthodontic care shall be provided only by [orthodontists] *qualified practitioners as determined by the Department*.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-40-12-00005-P, Issue of October 3, 2012. The emergency rule will expire December 20, 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:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance (''Medicaid'') program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objectives:

Section 365-a of the SSL provides that in addition to care, services, and supplies specifically listed in such section, Medicaid payment will be available for care, services, and supplies authorized in the regulations of the Department.

Needs and Benefits:

The proposed amendments clarify current policy regarding coverage of orthodontic services under the Medicaid program, and eliminate outdated references to the Physically Handicapped Children's Program (PHCP), a county-based public health program that was once, but is no longer, the primary point of access for Medicaid-covered orthodontic services for children.

The proposed amendments also remove from regulation specific procedures and criteria for Medicaid providers to bill and be reimbursed for orthodontic services, in favor of having such information provided in the Department's Medicaid Dental Provider Manual, which is available online athttps://www.emedny.org/ProviderManuals/Dental/index.aspx.

Including detailed information on these topics in the regulation necessitates amending the regulation whenever a minor change is made to policy, procedures or criteria. This is unwieldy, and prevents the Medicaid program from reacting promptly to evolving clinical standards for orthodontic care.

Specifically, the proposed amendments would repeal 10 NYCRR Section 85.45, an outdated section dealing primarily with the PHCP, and amend 18 NYCRR Section 506.4 to set forth current Medicaid coverage policy regarding orthodontic services. As amended, section 506.4 would provide for Medicaid coverage, with respect to a person under 21 years of age, of up to three years of active orthodontic care, plus one year of retention care, to treat a severe physically handicapping malocclusion. Part of such care could be provided after the person reached the age of 21, provided that the treatment was approved and active therapy begun prior to the person's 21st birthday. In addition, coverage would be provided for persons age 21 and over in connection with necessary surgical treatment (e.g. approved orthognathic surgery, reconstructive surgery or cleft palate treatment).

Costs:

Costs to the State Government:

There will be no additional costs to State Government as a result of the amendments.

Costs to Local Government:

There will be no additional costs to local governments as a result of the amendments.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties as a result of the amendments.

Costs to the Regulatory Agency:

There is no anticipated cost to the regulatory agency.

Local Government Mandate:

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

Paperwork:

The proposed regulation does not require any additional paperwork to be completed by regulated parties.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state, or local regulation.

Alternatives:

The existing rules contain outdated and vague criteria for the appropriate provision of orthodontic services under the Medicaid program. One alternative would be to update and clarify these criteria and procedures within the regulation. This approach was rejected since, as indicated above, it would maintain in the regulation a level of detail more appropriate to a provider manual. In addition, it would hamper the Department's ability to keep Medicaid criteria in step with advances in orthodontic clinical standards, and potentially allow providers to perform excessive or unnecessary procedures while the Department undertakes the process of promulgating revised regulations.

Federal Standards:

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

Compliance Schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers and practitioner offices. Based on recent data extracted from providers' submitted cost reports, seven hospitals, 245 DTCs and most practitioner offices were identified as employing fewer than 100 employees.

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendment is intended to strengthen the orthodontic care program in New York State so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. It is projected to have little or no impact on health care providers, particularly those with fewer than 100 employees.

Minimizing Adverse Impact:

The proposed amendment applies to orthodontic services and programs provided by hospitals, diagnostic and treatment centers and practitioner offices. The Department meets regularly with these providers in order to proactively address concerns and issues relating to orthodontic services.

Small Business and Local Government Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse economic impact on small businesses or local governments, and no new reporting, recordkeeping, or other compliance requirements are being imposed as a result of these rules. Small businesses and local governments will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendment applies to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The proposed amendment is intended to strengthen the orthodontic care program in New York State and increase its flexibility so that it is more adaptive to the Medicaid population's evolving clinical needs while ensuring that eligible recipients receive the appropriate level of orthodontic care. The existing rule would continue to provide Medicaid reimbursement to providers for delivering clinically unnecessary and excessive orthodontic care.

Opportunity for Rural Area Participation:

The proposed amendment clarifies current policy regarding coverage of orthodontic services under the Medicaid program. It will not have an adverse impact on rural areas, and no new reporting, recordkeeping, or other compliance requirements are being imposed as a result of these rules. Public and private interests in rural areas will have the opportunity to participate in the rulemaking process by submitting comments during the public comment period following the publication of the Notice of Proposed Rulemaking.

Job Impact Statement

Nature of Impact:

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law.

Regions of Adverse Impact:

This rule will apply to orthodontists that perform orthodontic screenings as well as some downstate hospitals as defined under Article 28 of the Public Health Law, but it will have no adverse impact on those operators or their employees.

Minimizing Adverse Impact:

The rule would not impose any additional requirements upon regulated entities, and therefore there would be no adverse impact on jobs or employment opportunities.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

International Registration Plan

I.D. No. MTV-45-12-00005-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 28 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 405-i

Subject: International Registration Plan.

Purpose: Makes some minor technical changes and incorporates procedural changes.

Substance of proposed rule (Full text is posted at the following State website:www.dmv.ny.gov): This consensus rule clarifies and makes technical corrections to Part 28, the International Registration Plan (IRP). The proposed rule does not impose new obligations on motor carriers, but rather, codifies in the regulation existing procedures.

For example, Part 28.2(b) incorporates requirements set forth in the Federal Performance and Registration Information Systems Management (PRISM) program. PRISM was developed to meet the challenge of reducing the number of commercial vehicle crashes of a rapidly expanding interstate carrier population. Through PRISM, information system connections between participating IRP vehicle registration agencies and the Federal Motor Carrier Safety Administration (FMCSA) provide the ability to check the safety status of motor carriers prior to issuing or renewing IRP license plates. In order for PRISM to work effectively, carriers must report their USDOT and taxpayer identification numbers to DMV, as well as other information required by the Federal Motor Carrier Administration. The collection of such numbers is codified in this regulation.

The regulation also clarifies current procedure regarding which vehicles are IRP eligible, staggered expiration dates for IRP registrations, and proof of payment or exemption of the Heavy Vehicle Use Tax and proof of clearance regarding the Highway Use Tax.

Text of proposed rule and any required statements and analyses may be obtained from: Donna Vickery, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: donna.vickery@dmv.ny.gov

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: donna.vickery@dmv.ny.gov

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

Consensus Rule Making Determination

This proposed rule makes numerous minor technical changes to Part 28 and incorporates several procedures related to the International Registration Plan (IRP) into such Part.

As background, Chapter 755 of the Laws of 1987 authorized the Commissioner of Motor Vehicles to enter into a reciprocal agreement to have this State become a member of the IRP. The IRP is a registration reciprocity agreement among states of the United States, the District of Columbia and provinces of Canada providing for a single payment of registration fees on the basis of fleet distance operated in various jurisdictions. It calls for a single license plate or set of plates and a single cab card to be issued by only one jurisdiction for each vehicle in a fleet registered under the Plan, and so far as registration is concerned, that vehicle may be operated both interstate and intrastate in the appropriate jurisdictions. Application for entry into the program was made by the Commissioner as provided under the Plan and this State's entry was approved and endorsed by member jurisdictions on February 5, 1988.

The purpose of the proposed rulemaking is to update terminology and clarify language, and to incorporate procedures regarding the IRP that the Department has been requiring for years. The regulation does not impose any new requirements on motor carriers, but rather, clarifies and elucidates such procedures.

For example, Part 28.2(b) incorporates requirements set forth in the Federal Performance and Registration Information Systems Management (PRISM) program. PRISM was developed to meet the challenge of reducing the number of commercial vehicle crashes of a rapidly expanding interstate carrier population. It has increased the efficiency and effectiveness of Federal and State safety efforts through a more accurate process for targeting the highest-risk carriers, which allows for a more efficient allocation of scarce resources for compliance reviews and roadside inspections. The PRISM program requires that motor carriers improve their identified safety deficiencies or face progressively more stringent sanctions up to the ultimate sanction of a Federal Out-of-Service order and concurrent State registration suspensions through PRISM, information system connections between participating IRP vehicle registration agencies and the Federal Motor Carrier Safety Administration (FMCSA) provide the ability to check the safety status of motor carriers prior to issuing or renewing IRP license plates. In order for PRISM to work effectively, carriers must report their USDOT and taxpayer identification numbers to DMV, as well as other information required by the Federal Motor Carrier Administration. The collection of such numbers is codified in this regulation.

Since this proposed rulemaking imposes no new requirements on motor carriers, a consensus rule is appropriate.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer Certain Equipment to AES ES Westover LLC

I.D. No. PSC-45-12-00003-EP

Filing Date: 2012-10-19

Effective Date: 2012-10-19

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

Proposed Action: The Public Service Commission adopted an order approving the transfer of a 115 kV circuit breaker from New York State Electric & Gas Corporation (NYSEG) to AES ES Westover LLC (AES ES), so that AES ES can repair an interconnection at its Westover site, which is crucial to preserving electric reliability in the surrounding region because it connects NYSEG's 115 kV system to its 34.5 kV system, besides also connecting to NYSEG a battery storage system owned by AES ES.

Statutory authority: Public Service Law, section 70

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

Specific reasons underlying the finding of necessity: Approval of the transfer of the 115 kV circuit breaker from NYSEG to AES ES should be adopted on an emergency basis pursuant to SAPA § 202(6). The delays in returning the 34.5 kV and battery system interconnection to service that would occur if the breaker were not transferred would threaten electric

reliability. Such diminished reliability would threaten the public health, safety and general welfare. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate authorization to transfer the equipment is necessary for the preservation of the public health, safety and general welfare.

Subject: Transfer Certain Equipment to AES ES Westover LLC.

Purpose: To approve the transfer of certain equipment to AES ES Westover LLC.

Substance of emergency/proposed rule: On October 18, 2012, the Public Service Commission issued an Order approving, on an emergency basis, the transfer of a 115 kV circuit breaker from NYSEG to AES ES, so that AES ES can repair an interconnection at its Westover site, which is crucial to preserving electric reliability in the surrounding region because it connects NYSEG's 115 kV system to its 34.5 kV system, besides also connecting to NYSEG a battery storage system owned by AES ES.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire January 16, 2013.

Text of rule may be obtained from: 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-E-0411EP1)

NOTICE OF ADOPTION

Approving Rehearing of the Commission's November 17, 2011 Order

I.D. No. PSC-02-12-00007-A

Filing Date: 2012-10-18

Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s request for rehearing of the Commission's November 17, 2011 Order.

Statutory authority: Public Service Law, sections 22, 64, 65(1), (2), 66(1), (12)(a) and (e)

Subject: Approving rehearing of the Commission's November 17, 2011 Order.

Purpose: To approve the rehearing of the Commission's November 17, 2011 Order.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Consolidated Edison Company of New York, Inc.'s request for rehearing of the Commission's November 17, 2011 Order regarding the calculation of contract demand exceedances, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0299SA2)

NOTICE OF ADOPTION

Disposition of a Property Tax Refund of Approximately $5.767 Million from the Town of Hempstead

I.D. No. PSC-08-12-00005-A

Filing Date: 2012-10-19

Effective Date: 2012-10-19

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

Action taken: On 10/18/12, the PSC adopted an order approving the Joint Proposal of New York Water Service Corporation for the disposition of a property tax refund of approximately $5.767 million from the Town of Hempstead.

Statutory authority: Public Service Law, sections 2, 5, 89-b and 113(2)

Subject: Disposition of a property tax refund of approximately $5.767 million from the Town of Hempstead.

Purpose: To approve the disposition of a property tax refund of approximately $5.767 million from the Town of Hempstead.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the Joint Proposal, with one minor exception, of New York Water Service Corporation for the disposition of a property tax refund of approximately $5.767 million from the Town of Hempstead, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-W-0695SA1)

NOTICE OF ADOPTION

Amendments to PSC Nos. 10 and 12—Electricity, Effective 10/25/12 to Expand Standby Service

I.D. No. PSC-15-12-00005-A

Filing Date: 2012-10-18

Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving, with modifications Consolidated Edison Company of New York, Inc.'s amendments to PSC Nos. 10 and 12—Electricity, eff. 10/25/12 to expand Standby Service.

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

Subject: Amendments to PSC Nos. 10 and 12—Electricity, effective 10/25/12 to expand Standby Service.

Purpose: To approve, with modifications, amendments to PSC No. 10 and 12—Electricity, effective 10/25/12 to expand Standby Service.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving, with modifications Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 10 and 12—Electricity, effective October 25, 2012 pursuant to Commission Order issued November 17, 2011 to expand the applicability of standby service to multiple buildings and to its Power Authority of the State of New York customers and direct the company to file further revisions implementing the modifications contain in the order, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-E-0299SA3)

NOTICE OF ADOPTION

Approving Affiliate Standards Filed by Corning Natural Gas Corporation and Its Affiliates

I.D. No. PSC-19-12-00026-A

Filing Date: 2012-10-19

Effective Date: 2012-10-19

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

Action taken: On 10/18/12, the PSC adopted an order approving, with modifications, Affiliate Standards pertaining to transactions, conflicts of interest, cost allocation and sharing of information filed by Corning Natural Gas Corporation and its affiliates.

Statutory authority: Public Service Law, section 110

Subject: Approving Affiliate Standards filed by Corning Natural Gas Corporation and its affiliates.

Purpose: To approving Affiliate Standards filed by Corning Natural Gas Corporation and its affiliates.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving, with modifications and clarifications, Affiliate Standards pertaining to transactions, conflicts of interest, cost allocation and sharing of information filed by Corning Natural Gas Corporation and its affiliated companies, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0280SA2)

NOTICE OF ADOPTION

Approving Lightened Ratemaking Regulation

I.D. No. PSC-25-12-00011-A

Filing Date: 2012-10-18

Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving the petition of Bluestone Gas Corporation of New York, Inc. for lightened ratemaking regulation of it as a gas corporation.

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

Subject: Approving lightened ratemaking regulation.

Purpose: To approve lightened ratemaking regulation as a gas corporation.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the petition of Bluestone Gas Corporation of New York, Inc. for lightened ratemaking regulation of it as a gas corporation under the Public Service Law, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-G-0214SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 12—Gas, Effective November 1, 2012

I.D. No. PSC-28-12-00009-A

Filing Date: 2012-10-18

Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 12—Gas, effective November 1, 2012 to implement weighted average cost of capacity pricing.

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

Subject: Amendments to PSC No. 12—Gas, effective November 1, 2012.

Purpose: To approve amendments to PSC No. 12—Gas, effective November 1, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No.12 - Gas, effective November 1, 2012 to implement weighted average cost of capacity pricing for capacity releases to Retail Suppliers.

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

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

Assessment of Public Comment

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

(11-G-0697SA2)

NOTICE OF ADOPTION

Modify the Commission's Order for the Publication Requirement for Authorized Rate Increases in 2013 and 2014

I.D. No. PSC-28-12-00012-A

Filing Date: 2012-10-22

Effective Date: 2012-10-22

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

Action taken: On 10/18/12, the PSC adopted an order approving the request of United Water Owego-Nichols Inc. to modify the Commission's 3/21/12 Order to waive the publication requirement for authorized rate increases in 2013 and 2014.

Statutory authority: Public Service Law, section 89-c(1) and (10)

Subject: Modify the Commission's Order for the publication requirement for authorized rate increases in 2013 and 2014.

Purpose: To modify the Commission's Order for a waiver of publication requirement for authorized rate increases in 2013 and 2014.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the request of United Water Owego-Nichols Inc. (company) to modify the Commission's March 21, 2012 Order to allow the company to notify ratepayers of the second and third year rate increases in a multi-year rate plan by means of bill inserts or direct mailings instead of newspaper publication, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-W-0082SA2)

NOTICE OF ADOPTION

Approving Amendments to PSC No. 4—Gas, Effective 11/1/12, Pursuant to Commission Order Issued May 23, 2012

I.D. No. PSC-29-12-00016-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving amendments to PSC No. 4—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Purpose: To approve amendments to PSC No. 4—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4 - Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA3)

NOTICE OF ADOPTION

Approving, with Modifications, Amendments to PSC No. 9—Gas, Eff. 11/1/12, Pursuant to Commission Order

I.D. No. PSC-29-12-00020-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving, with modifications, amendments to PSC No. 9—Gas, eff. 11/1/12, pursuant to Commission Order.

Purpose: To approve, with modifications, amendments to PSC No. 9—Gas, eff. 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving, with modifications, Consolidated Edison Company of New York, Inc.'s amendments to PSC No. 9—Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23, 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA4)

NOTICE OF ADOPTION

Approving Amendments to PSC No. 12—Gas, Effective 11/1/12, Pursuant to Commission Order Issued May 23, 2012

I.D. No. PSC-29-12-00022-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 12—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving amendments to PSC No. 12—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Purpose: To approve amendments to PSC No. 12—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Central Hudson Gas & Electric Corporation's amendments to PSC No. 12 - Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA1)

NOTICE OF ADOPTION

Approving Amendments to PSC No. 1—Gas, Effective 11/1/12, Pursuant to Commission Order Issued May 23, 2012

I.D. No. PSC-30-12-00004-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I.'s amendments to PSC No. 1—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving amendments to PSC No. 1—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Purpose: To approve amendments to PSC No. 1—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving KeySpan Gas East Corp. d/b/a Brooklyn Union of L.I.'s amendments to PSC No. 1—Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA7)

NOTICE OF ADOPTION

Approving Amendments to PSC No. 219—Gas, Effective 11/1/12, Pursuant to Commission Order Issued May 23, 2012

I.D. No. PSC-30-12-00005-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving amendments to PSC No. 219—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Purpose: To approve amendments to PSC No. 219—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's amendments to PSC No. 219—Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23, 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA5)

NOTICE OF ADOPTION

Approving Amendments to PSC No. 12—Gas, Effective 11/1/12, Pursuant to Commission Order Issued May 23, 2012

I.D. No. PSC-30-12-00006-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's amendments to PSC No. 12—Gas, effective 8/1/12 and postponed to 11/1/12, pursuant to Commission Order issued May 23, 2012.

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

Subject: Approving amendments to PSC No. 12—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Purpose: To approve amendments to PSC No. 12—Gas, effective 11/1/12, pursuant to Commission Order issued May 23, 2012.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid's amendments to PSC No. 12—Gas, effective August 1, 2012 and postponed to November 1, 2012, pursuant to Commission Order Directing Certain Utilities to Submit Tariff Amendments, issued May 23 2012, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0543SA6)

NOTICE OF ADOPTION

Amendments to PSC No. 4—Gas, Eff. 11/1/12 to Continue Provisions Beyond the 3 Year Term of the Gas Rate Plan

I.D. No. PSC-31-12-00007-A
Filing Date: 2012-10-19
Effective Date: 2012-10-19

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

Action taken: On 10/18/12, the PSC allowed Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4—Gas, to become effective November 1, 2012 to effectuate the continuation of certain provisions beyond the three-year term of the Gas Rate Plan.

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

Subject: Amendments to PSC No. 4—Gas, eff. 11/1/12 to continue provisions beyond the 3 year term of the Gas Rate Plan.

Purpose: To approve amendments to PSC No. 4—Gas, eff. 11/1/12 to continue provisions beyond the 3 year term of the Gas Rate Plan.

Substance of final rule: The Commission, on October 18, 2012 allowed Orange and Rockland Utilities, Inc.'s amendments to PSC No. 4—Gas, to become effective November 1, 2012 to effectuate the continuation of certain provisions beyond the three-year term of the Gas Rate Plan approved in the Commission's Order Adopting Joint Proposal and Implementing a Three-Year Rate Plan, issued October 16, 2009.

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.

(08-G-1398SA3)

NOTICE OF ADOPTION

Property Tax Refund Associated with the 1992 to 2002 Tax Years, Received from the Town of Hempstead

I.D. No. PSC-32-12-00014-A
Filing Date: 2012-10-22
Effective Date: 2012-10-22

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

Action taken: On 10/18/12, the PSC adopted an order approving the petition of Verizon New York, Inc. to retain $5.9 million, the intrastate portion, of a $9.7 million property tax refund associated with the 1992 to 2002 tax years, received from the Town of Hempstead.

Statutory authority: Public Service Law, section 113(2)

Subject: Property tax refund associated with the 1992 to 2002 tax years, received from the Town of Hempstead.

Purpose: To approve a property tax refund associated with the 1992 to 2002 tax years, received from the Town of Hempstead.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the petition of Verizon New York, Inc. to retain $5.9 million, the intrastate portion, of a $9.7 million property tax refund associated with the 1992 through 2002 tax years, received from the Town of Hempstead, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-C-0318SA1)

NOTICE OF ADOPTION

Amendments to PSC No. 12—Gas, Eff. 11/1/12 to Add a Definition of ''Force Majeure'' Regarding ESCOs Delivery

I.D. No. PSC-33-12-00010-A
Filing Date: 2012-10-19
Effective Date: 2012-10-19

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

Action taken: On 10/18/12, the PSC allowed The Brooklyn Union Gas Company d/b/a National Grid's amendments to PSC No. 12—Gas, to become effective 11/1/12 to add a definition of ''Force Majeure'' regarding an Energy Service Companies delivery responsibility.

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

Subject: Amendments to PSC No. 12—Gas, eff. 11/1/12 to add a definition of ''Force Majeure'' regarding ESCOs delivery.

Purpose: To approve amendments to PSC No. 12—Gas, eff. 11/1/12 to add a definition of ''Force Majeure'' regarding ESCOs delivery.

Substance of final rule: The Commission, on October 18, 2012 allowed The Brooklyn Union Gas Company d/b/a National Grid's amendments to PSC No. 12—Gas, to become effective November 1, 2012 to add a definition of ''Force Majeure'' regarding an Energy Service Companies (ESCO) delivery responsibilities and to include more detail on Capacity Release Services already available to the ESCOs.

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

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

Assessment of Public Comment

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

(12-G-0342SA1)

NOTICE OF ADOPTION

To Issue Up to $10,870,000 of Long-Term Debt by December 31, 2013

I.D. No. PSC-33-12-00011-A
Filing Date: 2012-10-19
Effective Date: 2012-10-19

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

Action taken: On 10/18/12, the PSC adopted an order authorizing New York Water Service Corporation d/b/a New York American Water Company to issue up to $10,870,000 of long-term debt by December 31, 2013.

Statutory authority: Public Service Law, section 89-f

Subject: To issue up to $10,870,000 of long-term debt by December 31, 2013.

Purpose: To approve the issuance of up to $10,870,000 of long-term debt by December 31, 2013.

Substance of final rule: The Commission, on October 18, 2012 adopted an order authorizing New York Water Service Corporation d/b/a New York American Water Company to issue up to $10,870,000 of long-term debt by December 31, 2013, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-W-0314SA1)

NOTICE OF ADOPTION

To Increase the Minimum Net Metering Limit for Central Hudson Gas and Electric Corporation to 36 MW

I.D. No. PSC-33-12-00012-A
Filing Date: 2012-10-22
Effective Date: 2012-10-22

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

Action taken: On 10/18/12, the PSC adopted an order approving the petition of Hudson Valley Clean Energy, Inc., to increase the minimum net metering limit for Central Hudson Gas and Electric Corporation to 36 MW under Public Service Law section 6-j.

Statutory authority: Public Service Law, section 66-j

Subject: To increase the minimum net metering limit for Central Hudson Gas and Electric Corporation to 36 MW.

Purpose: To approve an increase to the minimum net metering limit for Central Hudson Gas and Electric Corporation to 36 MW.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the petition of Hudson Valley Clean Energy, Inc., to increase the minimum net metering limit for Central Hudson Gas and Electric Corporation to 36 MW under Public Service Law section 66-j, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-E-0343SA1)

NOTICE OF ADOPTION

Approve the Report for Modifications of the Terms of a Gas Supply Collaborative

I.D. No. PSC-34-12-00006-A
Filing Date: 2012-10-18
Effective Date: 2012-10-18

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

Action taken: On 10/18/12, the PSC adopted an order approving the recommendations of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation's report for modifications to the terms of their Gas Supply Collaborative.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9), (10) and (12)

Subject: Approve the report for modifications of the terms of a Gas Supply Collaborative.

Purpose: To approve the report for modifications of the terms of a Gas Supply Collaborative.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the recommendations of New York State Electric and Gas Corporation and Rochester Gas & Electric Corporation's report for modifications to the terms of their Gas Supply Collaborative and directed the Companies to file tariff revisions effectuating the recommendations contained in the order, 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.

(09-G-0716SA3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of Certain Requirements of Sections 16 NYCRR 600.3, 609.4, 609.13(c), and 890.66, As Requested by Verizon

I.D. No. PSC-45-12-00006-P

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

Proposed Action: The Commission is considering a petition from Verizon New York Inc. which would permit e-mail rather than hardcopy notification of suspension, terminating, or discontinuing of services if the customer has previously consented to e-mail notification.

Statutory authority: Public Service Law, sections 4(1), 216(1) and (5)

Subject: Waiver of certain requirements of sections 16 NYCRR 600.3, 609.4, 609.13(c), and 890.66, as requested by Verizon.

Purpose: To implement a program providing for prior approved notification by e-mail rather than hardcopy notices.

Substance of proposed rule: The Commission is considering a petition from Verizon New York Inc. (Verizon) to implement a program providing for notification by e-mail (rather than hardcopy notices) (a) in cases of proposed suspension, termination, or discontinuance of telephone or cable television service, and (b) where certain foreign-language notifications describing the content of Verizon's bills are required, where the customer affirmatively consents in advance to receive notice in that form. The Commission may adopt, modify or reject the proposal; may resolve related matters; and may apply its decision here to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/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-C-0455SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-45-12-00007-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 2130 ACP Boulevard Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Boulevard, New York, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 2130 ACP Blvd Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr Blvd., NY, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 2130 ACP Boulevard Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Boulevard, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/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-E-0460SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Grant, Deny or Modify, in Whole or Part, ESHG's Petition for a Waiver of Commission Policy and RG&E Tariff

I.D. No. PSC-45-12-00008-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Episcopal Senior Housing Greece, LLC (ESHG) for waiver to allow master metering at 600 Denise Road, Greece, New York.

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

Subject: Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff.

Purpose: Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Episcopal Senior Housing Greece, LLC for waiver of the Commission's policy contained in Opinion 76-17 to allow for rent inclusion of electricity (master metering) in new or refurbished residential construction and the tariff of Rochester Gas and Electric Corporation for a senior housing facility located at 600 Denise Road, Greece, 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.ny.gov/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-E-0434SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State

I.D. No. PSC-45-12-00009-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 assessing certain aspects of the residential and small non-residential retail energy markets and is considering actions regarding the operation of those markets.

Statutory authority: Public Service Law, section 66(1)

Subject: Certain aspects of the residential and small non-residential retail energy markets in New York State.

Purpose: To assess certain aspects of the retail energy markets and to consider actions regarding the operation of those markets.

Substance of proposed rule: On October 19, 2012, the Public Service Commission issued an Order instituting Case 12-M-0476 in which it will assess certain aspects, detailed in the Order, of the residential and small non-residential retail energy markets in New York State. The Commission is considering whether to take actions regarding these aspects of the residential and small non-residential retail energy markets. The Commission may also address 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.ny.gov/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-0476SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Grant, Deny or Modify, in Whole or in Part the Petition of Con Edison to Grant Easements to Millwood Fire District

I.D. No. PSC-45-12-00010-P

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

Proposed Action: The Commission is considering the petition of Consolidated Edison of New York, Inc. to grant certain easements to Millwood Fire District over a portion of District Tax Map ID No. 81.09-3-1, Town of New Castle, New York.

Statutory authority: Public Service Law, sections 2(12), (13), 66(1) and 70(1)

Subject: Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District.

Purpose: Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Consolidated Edison Company of New York, Inc. (Con Edison) to grant permanent and temporary easements to Millwood Fire District (District) over a portion of the rear of Millwood Road (NY State Route 133), District Tax Map ID No. 81.09-3-1, Town of New Castle, Westchester County, New York. The proposed permanent easement would be 20' wide by 595' long (12,107± sq. ft.) over a portion of Con Edison's real property (totaling approximately 32.8 acres) with overhead power transmission lines and towers. The permanent easement granted to the Millwood Fire District would be used by the District to construct a sub-surface drainage culvert to serve a new fire station that will be developed. In addition, Con Edison would also grant a temporary easement to the District for construction purposes.

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.ny.gov/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-0480SP1)