

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Species of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-14-13-00001-EP

Filing No. 265

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Proposed Action: Amendment of section 141.2 of Title 1 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The rule amends section 141.2 of 1 NYCRR to establish an Emerald Ash Borer (EAB) quarantine in the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins. The rule will also extend the quarantine to the southern portions of the following counties: Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga.

EAB, *Agrilus planipennis*, an insect species non-indigenous to the

United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 12 counties in western New York: Cattaraugus, Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2012, there were new detections within the Western New York quarantine area as well as the Eastern New York area. All but two are within quarantine counties. Dutchess and Tioga Counties are new detections outside the current quarantine and as such, are required to be quarantined per federal protocols.

Given the rapid pace of EAB detections in New York, the challenges with timely detection, cost of control, and stakeholder calls for changes due to economic impacts and limited ability to move various regulated articles, this regulation combines both quarantine zones by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga. This creates one quarantine zone.

The regulations are necessary to protect the general welfare, since the effective control of the EAB in the counties where this insect has most recently been found is important to protect New York's nursery, forest products industry, urban and suburban street trees and forest resources. The quarantine will help ensure that as control measures are undertaken,

EAB does not spread beyond those areas via the movement of infested trees and materials. Since EAB has been detected in many locations in both western and eastern New York, there is a high likelihood that this pest is present in other areas of the State, but has yet to be detected.

The regulations are also necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of these amendments is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Subject: Species of ash trees, parts thereof and products and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To extend the emerald ash borer quarantine to prevent the further spread of the beetle to other areas.

Text of emergency/proposed rule: Section 141.2 of 1 NYCRR is amended to read as follows:

Section 141.2. Quarantined area.

(a) Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within [Albany, Orange, Niagara, Erie, Orleans, Genesee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties] *Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Columbia, Cortland, Delaware, Dutchess, Erie, Genesee, Greene, Livingston, Monroe, Niagara, Ontario, Orleans, Orange, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Wayne, Wyoming and Yates Counties* to any point outside of said counties, except in accordance with this Part.

(b) *Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within those portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties inclusive of and south of the New York State Thruway to any point outside of said counties, except in accordance with this Part. The boundary of the quarantine in these counties is as follows: a line from the shore of Lake Ontario following the boundary of Cayuga County south to the New York State Thruway; continuing east along and inclusive of the New York State Thruway to its intersection with State Route 28 in Herkimer County; continuing north along State Route 28 to its intersection with State Route 29; continuing east along State Route 29 onto State Route 29A until the crossing of the East Canada Creek; continuing south along the East Canada Creek to its intersection with State Highway 29; continuing east along State Highway 29 until its intersection with State Highway 67; continuing east along State Highway 67 until its intersection with the Saratoga County line; continuing south along the boundary of Saratoga and Albany Counties to the Rensselaer County line.*

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 June 12, 2013.

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law.

2. Legislative objectives:

The regulations are consistent with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Emerald Ash Borer (EAB).

3. Needs and benefits:

The rule amends section 141.2 of 1 NYCRR to extend the EAB quarantine to the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins. The rule would also establish a quarantine within the southern portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties.

The Emerald Ash Borer, *Agrilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years. The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 10 counties in western New York: Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2012, there were new detections within the Western New York quarantine area as well as the Eastern New York area. All but two are within quarantine counties. Dutchess and Tioga Counties are new detections and are outside the current quarantine and are required to be quarantined per federal protocols. Since EAB has been detected in many locations in both western and eastern New York, there is a high likelihood that this pest is present in other areas of the State, but has yet to be detected. Most finds are well established leading to little opportunity for successful intervention.

Given the rapid pace of EAB detections in New York and the likelihood EAB is established in counties but yet to be detected, the regulation adds the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins to the quarantine area. The rule also establishes a quarantine within the southern portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties. The addition of these counties or portions thereof creates one quarantine zone. This not only helps to control the further spread of this pest, but also answers the calls by regulated parties to combine the two quarantine areas due to economic impacts and limited ability to move various regulated articles throughout the State.

The regulations are necessary to balance pest risk against economic impacts as this program transitions to a management program. The immediate adoption of this rule is necessary to meet Federal protocols for new detections as well as mitigate negative economic impacts that have resulted from the current configuration of the quarantine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: There are approximately 940 licensed nursery growers and 1,399 nursery dealers in the new quarantine areas. However, it is anticipated that only a fraction of these establishments carry regulated articles. There is no approved protocol for ash nursery stock. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

According to the US Census Bureau's most recent County Business Patterns Report, there are 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2011. Additionally, purchases of white ash stumpage from New York landowners exceed \$13-million annually.

Regulated parties exporting regulated articles, exclusive of nursery stock, from the quarantine zone would require an inspection and the issuance of a federal or state certificate of inspection and/or compliance agreement. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the quarantine area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option of leaving host materials within the quarantine area or transporting them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the rule does not require local governments to remove the trees from the quarantine area. Accordingly, local governments within the quarantine area will not incur any additional expenses due to the quarantine. This expansion of the quarantine area will save on costs to the state as seasonal staff can be reduced due to a decline in the number of compliance agreements that will be needed to move regulated materials from within an expanded quarantine area.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry. Private regulated parties handling regulated articles in the quarantine area would no longer require compliance agreements with the Department or phytosanitary certificates for intra-state movement of regulated articles. Accordingly, regulated parties would incur no expense.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the quarantine area established by the rule would have to be accompanied by a state or federal certificate of inspection and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the threat EAB poses to the State's forests and forest-based industries. Additionally, the option of establishing a quarantine throughout the entire state was also considered. However, this option could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of EAB that could result from the unrestricted movement of White Ash, Green Ash, Black Ash and Blue Ash from the quarantine areas. In light of these factors, there does not appear to be any viable alternative to the quarantine set forth in this proposal.

9. Federal standards:

The regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated parties would be able to comply with the regulations immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

The small businesses affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are approximately 940 licensed nursery growers and 1,399 nursery dealers in these counties and portions thereof. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Additionally, purchases of white ash stumpage from New York landowners exceed \$13-million annually.

It is anticipated that only a fraction of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

2. Compliance requirements:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the regulations would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

3. Professional services:

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA).

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule:

None.

(b) Annual cost for continuing compliance with the rule:

Regulated parties exporting regulated articles, exclusive of nursery stock, from these counties, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the regulated area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

5. Economic and technological feasibility:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping regulated articles (exclusive of nursery stock) from the quarantine area, other than pursuant to a compliance agreement would require an inspection and the issuance of a certificate of inspection. Most shipments, however, would be made pursuant to compliance agreements. Accordingly, the requirements and procedures are economically and technologically feasible.

6. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses. This quarantine is being expanded in order to minimize economic impacts while maintaining restrictions that assist in minimizing the spread of EAB. The current quarantine, which consists of separate areas in western and eastern New York, has had significant financial impacts on wood products manufacturers in central New York. The rule addresses this by joining the western and eastern quarantine areas so that the quarantine is parallel to Pennsylvania's statewide quarantine. Several small businesses have expressed that they have incurred significant costs and one facility noted a shift layoff as a result of the inability to obtain wood for five months that this quarantine restricted movement of regulated articles. As set forth in the regulatory impact statement, the regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation:

On January 16, 2012, the Department made a presentation at the Penn-York Lumbermen's Association about the Asian Longhorned Beetle and the EAB. Over 80 lumber industry members were in attendance from throughout New York and Pennsylvania. Those in attendance expressed serious concerns with the costs of complying with the EAB quarantine in its current configuration, since the eastern quarantine area and western quarantine area were separated by counties which are not quarantined.

A stakeholder's meeting was held on April 26, 2012 to discuss various changes in the EAB program nationally and gain feedback from various interest groups. This was well attended by individuals representing environmental groups, local government, utility companies, private campgrounds, forest products businesses, forest landowners, and nursery businesses. Support was expressed for the State's efforts to control this pest, however, there was general agreement for a balanced approach that addressed economic concerns while making efforts to control the spread of EAB.

The economic impacts of the current quarantine configuration were raised by forest products businesses. The terms of the quarantine are not overly objectionable to the industry, however, the configuration of the quarantine that has surrounded some businesses on three-sides (Eastern New York, Western New York and Pennsylvania) is causing problems in that it prevents movement of logs to the State's largest hardwood lumber facilities for five months of the year.

Additional feedback from the stakeholder's meeting focused on the role that firewood plays in moving this insect. It was acknowledged that public campgrounds, while promoting a message of "don't move firewood," are not restricting or otherwise policing the movement of firewood into those facilities, which continues to present a serious threat to spread of EAB and other invasive insects.

The Department also conferred with the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA) in formulating this rule.

On June 13, 2012, a meeting and conference call was held with the Department, DEC and USDA to discuss recent detections of the pest as well as economic impacts of those detections.

In July 2012, the Department and DEC issued a letter, inviting comments on plans to extend EAB quarantine due to recent detections and continuing spread of the pest.

On September 20, 2012, the Department and DEC met with the Empire State Forest Products Association and indicated that the agencies have heard the concerns and are working closely to address them.

On November 21, 2012, the Department and DEC met to discuss DEC's concerns regarding the proposed rulemaking. DEC offered no specifics other than a preference for county by county approach.

On December 21, 2012, the Department and DEC agreed on a quarantine expansion that roughly coincides with the New York State Thruway.

Outreach efforts will continue.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The regulated parties affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schoharie, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are approximately 940 licensed nursery

growers and 1,399 nursery dealers in these counties and portions thereof. According to the US Census Bureau's most recent County Business Patterns Report, there are approximately 258 logging companies, sawmills and forest-products manufacturers in these counties, employing an estimated 3,664 employees. The Empire State Forest Products Association indicates that white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Additionally, purchases of white ash stumpage from New York landowners exceed \$13-million annually.

It is anticipated that only a fraction of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

These businesses are in rural areas as defined by section 481(7) of the Executive Law.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the rule would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA).

3. Costs:

There are 940 licensed nursery growers and 1,399 nursery dealers in the counties which would be affected by the quarantine. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceed \$13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantined areas set forth in this rule would require an inspection and the issuance of a federal or state certificate of inspection, unless they have a compliance agreement. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. A total of 3,520 inspections of wood processors, sawmills, nurseries, garden centers, firewood distributors, truckers, arborists, and loggers were conducted in 2011, and 156 compliance agreements were issued. These numbers will decline with the expansion of the regulated area.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This quarantine is being expanded in order to minimize economic impacts while maintaining restrictions that assist in minimizing the spread of EAB. The current quarantine, which consists of separate areas in western and eastern New York, has had significant financial impacts on wood products manufacturers in central New York. The rule addresses this by joining the western and eastern quarantine areas so that the quarantine is parallel to Pennsylvania's statewide quarantine. Several small businesses have expressed that they are incurring significant costs and one facility noted a shift layoff as a result of the inability to obtain wood for the five months that this quarantine restricted movement of regulated articles. As set forth in the regulatory impact statement, the regulations would provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the regulations were designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

On January 16, 2012, the Department made a presentation at the Penn-York Lumbermen's Association about the Asian Longhorned Beetle and

the EAB. Over 80 lumber industry members were in attendance from throughout New York and Pennsylvania. Those in attendance expressed serious concerns with the costs of complying with the EAB quarantine in its current configuration, since the eastern quarantine area and western quarantine area were separated by counties which are not quarantined.

A stakeholder's meeting was held on April 26, 2012 to discuss various changes in the EAB program nationally and gain feedback from various interest groups. This was well attended by individuals representing environmental groups, local government, utility companies, private campgrounds, forest products businesses, forest landowners, and nursery businesses. Support was expressed for the State's efforts to control this pest; however, there was general agreement for a balanced approach that addressed economic concerns while making efforts to control the spread of EAB.

The economic impacts of the current quarantine configuration were raised by forest products businesses. The terms of the quarantine are not overly objectionable to the industry, however, the configuration of the quarantine that has surrounded some businesses on three-sides (Eastern New York, Western New York and Pennsylvania) is causing problems in that it prevents movement of logs to the State's largest hardwood lumber facilities for five months of the year.

Additional feedback from the stakeholder's meeting focused on the role that firewood plays in moving this insect. It was acknowledged that public campgrounds, while promoting a message of "don't move firewood," are not restricting or otherwise policing the movement of firewood into those facilities, which continues to present a serious threat to spread of EAB and other invasive insects.

The Department also conferred with the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA) in formulating this rule.

On June 13, 2012, a meeting and conference call was held with the Department, DEC and USDA to discuss recent detections of the pest as well as economic impacts of those detections.

In July 2012, the Department and DEC issued a letter, inviting comments on plans to extend EAB quarantine due to recent detections and continuing spread of the pest.

On September 20, 2012, the Department and DEC met with the Empire State Forest Products Association and indicated that the agencies have heard the concerns and are working closely to address them.

On November 21, 2012, the Department and DEC met to discuss DEC's concerns regarding the proposed rulemaking. DEC offered no specifics other than a preference for county by county approach.

On December 21, 2012, the Department and DEC agreed on a quarantine expansion that roughly coincides with the New York State Thruway.

Outreach efforts will continue.

Job Impact Statement

The amendment to section 141.2, establishing an Emerald Ash Borer (EAB) quarantine in Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins Counties and portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga Counties will not have a substantial adverse impact on jobs or employment opportunities and in fact, will likely aide in protecting jobs and employment opportunities for now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

By extending the EAB quarantine to these counties and portions thereof, the regulation is designed to prevent the further spread of this pest to other parts of the State. There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in our forests. A spread of the infestation would have very adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of EAB, the rule helps prevent such adverse economic consequences, which protects the jobs and employment opportunities associated with the State's nursery, forestry and wood-working industries.

State Commission of Correction

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Access to Legal Reference Materials

I.D. No. CMC-14-13-00010-P

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

Proposed Action: Amendment of section 7031.4 of Title 9 NYCRR.

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

Subject: Inmate access to legal reference materials.

Purpose: To eliminate the requirement that law libraries be maintained within a local correctional facility.

Text of proposed rule: Section 7031.4 of Title 9 is amended to read as follows:

§ 7031.4 Access to legal reference material

(a) Consistent with the requirements of this Part, each local correctional facility shall provide prisoners access to current legal reference materials.

(b) Each local correctional facility shall [establish and maintain within the facility legal reference materials with supplements, including but not limited to, for every 100 prisoners or fraction thereof confined in the facility] *provide prisoners access to:*

(1) [one copy of] New York State Correction Law Annotated;

(2) [one copy of] New York State Penal Law Annotated;

(3) [one copy of] New York State Criminal Procedure Law Annotated; [and]

(4) [one copy of] Title 9 of the Official Compilation of Codes Rules and Regulations of the State of New York Subtitle AA[.];

(c) Irrespective of the prisoner population of any local correctional facility, a facility need not provide more than two copies of any facility legal reference materials listed in subdivision (b) of this section.

(d) Each local correctional facility shall maintain within the facility at least one copy, with supplements, of the following legal reference materials, including but not limited to:]

([1]5) a legal dictionary;

([2]6) form books for use in conjunction with:

(i) New York State Criminal Procedure Law;

(ii) New York State Civil Practice Law and Rules; and

(iii) title 42, sections 1981-1988, and title 18, sections 4001-4321, of the United States Code Annotated;

([3]7) a treatise with respect to:

(i) New York State Civil Practice Law and Rules;

(ii) New York State Penal Law;

(iii) New York State Criminal Procedure Law; and

(iv) actions commenced pursuant to title 42 of the United States Code, section 1983;

([4]8) a New York State case law digest, *or comparable search function of an electronic legal research service, capable of retrieving relevant case law on the topic of* [dealing with]:

(i) criminal law; and

(ii) prisoners and prisons;

([5]9) The United States and New York State Constitutions;

([6]10) a treatise on prisoner's legal rights and remedies;

([7]11) New York State Civil Practice Law and Rules Annotated;

([8]12) title 42 of the United States Code Annotated, sections 1981-1988;

([9]13) title 18 of the United States Code Annotated, sections 4001-4321; and

([10]14) a treatise on legal research.

(c) *Where one or more legal reference materials set forth in subdivision (b) are not maintained within the facility, or are maintained in a manner that does not permit direct access by a prisoner, the prisoner shall be provided access to a list of such available materials, sufficiently indexed to allow for a competent request by chapter, article, section, etc. Any such resulting request shall be made in writing and shall include the:*

(1) *name of the requesting prisoner;*

(2) *date of the request;*

(3) *name of the facility staff member receiving the request; and*

(4) *material requested.*

(d) *Legal reference materials requested pursuant to subdivision (c) of*

this section shall be made available within three (3) business days of the request. Costs attendant to printing or photocopying such materials shall not be charged to the requesting prisoner.

(e) Each local correctional facility shall *additionally* provide prisoners access to legal reference materials, including but not limited to:

- (1) United States Code Annotated;
- (2) New York State Consolidated Laws;
- (3) reported decisions of the Courts of New York from 1960 to date;
- (4) reported decisions of Federal District Courts, Federal Circuit Courts of Appeals, and the United States Supreme Court from 1960 to date;

(5) a Federal case law digest, *or comparable search function of an electronic legal research service, capable of retrieving relevant case law*;

(6) a New York State case law digest, *or comparable search function of an electronic legal research service, capable of retrieving relevant case law*;

(7) Shepard's; and

(8) Federal and New York State legal forms.

[(f) The legal reference materials listed in subdivision (e) of this section shall be made available to prisoners:

- (1) within the facility; or
- (2) from a source outside the facility pursuant to a prisoner request made in accordance with subdivision (g) of this section.]

[(g)]f Prisoner requests for legal reference materials [not available within a facility or from a prisoner's legal counsel] *set forth in subdivision (e)* shall be made in writing and shall include the:

- (1) name of the requesting prisoner;
- (2) date of the request;
- (3) name of the facility staff member receiving the request; and
- (4) material requested.

[(h)]g Legal reference materials requested pursuant to subdivision [(g)]f of this section shall be made available within [a reasonable time after any such] *three (3) business days of the request.*

[(i)]h The chief administrative officer may require that requests made pursuant to subdivision [(g)]f of this section include with respect to the material requested:

- (1) citations;
- (2) section references; or
- (3) any other specific delineation of the requested portion of a legal reference volume.

[(j)]i The chief administrative officer may comply with prisoner requests for legal reference material [not available within the facility, including but not limited to that material] listed in subdivision (e) of this section by:

- (1) providing specific volumes of requested legal reference material from a community library or any other source; or
- (2) providing photocopies of requested portions of a legal reference volume.

[(k)]j Legal reference material photocopied pursuant to paragraph [(j)]i (2) of this section shall for indigent prisoners be photocopied at facility expense. The costs attendant to photocopying such material for prisoners other than indigent prisoners may, in the discretion of the chief administrative officer, be charged to such prisoners. Legal reference material photocopied at facility expense may be retained by the facility for prisoner use.

[(l)]k With respect to legal reference material requested pursuant to subdivision [(g)]f of this section, the chief administrative officer may establish reasonable limitations on:

- (1) the amount of legal reference material prisoners may request at any one time; and
- (2) the number of requests for legal reference material a prisoner may make each week.

[(m)]l *All prisoners shall be provided access to, and i*[(n)]digent prisoners shall be provided at facility expense with, supplies necessary for the preparation of legal matters, including:

- (1) pens or pencils; and
- (2) paper.

[(n)]m All prisoners shall be permitted to have access to *either black ink pens or typewriters* for the purpose of preparing legal documents.

[(o)]n Prisoners shall be permitted to use legal reference materials in any area specifically designated for legal work. If such an area is not available, prisoners shall be permitted to use legal reference material in facility housing areas. In the discretion of the chief administrative officer, prisoners may be permitted to use legal reference materials in both a specifically designated area and in facility housing areas.

[(p)]o The chief administrative officer shall establish written guidelines for the use of all legal reference materials and supplies. Such guidelines shall be designed to ensure that prisoners have [daily and equal] *sufficient access to such materials and supplies, providing further consideration to prisoners acting pro se with regard to a criminal proceeding or a matter related to the conditions of his or her confinement.*

[(q)]p Any prisoner who is found, in accordance with the provisions of Part 7006 of this Subtitle, to have intentionally damaged any legal reference materials or supplies available pursuant to this Part may be subject to disciplinary action including restitution.

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

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

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

Regulatory Impact Statement

1.) Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to promulgate minimum standards setting forth an inmate's entitlement to legal services in county correctional facilities, including the access to legal reference materials.

3.) Needs and benefits:

In response to Executive Order No. 17, Commission of Correction Chairman Thomas A. Beilein convened a workgroup to undertake a regulatory review of the Commission's Rules, Regulations and Minimum Standards for the Management of County Jails and Penitentiaries. Participants included sheriffs, jail administrators, and representatives of the New York State Division of the Budget, New York State Sheriffs' Association and the New York State Association of Counties. Of the various issues discussed, all expressed their desire to amend the Commission's regulations requiring a local correctional facility to maintain a law library, as the current regulations impose a significant cost upon each county.

It is well settled that prisoners have a constitutional right of access to the courts. *Bounds v. Smith*, 430 U.S. 817, 822, 97 S.Ct. 1491, 1494 (1977). In *Bounds*, the United States Supreme Court held that this fundamental constitutional right requires correctional authorities to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Id.* At 828 (emphasis added). In 1996, the Supreme Court revisited the *Bounds* decision in *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174 (1996). In *Casey*, the Court held that *Bounds* "did not create an abstract, free-standing right to a law library or legal assistance." *Lewis*, at 2180. Rather, "[t]he right that *Bounds* acknowledged was the (already well-established) right of access to the courts." *Id.* at 2179. Inmate access to law library facilities was therefore only one constitutionally acceptable method to assure meaningful access to the courts, and the Court did not wish to foreclose alternative means to achieve that goal. Consequently, based on the decisions in *Bounds* and *Lewis*, it appears that an inmate represented by legal counsel would have no constitutional right of access to a law library, or any other legal reference materials provided by a correctional facility.

Inmates of local correctional facilities in New York State, however, have been granted rights of access to legal reference materials superior to those guaranteed by the United States Constitution. Part 7031 of the Commission's Minimum Standards provides that "[e]ach prisoner confined in a local correctional facility is entitled to legal services [9 NYCRR § 7031.1(a)(1)]." 9 NYCRR 7031.1(b) defines legal services as "access to: legal counsel, legal reference materials and supplies, a notary public, and other legal assistance [emphasis added]." Therefore, pursuant to the Commission's Minimum Standards, every prisoner incarcerated in a local correctional facility, regardless of whether or not represented by legal counsel, is entitled access to legal reference materials as provided for in 9 NYCRR § 7031.4.

Current Commission regulations require that each local correctional facility establish and maintain, within the facility, a supply of current legal reference materials, including various chapters of New York State Consolidated Laws, form books, various titles of the United States Code Annotated, and specified treatises and case law digests. Additionally, such facilities are required to provide access to, but not maintain in the facility, reported court decisions and other state and federal statutes, digests and forms.

As amended, the Commission's regulations will eliminate the requirement that a library of legal references be maintained within the facility,

but preserve an inmate's rights to access such materials. Utilization of another law library maintained by a county to fill inmate requests will eliminate the duplicative costs of maintaining a library in the jail. Additionally, should a local correctional facility elect to maintain the law library within the facility, the costs associated therewith could now allowably be paid for with the profits of the inmate commissary pursuant to 9 NYCRR Part 7016.

Additional cost saving measures within the amendment include the allowable use of an electronic legal research service search function in the place of a New York State case law digest. The Commission has noted that only one publisher still provides a New York State case law digest, the cost of which is a significant part of a county's library expense. Modern electronic research services, such as Lexis-Nexis and Westlaw, currently provide a search function that allows an inmate to perform comparable research at a lower cost to the county. Further, the amendment dispenses with the requirement that each facility provide a typewriter for inmate use, provided such inmates are provided access to black ink pens. As legal papers are required only to be written in black ink (see CPLR Rule 2101), eliminating the requirement that facilities obtain and maintain typewriters will save the counties the costs associated therewith.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The amendment may result in significant county savings should the choice be made to utilize another law library maintained by a county to fill inmate requests, thus eliminating the duplicative costs of maintaining a library in the jail. Additionally, should a local correctional facility elect to maintain the law library within the facility, the resulting costs could now allowably be paid for with the profits of the inmate commissary pursuant to 9 NYCRR Part 7016.

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

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

5.) Local government mandates:

None.

6.) Paperwork:

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

7.) Duplication:

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

8.) Alternatives:

The alternative, maintaining the current regulations relative to inmate law libraries, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that unnecessary county expenditures, relative to the establishment of a law library within a local correctional facility, can be eliminated without sacrificing an inmate's access to necessary legal reference materials.

9.) Federal standards:

There are no applicable minimum standards of the federal government.

10.) Compliance schedule:

Each county correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to eliminate the requirement that law libraries be maintained within a local correctional facility. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to eliminate the requirement that law libraries be maintained within a local correctional facility. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportuni-

ties, as apparent from its nature and purpose. The proposed rule seeks only to eliminate the requirement that law libraries be maintained within a local correctional facility. As such, there will be no impact on jobs and employment opportunities.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Albion Correctional Facility

I.D. No. CCS-52-12-00002-A

Filing No. 261

Filing Date: 2013-03-14

Effective Date: 2013-04-03

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

Action taken: Amendment of section 100.94(c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Albion Correctional Facility.

Purpose: To include alcohol and substance treatment correctional annex to functions of the facility.

Text or summary was published in the December 26, 2012 issue of the Register, I.D. No. CCS-52-12-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@dcccs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Licensure of Non-Degree Granting Private Proprietary Schools

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

Filing No. 260

Filing Date: 2013-03-14

Effective Date: 2013-03-14

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

Action taken: Amendment of Part 126 and section 145-2.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 212(3), 305(1), 5001 through 5010; and L. 2012, ch. 381

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 381 of the Laws of 2012, which amends Education Law sections 5001 through 5010, to amend the licensure requirements for non-degree granting schools. In order to timely implement the provisions of Chapter 381 of the Laws of 2012 before its stated effective date on December 15, 2012, the Board of Regents adopted the proposed amendment as an emergency measure at its December 2012 meeting and the proposed amendment became effective on December 15, 2012.

The proposed rule was adopted as an emergency action at the December 2012 Regents meeting, effective December 15, 2012. Since publication of

the Notice of Proposed Rule Making in the State Register on November 7, 2012, the proposed rule has been revised in response to public comment.

Because the Board of Regents meets at scheduled intervals, the March 2013 meeting is the earliest the revised proposed rule could be presented for permanent adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period required under State Administrative Procedure Act § 202(4-a). If adopted as a permanent rule, the earliest the rule can become effective is March 27, 2013. However, the December emergency rule will expire on March 15, 2013. A lapse in the rule will disrupt implementation of Chapter 381 of the Laws of 2012.

A second emergency action is therefore necessary for the preservation of the general welfare to timely implement the provisions of the Chapter 381 of the Laws of 2012 and to otherwise ensure that the emergency rule adopted at the December Regents meeting, as so revised, remains continuously in effect until it can be presented and made effective as a permanent rule. If adopted as an emergency measure at the March 2013 meeting, the proposed amendment will become effective on March 14, 2013.

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

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

Substance of emergency rule: The Commissioner of Education proposes to amend Part 126 and Section 145-2.3 of the Commissioner's Regulations to implement Education Law sections 5001 through 5010, as amended by Chapter 381 of the Laws of 2012, effective March 14, 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 126.3 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 126.8(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 al-

lowing 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.

Section 145-2.3 is amended to eliminate the references to registered private business schools and replace these references with licensed private career schools.

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. EDU-45-12-00013-P, Issue of November 7, 2012. The emergency rule will expire May 12, 2013.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, New York State Education Department, 89 Washington Avenue, Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

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 require-

ments 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 pre-requisite 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 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. 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.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the November 7, 2012 State Register, the State Education Department received comments from the public. The following is a summary assessing these comments:

1. COMMENT:

One commenter expressed concern with the change to section 126.7(b)(9) of the proposed amendment which requires an enrollment agreement to 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. The commenter noted that disclosure in an enrollment agreement is not necessary and is not compliant with Federal regulations. (Financial Aid is already a highly regulated area and these types of disclosures are given to students in other documents. Additionally, this would allow for a potential cross-over of the world of financial aid into the admissions department, which is strictly prohibited by Federal regulations.)

RESPONSE:

The proposed amendment has been amended to eliminate this requirement.

2. COMMENT:

A commenter questions the amendment to 126.9(a)(19) of the Commissioner's regulations which requires each catalog to publish a catalog which includes "a weekly tuition liability chart for each program that indicates the amount of refund due the student in the event of withdrawal.

RESPONSE:

The proposed amendment implements Education Law 5002(3)(h), as amended by Chapter 381 of the Laws of 2012. Therefore, no change is warranted.

3. COMMENT:

A commenter challenges the deletion of the following provision in section 126.9 of the current Commissioner's regulations:

"As an alternative to the prior approval of a catalog or bulletin by the commissioner, a school may submit, in a form prescribed by the commissioner, an attestation that the catalog or bulletin meets all of the requirements set forth in subdivision (a) of this section, is true and accurate, and contains no false, misleading, or fraudulent representations. A subsequent determination by the commissioner that the catalog does not meet the requirements of subdivision (a) of this section, or is not true and accurate, or that the catalog contains false, misleading or fraudulent representations, may subject the school to disciplinary action, as prescribed in section 126.14 of this Part and section 5003 of the Education Law."

The commenter indicates that this amendment may delay the dissemination of information to students in a timely manner.

RESPONSE:

Section 5002(5)(f) of the Education Law provides that the Commissioner shall act upon a catalog within 90 days of receipt. The statute further states that if the Commissioner fails to act within 90 days, a catalog shall be deemed approved for one year. Therefore, the Department believes that there will be no delay in getting information to students and that no change is warranted.

Department of Environmental Conservation

AMENDED NOTICE OF ADOPTION

Model Environmental Assessment Forms

I.D. No. ENV-47-10-00015-AA

Filing No. 262

Filing Date: 2013-03-14

Effective Date: 2013-10-07

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

Action taken: Amendment of section 617.20 of Title 6 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on August 21, 2012, to be effective April 1, 2013, File No. 871. The notice of adoption, I.D. No. ENV-47-10-00015-A, was published in the February 15, 2012 issue of the *State Register*.

Statutory authority: Environmental Conservation Law, section 8-0113(2)(1)

Subject: Model environmental assessment forms.

Purpose: To provide model forms that may be used to conduct environmental assessments under the State Environmental Quality Review Act.

Substance of amended rule: The environmental assessment forms ("EAF") are model forms promulgated by the Department of Environmental Conservation ("DEC") and appended to the State Environmental Quality Review Act ("SEQR") regulations as required by the SEQR (see ECL § 8-0113). The EAFs are used by agencies and boards involved in the SEQR process to assess the environmental significance of actions they may be undertaking, funding or approving. The "Full EAF" has not been substantially revised since 1978 while its sister form, the "Short EAF," was last substantially revised in 1987. In the years since the EAFs were first created, DEC and other SEQR practitioners have gathered a great deal of experience with environmental analyses under SEQR. DEC has brought this experience to bear by preparing modern Full and Short EAFs. The forms, which replace the existing ones set out at 6 NYCRR 617.20, appendices A, B, and C, now include consideration of emerging environmental issues such as climate change. The revised EAFs have been changed to better address planning, policy and local legislative actions, which can have greater impacts on the environment than individual physical changes.

In addition to these substantive changes, the structure of the forms has been updated, to make them more straightforward to use. DEC has merged the substance of the Visual EAF Addendum (6 NYCRR 617.20, former Appendix B) into the Full EAF and then eliminated the Visual EAF Addendum. This will help reduce the multiplicity of forms. The determination of significance has been merged into Part 3 of the forms. Part 2 of the Short Form has been conformed to the structure of Part 2 of the Full EAF.

Both forms have been reworked and modified in response to public comment. The forms as adopted are available on the DEC's website at the following address: <http://www.dec.ny.gov/permits/70293.html>. The effective date of the new forms is October 7, 2013.

Text of amended rule and any required statements and analyses may be obtained from: Robert Ewing, Environmental Analyst, Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, (518) 402-9167, email: depprmt@gw.dec.state.ny.us

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

SEQR Environmental Assessment Forms, 6 NYCRR 617.20, repeal of appendices A, B and C and adoption of appendices A and B

Revised regulatory impact and flexibility analyses are required when a rule as adopted includes a substantial change from the rule as proposed and the change requires modification of the statements. A revised regulatory impact statement and flexibility analyses are not required here as the information presented in the previously filed statements are adequate and complete as to the environmental assessment forms as revised through the public comment process. The forms do not contain any substantial revisions and the revisions do not necessitate that such statement be modified. Revisions to the forms were made based on public comments. The changes substantially reduced the length and complexity of completing the forms.

The changes reduced rather than increased any regulatory burden as follows:

DEC reduced the length of Part I of the Full EAF by, among other ways, eliminating DEC centric and redundant questions (except where they are fundamental to environmental analysis).

DEC reduced the complexity of questions that would require even a more sophisticated applicant to hire a consultant to answer the question such as on traffic impacts.

Under the revised forms, lead agencies will not have to discuss small impacts in Part 3 (which was not the intent) by reinserting an improved table into Part 2 of the Full EAF that allows the project sponsor to categorize impacts as "no, or small impact" or "moderate to large impact." If an impact is judged to be not present or small, no further analysis is required. If the lead agency determines that an impact may be moderate to large, then it must explain the impact as being not significant or significant in Part 3. The new table strikes a balance that allows lead agencies to dismiss small impacts and ones that should require a more detailed explanation as to why they are or are not significant. The Short EAF has been conformed to the Full EAF so both forms have the same method of analysis.

Revised Job Impact Statement

No change is made to the following statement that appeared in the State Register on November 24, 2010, in connection with the revised environmental assessment forms.

The updating of the State Environmental Quality Review Act (SEQR) environmental assessment forms (EAF) should have no impact on existing or future jobs and employment opportunities. EAFs are expected to be completed in part by project sponsors and ultimately by lead agencies to determine whether a particular action may have a potentially significant, adverse impact on the environment. If the lead agency answers in the affirmative, then it must prepare or cause to be prepared an environmental impact statement the purpose of which is to evaluate the identified impacts and how to avoid or mitigate them. Local governments using EAFs or businesses who may fill in portions of the forms would be required to continue to do this, whether DEC revises the forms or continues to use the existing forms. While there may be a small increase in time to complete the new EAFs, this time should be offset by the decrease in time that is now spent in back-and-forth discussions or correspondence between project sponsors and governmental agencies to answer additional questions and clarify points that a new, more comprehensive EAF would include from the beginning. DEC also expects to make greater use of electronic information technologies with the new forms which may help to hasten the information gathering process, which is the object of the forms. DEC proposes to merge the substance of the Visual EAF Addendum (6 NYCRR 617.20, Appendix B) into the full EAF (6 NYCRR 617.20, Appendix A), and then eliminate the Visual EAF form. This will help reduce the multiplicity of forms.

A Job Impact Statement is not submitted with this rulemaking proposal because the proposal will not have a "substantial adverse impact on jobs or employment opportunities," which is defined in the State Administrative Procedure Act Section 201-a to mean "a decrease of more than one hundred full-time annual jobs and employment opportunities, including opportunities for self-employment, in the state, or the equivalent in part-time or seasonal employment, which would be otherwise available to the residents of the state in the two-year period commencing on the date the rule takes effect." The proposed changes to the EAFs are not expected to have any such effect and most likely will have no impact on jobs or employment opportunities.

Department of Financial Services

NOTICE OF ADOPTION

Smoker/Nonsmoker Mortality Tables and Underwriting Classifications

I.D. No. DFS-35-12-00002-A

Filing No. 258

Filing Date: 2013-03-13

Effective Date: 180 days after filing

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

Action taken: Amendment of Part 57 (Regulation 113) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2403, 3201, 4217, 4221, 4224, 4511 and 4517

Subject: Smoker/nonsmoker mortality tables and underwriting classifications.

Purpose: To provide that juveniles will be treated as non-smokers unless an insurer has evidence to the contrary.

Text or summary was published in the August 29, 2012 issue of the Register, I.D. No. DFS-35-12-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Thomas Hartman, Supervising Actuary, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-2126, email: thomas.hartman@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Currently, some insurers re-classify certain insureds as smokers or tobacco users upon the attainment of a specified age without evidence of the insured's actual tobacco or nicotine usage. This amendment to Insurance Regulation 113 prohibits insurers from classifying an insured as a smoker or tobacco user unless the insured actually smokes or uses tobacco or nicotine products. The amendment also requires insurers to describe in the policy any procedures for the insured to seek risk reclassification.

The Department of Financial Services ("Department") received one comment during the public comment period from a trade association of life insurers. It commented that group insurance policies and individual conversion policies should be excluded from the scope of Insurance Regulation 113. It also commented that the Superintendent has no authority to create a determined violation by regulation.

The trade association asserts that the implementation (e.g., sale) and administration of group life insurance policies are designed to be simpler than those of individual life insurance policies, to effectuate cost efficiencies and facilitate the administration of large numbers of certificates. The trade association further asserts that some computer systems used by insurers or third party administrators ("TPAs") in the administration of group insurance are not configured to administer group coverage as the regulation contemplates (i.e., by billing a portion of a group participant's coverage at smoker rates and another portion at non-smoker rates), which could occur when an existing insured requests an increase in coverage and the insured's rating classification has changed. The trade association asserts that compliance with the proposed requirements would necessitate costly system changes for group insurers, thereby increasing the cost of doing business in New York and the price of some insurance coverages for New York consumers.

The Department does not agree that it is either necessary or appropriate to exclude group insurance from the proposed rule for the following reasons:

First, the reclassification of insureds as smokers or tobacco users at issue here constitutes post-issue underwriting, which the Superintendent deems unjust, unfair and inequitable. Insurers may not engage in this practice either through contractual terms included in their policy forms, or as an administrative matter.

Second, insurers already issue policies and certificates that either administer two rates for an individual insured or deny the additional cover-

age if it could not be underwritten at the existing risk classification and rate. The rule does not dictate how insurers, TPAs or, for that matter, employers should administer their billing systems. They are free to develop systems that allow flexible practices and procedures so long as they comport with the law. The Department believes there are cost effective solutions that would not require changing the software suite. For example, an insurer may determine the ratio of coverage amounts and rates and calculate an integrated premium for the consumer; it would then have to maintain a separate record of the ratio and coverage amounts. Alternatively, it could separately enter the coverage amounts as though there were two separate insureds.

The trade association also asserts that individual conversion policies should be excluded from the scope of the regulation, but provides no explanation as to why. The Department believes that the association's concern focuses on the conversion of group coverage to an individual life insurance policy, where the group policy was issued on a composite or unisome basis. However, the regulation does not prohibit an insurer from issuing an individual conversion policy using the same rating classification as the original group insurance.

In addition, the trade association made a comment regarding new Section 57.6, which provides that a violation of Section 57.5 shall be deemed to be an unfair method of competition or an unfair or deceptive act or practice in the conduct of the business of insurance in New York, and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law Section 2402(c), in violation of Insurance Law Section 2403. The trade association asserts that the Superintendent has no authority to create a determined violation by regulation or prospectively to declare an act to be a determined violation. The association contends that the law allows the Superintendent to make such a finding only after a hearing pursuant to Insurance Law Section 2405. The association notes that once a decision is rendered and the method of competition, act or practice constituting the determined violation has not been discontinued, the Superintendent, through the Attorney General, may cause an action to be instituted to enjoin the person from engaging in the determined violation.

The Department agrees that the Superintendent must hold a hearing and make findings before taking action against a person in a specific case, but the same generally would be true with respect to any other violation. We disagree that the Superintendent may not clearly establish by regulation that specific methods, acts or practices would be determined violations, subject to the Superintendent's finding that such activity or practice occurred or was occurring in a specific case. The Superintendent has broad authority pursuant to Financial Services Law Sections 202 and 302 and Insurance Law Section 301 to interpret the provisions of the Insurance Law and to promulgate regulations implementing the law and furthering the public policy of this State. Article 24 of the Insurance Law accords the Superintendent broad discretion to determine whether specific methods, acts or practices constitute unfair methods of competition or unfair or deceptive acts and practices. Section 57.6 of the regulation puts insurers on notice that specific methods, practices or activities - if found to occur - are improper and subject to the sanctions set forth in Article 24. Enforcement under Article 24 does not preclude the Superintendent from taking other adjudicatory action that the Superintendent is legally authorized to take. Indeed, Insurance Law Section 109 was recently amended to clarify that the monetary penalties under that section may be levied for violations of any regulation.

The Superintendent - and the Superintendent's predecessor, the Superintendent of Insurance - has on several occasions, going back to at least the 1970s, promulgated regulations that specify certain activities as improper within the meaning of Section 2402 and its predecessor, Section 272 of the 1939 Insurance Law. For example, in 1975, Section 217.2 of 11 NYCRR 217 (Regulation 75) deemed a contravention of Section 217.1 to be an unfair act or practice with respect to sexual discrimination in refusing to renew or cancelling or declining to renew any insurance policy.

In addition, in 2002, Section 420.33 of 11 NYCRR 420 (Regulation 169), which applies to privacy of consumer financial and health information, was promulgated. It deems a contravention of Part 420 to be an unfair method of competition or an unfair or deceptive act and practice in the business of insurance in this State, and a trade practice constituting a determined violation as defined in Section 2402(c), in violation of Section 2403. Furthermore, Section 421.9 of 11 NYCRR 421 (Regulation 173), the companion regulation to Regulation 169, promulgated in 2003, similarly deems certain contraventions of the regulation to be unfair methods of competition or unfair or deceptive acts and practices in the business of insurance in this State and trade practices constituting determined violations. A similar provision is also found in Section 223.7 of 11 NYCRR 223 (Regulation 186), which was promulgated in 2008 and applies to military sales practices. And, more recently, another similar provision was included in Section 225.3 of 11 NYCRR 225 (Regulation 199), which applies to senior-specific certifications and professional designations.

In each such case, the Superintendent has used the Superintendent's broad authority under the Insurance Law (and now the Financial Services Law as well) and relied on Article 24 as the principal authority to provide guidance to the insurance industry so that insurers and other persons can take appropriate steps to ensure that they are acting properly in a manner consonant with the public policy of this State. Accordingly, the Department is not revising proposed new Section 57.6.

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

I.D. No. RWB-08-13-00006-E

Filing No. 263

Filing Date: 2013-03-14

Effective Date: 2013-03-14

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

Action taken: Amendment of sections 4043.2(e)(9), (g), (i) and 4043.4(b) of Title 9 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The Gaming Commission has determined that immediate adoption of these rule amendments is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

On September 27, 2012, the New York State Task Force on Racehorse Health and Safety released their report on the investigation of 21 equine fatalities at the 2011-12 fall and winter meet at Aqueduct Racetrack. The Task Force determined that there may have been opportunities to prevent 11 of those 21 fatalities. The amendments contained in this emergency rulemaking are based upon the findings and recommendations of the Task Force.

The Gaming Commission (in December 2012, as the New York State Racing and Wagering Board) originally adopted emergency rules to address the administration of clenbuterol and corticosteroids. These emergency rules were requested by the industry for the purpose of protecting the horses and athletes involved in thoroughbred racing and must be implemented on an emergency basis.

Given the danger of a horse breaking down, and the safety threat presented to both the horse and the jockeys racing in close proximity, these rule amendments are necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound horse or a horse influenced by the administration of certain medications may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government.

Subject: Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

Purpose: To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

Text of emergency rule: Subdivision (g) of Section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any

means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- [(5) clenbuterol;]
- [(6)](5) detomidine;
- [(7)](6) glycopyrrolate;
- [(8)](7) guaifenesin;
- [(9)](8) hydroxyzine;
- [(10)](9) isoxsuprine;
- [(11)](10) lidocaine;
- [(12)](11) mepivacaine;
- [(13)](12) pentoxifylline;
- [(14)](13) phenytoin;
- [(15)](14) pyrilamine;
- [(16)](15) xylazine.

[They] Such substances may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such [96 hours] 96-hour period.

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadotropin[, glucocorticoids]), except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part;

Subdivision (i) of Section 4043.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse [which has had a joint aspirated (in conjunction with a steroid injection)] may not race for [at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race] the following periods of time:

(1) for at least five days following a systemic administration of a corticosteroid;

(2) for at least seven days following a joint injection of a corticosteroid; and

(3) for at least 14 days following an administration of clenbuterol.

In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.

New Subdivision (b) is added to Section 4043.4 of 9 NYCRR to read as follows:

(b) Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.

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. RWB-08-13-00006-P, Issue of February 20, 2013. The emergency rule will expire May 12, 2013.

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 395-5400, email: info@gaming.ny.gov

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Gaming Commission is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law sections 103(1), 104(1), 104(19), 122, and 902(1). Under sections 103(1) and 104(1), the Gaming Commission has general jurisdiction over all horse racing and pari-mutuel wagering activities in the state and the corporations and associations and persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance, and is responsible for the supervision, regulation, and administration thereof. Section 104(19) authorizes the Gaming Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 provides that all rule-making of the former New York State Racing and Wagering Board shall continue in force and effect as rule-making of the Gaming Commission until duly modified or abrogated by such commission. Section 902(1) prescribes that a state college within New

York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Gaming Commission to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties on anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Gaming Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Gaming Commission has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force’s investigation revealed troubling aspects with the way horses are examined and managed in this state and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Gaming Commission Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For such reasons, regulation of joint injections of corticosteroids is appropriate. The term “intra-articular” has been revised to “joint injection” in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Gaming Commission’s rules. It is a potent bronchodilator that is approved by the Food and Drug Administration for treatment of lower airway inflammation and upper respiratory infections in a horse. The drug is used to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9E NYCRR.

The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: “It was abundantly clear to the Task Force that while the NYSRWB’s time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended.”

The Gaming Commission also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Gaming Commission’s existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Gaming Commission believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: “The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant...treatments that had the potential to misrepresent the true clinical condition of a horse.” Therefore, in order to ensure proper notification, the Gaming Commission amends Section 4043.4 of 9 NYCRR, which is commonly known as the “Trainer’s Responsibility Rule,” to require that a trainer maintain accurate records of all corticosteroid joint injections to a horse he or she trains. The corticosteroid reporting will require that a trainer submit a corticosteroid joint injection record to the Gaming Commission within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Gaming Commission with timely notice of any potential ailments and ensure that documentation is available in the event a horse’s fitness comes into question.

In response to input from the New York Thoroughbred Racing Association, the Gaming Commission added a provision in the CJI reporting rule,

the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Gaming Commission to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Gaming Commission relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency’s best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Gaming Commission in a manner prescribed by the Gaming Commission.

7. Duplication: None.

8. Alternatives: These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule will be implemented upon submission to the Department of State as a 60-day extension to an original emergency rulemaking that was published in the December 26, 2012 State Register.

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

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

Department of Health

EMERGENCY RULE MAKING

Medicaid Managed Care Programs

I.D. No. HLT-14-13-00002-E

Filing No. 310

Filing Date: 2013-03-18

Effective Date: 2013-03-18

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 began to be phased in as of 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 these 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 Medicaid 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 circumstances in which a Medicaid recipient is 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 in 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 management contractor 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 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.

360-10.10 MCO unacceptable practices

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

360-10.11 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 this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 15, 2013.

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: regsqa@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 of Health 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 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. Medicaid managed care program reporting requirements for social service districts and MCOs have been in place since 1997 when the mandatory Medicaid managed care program began. 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. 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.

Alternative Approaches:

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 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). Counties with a choice of MCOs were eligible to run a mandatory Medicaid managed care program, while counties with only one MCO ran a voluntary program until such time as at least one additional MCO began operating in the county. As of November 2012, all sixty-two counties operate a mandatory Medicaid managed care program. All counties also operate a FHP program.

As a result of the implementation of the Medicaid managed care 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 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.

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.

Hudson River Park Trust

NOTICE OF ADOPTION**Proposed Action is the Amendment of Rules and Regulations for Hudson River Park, Including a Ban on Smoking**

I.D. No. HPT-36-12-00004-A

Filing No. 264

Filing Date: 2013-03-14

Effective Date: 2013-04-03

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

Action taken: Amendment of Part 751 of Title 21 NYCRR.

Statutory authority: Hudson River Park Act; L. 1998, ch. 592

Subject: Proposed action is the amendment of rules and regulations for Hudson River Park, including a ban on smoking.

Purpose: To remain consistent with other parks in the area and to incorporate activities previously not addressed.

Text or summary was published in the September 5, 2012 issue of the Register, I.D. No. HPT-36-12-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Laura LaVelle, Hudson River Park Trust, 353 West Street, 2nd Floor, Pier 40, New York, NY 10014, (212) 627-2020, email: llavelle@hrpt.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Hudson River Park Trust Comment & Review:

A summary of these proposed rule changes was published in the New York State Register on September 5th, 2012, and the text of the rule changes was posted on the Hudson River Park website, in accordance with the State Administrative Procedure Act. Written comments on the proposed revisions were accepted between September 5 and October 22, 2012. No public hearing was held on this matter.

During the Trust's public comment period, we received five written comments, all concerning the proposed smoking ban.

Of the two comments criticizing the ban, one proposed a ban on dogs instead and requested that the Trust focus its energies on keeping Hudson River Park clean from dog waste, and not to be concerned with public health.

The other comment opposing the ban was from an attorney representing CLASH, a non-profit smokers' rights organization dedicated to advancing and promoting the interests of smokers and protecting the legal rights of smokers. CLASH criticizes the rule change on procedural grounds, claiming that our process is an act of consensus rule-making, and that the Trust

is not correctly following the State Administrative Procedure Law. CLASH also argues that the Trust does not have authority to address the issue of smoking and that the State Legislature must delegate specific authority to each agency individually for the property under its jurisdiction, and that this proposed ban is impermissible under the New York State Constitution, the Clean Indoor Air Act, and the cases *Boreali v. Axelrod*, 71 N.Y.2d 2 (1987) and *Justiana v. Niagara County Dep't of Health*, 45 F.Supp.2d 236 (W.D.N.Y. 1999). Additionally, the letter advised the Trust that CLASH is involved in a pending legal action dealing with the same issue against the New York Office of Parks, Recreation & Historic Preservation.

The comments supporting the ban are appreciative of the smoking ban already in effect in New York City parks, stating that the parks without smoking are cleaner and healthier for users, and express dislike for second hand smoke, odor, and debris resulting from cigarette smoke.

We received no comments regarding other proposed amendments.

Hudson River Park Trust Responses:

Smoking ban:

CLASH is incorrect on procedural grounds; this rule change is not a consensus rule change and we are in fact following the State Administrative Procedure Act in this amendment, with appropriate consultation from New York Department of State. The proposed rule change was published in the September 5, 2012 New York State Register; it did not include a statement "setting forth a clear and concise explanation of the basis for the agency's determination that no person is likely to object to the adoption of the rule as written" because we did not make such a determination; instead we sought comments from the public through the notice in the State Register and on the Hudson River Park website. We are considering those comments as part of the rulemaking process and have not yet made a final determination regarding the adoption of the amended rules.

On the issue of statutory authority, CLASH is incorrect. The Hudson River Park Act, the legislation which created and governs the Trust, gives the Trust powers, functions, and duties, including Section 7(a) "to ... operate and maintain the Hudson River Park," 7(b) "to provide for the health, safety and welfare of the public using facilities under its jurisdiction," 7(d)(ii) "to adopt, amend, or rescind such rules, regulations and orders as may be necessary or convenient for the performance or exercise of the functions, powers and duties of the trust," and 7(d)(vi) "to exercise and perform other such functions, powers and duties as shall have been or may be from time to time conferred or imposed by or pursuant to law." These statutory powers, particularly that found in Section 7(b), provides a sufficient basis upon which the Trust may proceed with this rule-making.

Dog waste:

Regarding the request that the Trust focus its energies on dog waste, Hudson River Park rules already prohibit any person "to allow any animal in his or her custody or control to discharge any fecal matter in the park unless he/she promptly removes and disposes of same." Park enforcement officers regularly patrol the park and write notices of violation, including notices of violation for failure to remove dog waste.

Power Authority of the State of New York

ERRATUM

A Notice of Adoption, I.D. No. PAS-41-12-00009-A, pertaining to Rates for the Sale of Power and Energy, published in the March 13, 2013 issue of the *State Register* contained an incorrect action taken, purpose, and final rule comparison. Following are the corrected action taken, purpose and final rule comparison, including the substance:

Action taken: Decrease the Fixed Cost component of the production rates.

Purpose: To align rates and costs.

Final rule as compared with last published rule: Substantive revisions were made in the Fixed Cost component.

Substance of final rule: The Power Authority's Notice of Proposed Rulemaking published October 10, 2012 proposed to increase the Fixed Costs component of the production rates to be charged to the New York City Governmental Customers ("Customers"). Comments on the proposal were received from the Customers. Based on those comments and staff's analysis, the Authority determined that the Fixed Costs component of the production rates should be decreased by 3.4%. The new rates will be effective commencing with the March 2013 billing period.

Public Service Commission

NOTICE OF ADOPTION

Modification of Submetering Order to Allow Hazel Towers Co., LP to Terminate Electric Service for Failure to Pay Electric Bills

I.D. No. PSC-13-11-00006-A

Filing Date: 2013-03-19

Effective Date: 2013-03-19

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition of Hazel Towers Company, LP to modify the order allowing submetering so that it may terminate electric service to tenants who fail to pay their electric bill.

Statutory authority: Public Service Law, sections 32, 35, 53, 65 and 66

Subject: Modification of submetering order to allow Hazel Towers Co., LP to terminate electric service for failure to pay electric bills.

Purpose: To modify the submetering order to allow Hazel Towers Co., LP to terminate electric service for failure to pay electric bills.

Substance of final rule: The Commission, on March 14, 2013 adopted an order modifying the Commission's submetering order, issued January 3, 2001, to allow Hazel Towers Co., LP, to terminate submetered electric service to tenants who fail to pay their submetered electric bills at 1730-1740 Mulford Avenue, Bronx, New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(00-E-1269SA3)

NOTICE OF ADOPTION

Approval of Petition of Meadow Manor Holdings, LLC to Submeter Electricity at Meadow Manor Apts., 3412 113th St., Flushing, NY

I.D. No. PSC-16-12-00010-A

Filing Date: 2013-03-19

Effective Date: 2013-03-19

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition of Meadow Manor Holdings, LLC to submeter electricity at Meadow Manor Apartments, 3412 113th Street, Flushing, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of Meadow Manor Holdings, LLC to submeter electricity at Meadow Manor Apts., 3412 113th St., Flushing, NY.

Purpose: To approve the petition of Meadow Manor Holdings, LLC to submeter electricity at Meadow Manor Apts., 3412 113th St., Flushing, NY.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving the petition of Meadow Manor Holdings, LLC to submeter electricity at Meadow Manor Apartments, 3412 113th Street, Flushing, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0151SA1)

NOTICE OF ADOPTION

Approval of Petition of 116 John Street Owner LLC to Submeter Electricity at 116 John Street, New York, New York

I.D. No. PSC-23-12-00008-A

Filing Date: 2013-03-19

Effective Date: 2013-03-19

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition of 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York.

Purpose: To approve the petition of 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving the petition of 116 John Street Owner LLC to submeter electricity at 116 John Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc., 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0235SA1)

NOTICE OF ADOPTION

Approval of Allocation of Property Tax Refunds

I.D. No. PSC-25-12-00008-A

Filing Date: 2013-03-14

Effective Date: 2013-03-14

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

Action taken: On 3/14/13, the PSC adopted an order approving the terms of a Joint Proposal of New York American Water Co. f/k/a Long Island Water Corporation d/b/a Long Island American Water to allocate property tax refunds of about \$3 million.

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

Subject: Approval of allocation of property tax refunds.

Purpose: To approve the allocation of property tax refunds.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving a joint proposal by New York American Water Co., f/k/a Long Island Water Corporation d/b/a Long Island American Water and trial staff of the Department of Public Service to allocate certain property tax refunds of about \$3 million, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0484SA2)

NOTICE OF ADOPTION

Approval of a Three-Year Gas Rate Plan

I.D. No. PSC-42-12-00008-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order approving a three-year rate plan for Niagara Mohawk Power Corporation d/b/a National Grid in accord with the terms of a joint proposal.

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

Subject: Approval of a three-year gas rate plan.

Purpose: To approve a three-year gas rate plan.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving a joint proposal by Niagara Mohawk Power Corporation d/b/a National Grid, Department of Public Service Staff, Multiple Intervenors, Utility Intervention Unit of the New York State Department of State, Division of Consumer Protection, United States Department of Defense and Retail Energy Supply Association for a three-year gas rate plan, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0202SA1)

NOTICE OF ADOPTION

Approval of a Three-Year Electric Rate Plan

I.D. No. PSC-42-12-00010-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order approving a three-year rate plan for Niagara Mohawk Power Corporation d/b/a National Grid in accord with the terms of a joint proposal.

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

Subject: Approval of a three-year electric rate plan.

Purpose: To approve a three-year electric rate plan.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving a joint proposal by Niagara Mohawk Power Corporation d/b/a National Grid, Department of Public Service Staff, Multiple Intervenors, Utility Intervention Unit of the New York State Department of State, Division of Consumer Protection, United States Department of Defense, Retail Energy Supply Association and New York Power Authority for a three-year electric rate plan, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0201SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00006-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, Consolidated Edison Company of New York, Inc.'s tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by Consolidated Edison Company of New York, Inc. for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0394SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00007-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, Central Hudson Gas and Electric Corporation's tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by Central Hudson Gas and Electric

Corporation for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0393SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00008-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, Niagara Mohawk Power Corp d/b/a National Grid's tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0396SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00009-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, New York State Electric and Gas Corporation's tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by New York State Electric and Gas Corporation for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0395SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00010-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, Rochester Gas & Electric Corporation's tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by Rochester Gas & Electric Corporation for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0397SA1)

NOTICE OF ADOPTION

Approval of Modifications to SIR and a Tariff Filing Regarding Remote Net Metering

I.D. No. PSC-44-12-00011-A

Filing Date: 2013-03-15

Effective Date: 2013-03-15

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

Action taken: On 3/14/13, the PSC adopted an order modifying SIR and approving, with modifications, Orange and Rockland Utilities, Inc.'s tariff filing regarding the remote net metering of micro-hydro electric generation for farm and non-residential customers.

Statutory authority: Public Service Law, section 66-j

Subject: Approval of modifications to SIR and a tariff filing regarding remote net metering.

Purpose: To approve modifications to SIR and a tariff filing regarding remote net metering.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving modifications to the Standardized Interconnection Requirements (SIR), and a tariff filing by Orange and Rockland Utilities, Inc. for the remote net metering of micro-hydro electric generation for farm and non-residential customers, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0398SA1)

NOTICE OF ADOPTION

Approval of Petition of CityStation East, LLC to Submeter Electricity at 1520 6th Avenue, Troy, New York

I.D. No. PSC-44-12-00012-A

Filing Date: 2013-03-19

Effective Date: 2013-03-19

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition of CityStation East, LLC to submeter electricity at 1520 6th Avenue, Troy, New York located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid.

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: Approval of petition of CityStation East, LLC to submeter electricity at 1520 6th Avenue, Troy, New York.

Purpose: To approve the petition of CityStation East, LLC to submeter electricity at 1520 6th Avenue, Troy, New York.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving the petition of CityStation East, LLC to submeter electricity at 1520 6th Avenue, Troy, New York located in the territory of Niagara Mohawk Power Corporation d/b/a National Grid, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0446SA1)

NOTICE OF ADOPTION

Approval of Petition of 2130 ACP Boulevard Investors LLC to Submeter Electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., NY

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

Filing Date: 2013-03-19

Effective Date: 2013-03-19

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition of 2130 ACP Boulevard Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of 2130 ACP Boulevard Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd., NY.

Purpose: To approve the petition of 2130 ACP Boulevard Investors LLC to submeter electricity at 2130-2138 Adam Clayton Powell Jr. Blvd.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving the petition of 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., 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0460SA1)

NOTICE OF ADOPTION

Approving NYSEDA's Request to Use Unencumbered Interest to Fund Payment of the NYS Cost Recovery Fee

I.D. No. PSC-46-12-00009-A

Filing Date: 2013-03-14

Effective Date: 2013-03-14

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

Action taken: On 3/14/13, the PSC adopted an order approving a petition filed by New York State Energy Research & Development Authority to use interest earned on Consolidated Edison Company of New York, Inc.'s Gas Program Funds to pay the state's Cost Recovery Fee.

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

Subject: Approving NYSEDA's request to use unencumbered interest to fund payment of the NYS cost recovery fee.

Purpose: To approve NYSEDA's request to use unencumbered interest to fund payment of the NYS cost recovery fee.

Substance of final rule: The Public Service Commission, on March 14, 2013, adopted an order approving New York State Energy Research and Development Authority's (NYSEDA) request to apply accumulated and uncommitted interest earned on the program funds previously authorized in these proceedings in order to pay the share of the New York State Recovery Fee that is allocable to the Consolidated Edison Company of New York, Inc. gas programs, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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.

(06-G-1332SA4)

NOTICE OF ADOPTION

Approval of Modifications of Tariff Requirements Regarding RNY and Denying MI's Petition**I.D. No.** PSC-52-12-00009-A**Filing Date:** 2013-03-18**Effective Date:** 2013-03-18

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

Action taken: On 3/14/13, the PSC adopted an order modifying tariff requirements related to the ReCharge New York Power Program Act (RNY); and denied Multiple Intervenors (MI) petition for refunds.

Statutory authority: Public Service Law, sections 4(1), 65 and 66; Public Authorities Law, section 1005; Economic Development Law, section 188-a

Subject: Approval of modifications of tariff requirements regarding RNY and denying MI's petition.

Purpose: To approve modifications of tariff requirements regarding RNY and denying MI's petition.

Substance of final rule: The Public Service Commission, on March 14, 2013, adopted an order modifying tariff requirements related to the ReCharge New York Power Program Act (RNY); and denied Multiple Intervenors (MI) petition for refunds., subject to the terms and conditions in this order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0176SA10)

NOTICE OF ADOPTION

Approval to Designate TWCIS/NY As a Lifeline-Only ETC in New York**I.D. No.** PSC-52-12-00010-A**Filing Date:** 2013-03-18**Effective Date:** 2013-03-18

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

Action taken: On 3/14/13, the PSC adopted an order approving designation of Time Warner Cable Information Services (New York) LLC (TWCIS/NY) as a Lifeline-only eligible telecommunications carrier (ETC) in New York.

Statutory authority: Public Service Law, sections 94(2) and 47; USC 214(e)(2)

Subject: Approval to designate TWCIS/NY as a Lifeline-only ETC in New York.

Purpose: To approve TWCIS/NY to offer residential voice telephone service to Lifeline-eligible customers.

Substance of final rule: The Commission, on March 14, 2013 adopted an order approving Time Warner Cable Information Services (New York), LLC to be designated as a Lifeline-only eligible telecommunications carrier in New York to receive federal universal service support, subject to 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0510SA1)

NOTICE OF ADOPTION

Authorizing a Withdrawal from an Existing Surcharge Account**I.D. No.** PSC-02-13-00014-A**Filing Date:** 2013-03-14**Effective Date:** 2013-03-14

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

Action taken: On 3/14/13, the PSC adopted an order authorizing Rainbow Water Company, Inc. and Sunrise Ridge Water Co. to withdraw \$25,769 from an existing surcharge account to fund a well capacity expansion, to cover costs associated with damage from Hurricane Sandy.

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

Subject: Authorizing a withdrawal from an existing surcharge account.

Purpose: To authorize a withdrawal from an existing surcharge account and to replenish the account by extending the recovery period.

Substance of final rule: The Commission, on March 14, 2013 adopted an order authorizing Rainbow Water Company, Inc. and Sunrise Ridge Water Company to withdraw \$25,769 from an existing surcharge account to fund a well capacity expansion project to cover costs incurred due to Hurricane Sandy; and to extend the surcharge collection period to replenish the account, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0559SA1)

NOTICE OF ADOPTION

Approval of Additional Financing of \$4.0 Million Related to a Transfer of Interests in Emkey to NEE**I.D. No.** PSC-04-13-00010-A**Filing Date:** 2013-03-18**Effective Date:** 2013-03-18

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

Action taken: On 3/14/13, the PSC adopted an order approving the petition filed by Emkey Energy LLC and certain affiliates and owners and NE Energy, Inc. (NEE) for additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Approval of additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Purpose: To approve additional financing of \$4.0 million related to a transfer of interests in Emkey to NEE.

Substance of final rule: The Public Service Commission, on March 14, 2013, adopted an order approving additional financing of \$4.0 million related to a transfer of interests from Emkey Energy LLC, Emkey Gathering LLC and Emkey Transportation, Inc. and certain affiliates and owners to NE Energy, Inc., subject to the terms and conditions in this order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@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-0565SA1)

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

Consolidated Edison Proposes to Use Data from a Test Period Ending June 30, 2012 to Support its January 25, 2013 Rate Filing

I.D. No. PSC-14-13-00003-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 motion of Consolidated Edison Company of New York, Inc. for a waiver of the 150-day rule set forth in the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major electric rate case.

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

Subject: Consolidated Edison proposes to use data from a test period ending June 30, 2012 to support its January 25, 2013 rate filing.

Purpose: To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of Consolidated Edison Company of New York, Inc. as set forth in a motion dated January 25, 2013, seeking a waiver of the applicable test period as established by the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings." Consolidated Edison seeks to extend the requirement that a test period supporting a major electric rate filing end no later than 150 days prior to the filing by 60 days in order that it may proceed despite a delay in filing attributable to Superstorm Sandy.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0030SP1)

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

Charges and Fees

I.D. No. PSC-14-13-00004-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 a tariff filing by the Village of Holley Electric Department to Revise Its Returned Check Charge and Reconnection Fees Contained in its Tariff Schedule PSC No. 1—Electricity, to become effective July 1, 2013.

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

Subject: Charges and fees.

Purpose: To revise its Returned Check Charge and Reconnection fees.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the Village of Holley Electric Department to Revise its Returned Check Charge and Reconnection Fees contained in its Tariff Schedule, P.S.C. No. 1 - Electricity. The filing has a proposed effective date of July 1, 2013. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza,

Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-E-0106SP1)

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

Recovery of Incremental Expense

I.D. No. PSC-14-13-00005-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part, the petition of St. Lawrence Gas Company, Inc. to defer approximately \$216,379 of incremental expenses related to In-Line Inspection of St. Lawrence Gas' 12" Pipe.

Statutory authority: Public Service Law, sections 5, 65(1), 66(12)

Subject: Recovery of incremental expense.

Purpose: To consider petition for recovery of incremental expense.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject, in whole or in part, the proposals set forth by St. Lawrence Gas Company, Inc., in a petition dated February 12, 2013, to defer incremental expenses related to the In-Line Inspection of 12" high pressure pipe installed in 1962.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-G-0076SP2)

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

Consolidated Edison Proposes to Use Data from a Test Period Ending June 30, 2012 to Support its January 25, 2013 Rate Filing

I.D. No. PSC-14-13-00006-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 the motion of Consolidated Edison Company of New York, Inc. for a waiver of the 150-day rule set forth in the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major gas rate case.

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

Subject: Consolidated Edison proposes to use data from a test period ending June 30, 2012 to support its January 25, 2013 rate filing.

Purpose: To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.

Substance of proposed rule: The Commission is considering whether to

adopt, modify, or reject, in whole or in part, the request of Consolidated Edison Company of New York, Inc. as set forth in a motion dated January 25, 2013, seeking a waiver of the applicable test period as established by the Commission's "Statement of Policy on Test Periods In Major Rate Proceedings." Consolidated Edison seeks to extend the requirement that a test period supporting a major gas rate filing end no later than 150 days prior to the filing by 60 days in order that it may proceed despite a delay in filing attributable to Superstorm Sandy.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-G-0031SP1)

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

Modification of Earnings and Other Provisions of Existing Rate Plan

I.D. No. PSC-14-13-00007-P

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

Proposed Action: Modify the existing rate plan of The Brooklyn Union Gas Company d/b/a National Grid NY pursuant to the terms of a Joint Proposal filed on February 22, 2013.

Statutory authority: Public Service Law, sections 3, 5, 65 and 66

Subject: Modification of earnings and other provisions of existing rate plan.

Purpose: To consider a joint proposal that modifies certain elements of an existing rate plan.

Substance of proposed rule: The Public Service Commission is considering adopting the terms of a Joint Proposal filed on February 22, 2013, that would modify the rate plan of The Brooklyn Union Gas Company d/b/a National Grid including extending the rate plan for two additional years. The Public Service Commission can either reject or adopt the Joint Proposal, in whole or in part, or as otherwise modified.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(12-G-0544SP1)

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

Consolidated Edison Proposes to Use Data from a Test Period Ending June 30, 2012 to Support its January 25, 2013 Rate Filing

I.D. No. PSC-14-13-00008-P

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

Proposed Action: The Commission is considering the motion of Consolidated Edison Company of New York, Inc. for a waiver of the 150-day rule set forth in the Commission's "Statement of Policy on Test Periods in Major Rate Proceedings" in a major steam rate case.

Statutory authority: Public Service Law, sections 4(1), 79(1) and 80(10)

Subject: Consolidated Edison proposes to use data from a test period ending June 30, 2012 to support its January 25, 2013 rate filing.

Purpose: To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of Consolidated Edison Company of New York, Inc. as set forth in a motion dated January 25, 2013, seeking a waiver of the applicable test period as established by the Commission's "Statement of Policy on Test Periods In Major Rate Proceedings." Consolidated Edison seeks to extend the requirement that a test period supporting a major steam rate filing end no later than 150 days prior to the filing by 60 days in order that it may proceed despite a delay in filing attributable to Superstorm Sandy.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-S-0032SP1)

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

Authorization to Transfer Certain Real Property

I.D. No. PSC-14-13-00009-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 authorize the transfer of certain real property located in the City of Ithaca, Tompkins County, New York owned by New York State Electric and Gas Corporation to the Ithaca City School District.

Statutory authority: Public Service Law, section 70

Subject: Authorization to transfer certain real property.

Purpose: To decide whether to approve the transfer of certain real property.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by New York State Electric and Gas Corporation seeking approval to transfer real property located at 610 Hancock Street in the City of Ithaca, Tompkins County, New York to the Ithaca City School District. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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.

(13-M-0090SP1)