

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 Audit and Control

NOTICE OF EXPIRATION

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

Relates to Transfer, Tier Reinstatement and Payment of Contributions by Certain Members Joining the Retirement System After January 1, 2010

I.D. No.	Proposed	Expiration Date
AAC-47-12-00007-P	November 21, 2012	November 21, 2013

Education Department

EMERGENCY RULE MAKING

Protection of People with Special Needs Act (L. 2012, Ch. 501)

I.D. No. EDU-28-13-00009-E

Filing No. 1133

Filing Date: 2013-11-22

Effective Date: 2013-11-22

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

Action taken: Amendment of sections 200.7 and 200.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 4002(1)-(3), 4212(a), 4314(a), 4358(a), 4403(11), 4308(3), 4355(3), 4401(2), 4402(1)-(7), 4403(3), (11) and (13), 4410(1)-(13); and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center, which became effective June 30, 2013.

The proposed amendment was adopted as an emergency rule at the June 16-17, 2013 Regents meeting, effective June 30, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the *State Register* on July 10, 2013. The June emergency rule expired on September 22, 2013. The proposed amendment was re-adopted as an emergency rule at the September 16-17, 2013 Regents meeting, effective September 23, 2013.

The State Education Department has continued to work closely with the Justice Center and the other State Oversight Agencies on implementing the provisions of Chapter 501 since it became effective June 30, 2013. It was initially anticipated that the proposed rule would be presented to the Board of Regents for adoption as a permanent rule at their November 17-18, 2013 meeting. However, additional time is needed to determine whether any revisions should be made to the proposed rule based on any further clarification and/or decisions that the Justice Center may be providing in the coming months.

Pursuant to SAPA section 202(6)(b), the September 2013 emergency adoption will expire on November 21, 2013 (sixty days after the date of its filing with the Department of State on September 23, 2013). Therefore, a third emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the June 2013 Regents meeting, and readopted at the September 2013 Regents meeting, remains continuously in effect until the effective date of its adoption as a permanent rule at a subsequent Regents meeting, and thereby ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

It is anticipated that the proposed rule will be presented at the January 13-14, 2014 Regents meeting for either permanent adoption if no substantial revisions are necessary, or for another emergency adoption if substantial revisions must be made to the proposed rule based on further clarification and/or decisions that the Justice Center may be providing in the coming months.

In the event it is determined that substantial revisions must be made to the proposed rule, the revised rule cannot be presented for permanent adoption until the February 10-11, 2014 Regents meeting or later, after publication of the proposed revised rule in the *State Register* and expiration of the 30-day public comment period for revised rules established by the State Administrative Procedure Act.

Subject: Protection of People with Special Needs Act (L. 2012, Ch. 501).

Purpose: To conform Commissioner's Regulations relating to students attending residential schools to L. 2012, ch. 501.

Substance of emergency rule: The Board of Regents has adopted amendments to sections 200.7 and 200.15 of the Commissioner's Regulations as an emergency rule, effective November 22, 2013, relating to Chapter 501 of the Laws of 2012: "Protection of People with Special Needs Act." The following is a summary of the substance of the emergency amendments.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require

preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

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-28-13-00009-EP, Issue of July 10, 2013. The emergency rule will expire January 20, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 4002 establishes responsibilities for education of students in child-care institutions.

Education Law sections 4212(a), 4314(a), 4358(a) and 4403(11) authorize Commissioner's Regulations concerning standards for the protection of children in residential care.

Education Law sections 4308(3) and 4355(3) authorize Commissioner's Regulations regarding admission to the State School for the Blind and State School for the Deaf.

Education Law section 4401 authorizes the Commissioner to approve private day and residential programs serving students with disabilities.

Education Law section 4402 establishes the district's duties regarding education of students with disabilities.

Education Law section 4403 outlines the Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in its best interests. Section 4403(11) authorizes the Commissioner to promulgate regulations concerning standards for the protection of children in residential care from abuse and maltreatment. Section 4403(12) authorizes and directs the State Education Department to cooperate with other departments, divisions and agencies of the state when a report is received to protect the health and safety of children in residential placement.

Education Law section 4410 establishes requirements for education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

Chapter 501 of the Laws of 2012 establishes the Justice Center for the Protection of People with Special Needs and procedures for the protection of vulnerable persons from abuse, neglect and significant incidents, including pupils in residential care.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment conforms the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and carries out the legislative objectives in the aforementioned statutes to increase protections for students with disabilities in residential care.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center.

Chapter 501 requires the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of reportable incidents (i.e., abuse, neglect and significant incidents) in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the State Education Department

(SED) and other relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A Vulnerable Persons' Central Register (VPCR) contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are placed on a staff exclusion list and prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501, the Justice Center is charged with recommending policies and procedures to SED for the protection of students with disabilities in residential care. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in SED's regulations. Consequently, the proposed amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

Chapter 501 further requires SED, in consultation with the Justice Center, to promulgate regulations relating to an incident management program.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to SED of implementation and continuing compliance: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law, and Executive Law (as amended by Chapter 501 of the Laws of 2012) and does not impose any additional costs beyond those imposed by federal and State statutes and regulations.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional program, service, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

6. PAPERWORK:

Consistent with Chapter 501 of the Laws of 2012, the proposed amendment would add additional paperwork requirements pertaining to reporting reportable incidents to the Justice Center. However, many of the new requirements will predominantly utilize electronic format. The proposed rule adds requirements for in-State residential schools to provide parents with written information regarding reporting responsibilities and processes and to provide a written report of the findings of the investigation of a significant incident to parents or guardians of student(s) named in the report, and the school district of the student(s). In-State residential schools will also be required to provide staff at the time of initial employment, and at least annually thereafter, with a copy of the code of conduct developed by the Justice Center; submit reports of incident patterns and trends to SED; and provide copies of records to the Justice Center when a request is made to the Justice Center for public inspection and copying of records relating to the abuse and neglect of students. The proposed amendment also adds additional paperwork requirements for out-of-State residential schools to forward the findings of abuse and neglect investigations not conducted by the Justice Center to the Justice Center, SED, and the student's committee on special education and, as appropriate, the social services district in NYS.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Chapter 501 of the Laws of 2012.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012, and there are no alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute and does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by the June 30, 2013 effective date.

Regulatory Flexibility Analysis**1. EFFECT OF RULE:**

The proposed amendment applies to all approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law. In total, the proposed amendment affects approximately 618 public and private providers of special education. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas. There are approximately 10 special act school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional compliance requirements on small businesses and local governments beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform the Commissioner's Regulations Chapter 501 of the Laws of 2012, and does not impose any additional professional service requirements on small businesses or local governments.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center, and does not impose any additional costs beyond those imposed by such statutes and regulations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments beyond those imposed by such statutes and regulations.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents and the chief officers of the Big 5 city school districts with the request that they distribute them to school districts within their supervisory districts for review and comment.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendment applies to all approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less. In total, the proposed amendment affects approximately 618 public and private providers of special education of which not more than 172 are located in rural areas of New York State. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any compliance requirements upon small businesses and local governments in rural areas beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the New York State Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments in rural areas beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law in the State, it is not possible to adopt different standards for such entities in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law, as amended by Chapter 501 of the New York State Laws of 2012 ("Protection of People with Special Needs Act"), and the regulations, guidelines and procedures established by the Justice Center, to ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 10, 2013, the State Education Department received the following comments:

1. COMMENT:

Applaud the State Education Department for conforming to State regulations regarding students with special needs. In addition to providing training to staff upon hiring, training should also be repeated at least annually to ensure compliance from all staff.

DEPARTMENT RESPONSE:

The regulations require that schools provide, or ensure the provision of, child abuse prevention and identification training to all administrators, employees and volunteers on a regular, but at least annual, basis.

2. COMMENT:

This is a good first step, and the Regents are to be commended for having the courage to do the right thing. The proposal includes several references to "oversight" but none to organized systematic monitoring. There needs to be an independent structure/protocol for oversight so that the standards for care will be met and maintained. Additionally, there is no provision for filing an allegation, investigating the allegation, and implementation of corrective action, if a school is identified as not meeting the quality standard of care as outlined.

DEPARTMENT RESPONSE:

The Department is responsible to review trends in incident reports and to ensure corrective action plans are implemented to address both child-specific as well as systemic findings. A description of the oversight and monitoring role of the Justice Center can be found at <http://www.justicecenter.ny.gov/oversight-and-monitoring/unit>.

Department of Environmental Conservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Taking of Free-Ranging Eurasian Boars and Interference with Department Authorized Eradication Efforts

I.D. No. ENV-50-13-00004-P

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

Proposed Action: Addition of section 180.12 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0514 and 11-0303

Subject: Taking of Free-ranging Eurasian Boars and interference with Department authorized eradication efforts.

Purpose: Prohibit the taking of Eurasian boars by hunting or trapping in order to support eradication efforts of USDA and DEC.

Text of proposed rule: 6 NYCRR Part 180 ("Miscellaneous Regulations") is amended to add a new Section 180.12 entitled "Eurasian boar" to read as follows:

Section 180.12 Eurasian boar

(a) Prohibitions.

(1) No person shall hunt, trap, take or engage in any activity, including the use of dogs, that is likely to result in the taking of any free-ranging Eurasian boar, as defined in Environmental Conservation Law section 11-0514. "Free-ranging" shall mean any Eurasian boar that is not lawfully possessed within a completely enclosed or fenced facility from which the animal cannot escape to the wild.

(2) No person shall disturb, move, destroy, tamper with, obstruct, damage, open or interfere with any lawfully set Eurasian boar trap, net or capture device. No person shall release, remove or transport any live Eurasian boar caught in any trap, net or capture device.

(3) Exceptions. This section shall not apply to any state or federal agency, to any member of a law enforcement agency acting in accordance with their official duties, or to any other person permitted to take Eurasian boar pursuant to Environmental Conservation Law section 11-0521 or section 11-0523. Any person who takes a free-ranging Eurasian boar pursuant to any of the above exceptions shall promptly notify the Department and follow all instructions given by the Department with respect to handling and disposition of the carcass.

Text of proposed rule and any required statements and analyses may be obtained from: Kelly Stang, NYS DEC, 625 Broadway, Albany, NY 12233-4754, (518) 402-8862, email: kjstang@gw.dec.state.ny.us

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 (entitled "Management of fish and wildlife resources; general purposes and policies governing manner of exercise of powers") grants the Department broad authority to develop and carry out programs and procedures which will in its judgment, (a) promote natural propagation and maintenance of desirable species in ecological balance, and (b) lead to observance of sound management practices for such propagation and maintenance on lands and waters of the state, whether owned by the state or held in private ownership.

Section 11-0514 (entitled "Eurasian Boars prohibited") of the Environmental Conservation Law (ECL) provides the Department with authority to adopt any rules and regulations necessary to implement and administer this section of law, which relates to importation, possession, sale, or release of Eurasian Boar in New York State.

2. Legislative objectives:

The legislative objectives of Section 11-0303 are to empower the Department to promote the general welfare of desirable species in ecological balance, and promote management practices to accomplish that end. The ultimate objectives include, but are not limited to, the maintenance of ecological balance, compatibility of fish and wildlife with necessary or desirable land uses, and protection of public safety and private property.

The legislative objectives of Section 11-0514 are to prohibit the importation, possession, sale, or release of Eurasian Boar in New York State. The primary purpose of these prohibitions is to prevent the establishment of free-ranging Eurasian boar populations in New York State, due to concerns about the adverse impacts these animals can have on native plants and wildlife, livestock, agriculture, and public health and safety.

3. Needs and benefits:

This rule making is necessary to ensure that Eurasian boars do not become established in the wild in New York, as a complementary measure to the recently enacted legislation. ECL 11-0514 prohibited the importation, propagation and release of Eurasian boars in New York, but it allowed for continued possession of boars in captivity until September 1, 2015. During this interim period, the potential for illegal releases or escapes from captive facilities is high, so we need to ensure that DEC and USDA are able to conduct effective trapping operations without interference as soon as any boars are reported in the wild. Even after possession of Eurasian boars is completely prohibited, we will need to ensure that any continued eradication efforts can occur without interference.

ECL-0514 also did not address the status free-ranging boars that already exist in the wild or which may result from illegal releases or escapes from captive facilities. Under ECL 11-0103, those boars are considered “unprotected wildlife”, which can be taken at any time and in any manner. However, as discussed below, allowing this unrestricted take of boars can be in direct conflict with eradication and prevention strategies. Therefore, we need to prohibit the taking of free-ranging boars using the “general powers” authority provided by ECL-0303(2).

The transport and release of Eurasian boars to establish hunting populations, the escape of Eurasian boars from enclosed shooting facilities, and domestic swine that have escaped and become wild have resulted in breeding populations of Eurasian boars in at least 36 states, including New York. Eurasian boars have been confirmed breeding in at least 6 counties in New York and they have been reported in many other New York counties across the state.

Without immediate action, Eurasian boar populations will become permanently established across New York as a result of natural range expansion, illegal movement by hunters, and escapes from enclosed shooting facilities and swine breeding facilities. Eurasian boars cause extensive harm to native wildlife and their habitats, agricultural crops, and other private and public property. They also pose a disease threat to domestic livestock, pets and humans. The potential establishment and rapid growth of Eurasian boar populations are a major concern to natural resource managers, farmers, livestock producers, and animal health officials in New York and other states across the country.

Eradication of Eurasian boars is the ultimate goal of the Department. DEC and USDA have initiated eradication efforts in many locations where Eurasian boars have been confirmed, and those efforts are expected to continue and expand over the next several years. However, eradication is expensive, time consuming and requires a great deal of manpower. Therefore, eradication efforts must be reinforced with effective preventive measures to eliminate both the supply and demand for Eurasian boars in New York.

Because Eurasian boars are considered “unprotected wildlife” under ECL 11-0103, any person with a small game hunting license may take Eurasian boars at any time and in any number. Although this can result in the removal of some individual boars, it also contributes to the demand for continued importation and release of Eurasian boars into areas of New York where they do not already occur. Some hunters want to be able to hunt “wild boar” but do not have permission to hunt on land in areas where Eurasian boars reside, or they do not want to travel far and want to expand boar hunting opportunities to their own or nearby land. These hunters may obtain Eurasian boars, often from outside the state, and transport them to New York for release, in hopes of establishing a local population. Such movement and release of Eurasian boars makes eradication impossible to achieve. In Missouri and Tennessee, it is believed that the biggest contribution to feral hog population expansion was the illegal release of feral hogs for the purpose of sport hunting. We need to counter the perception that Eurasian boars represent a potential new “game” species for New York hunters, as the destruction these animals can cause far outweighs any recreational benefits they may provide.

As long as Eurasian boars may be pursued by hunters, there is also a potential conflict with our eradication efforts. Eurasian boars often join together to form a “sounder”, the name for a group of pigs sometimes numbering 20 or more individuals. Trapping Eurasian boars in corral traps is the most effective way to capture a large number of boars at one time. Simply shooting individual boars as opportunities arise is ineffective as an eradication method. In some cases, hunters may attempt to take boars in locations where baited traps have been established by DEC or USDA, and this disturbance can undermine costly and labor-intensive capture efforts. Shooting may kill one or two boars but the rest of the sounder scatters and rarely comes back together as a group, thereby hampering eradication efforts. Some landowners have also indicated that Eurasian boar hunting could provide them with income from hunters willing to pay to hunt their lands, resulting in less cooperation with eradication efforts in that area. In addition to prohibiting take of Eurasian boars by hunters, the proposed regulation would prohibit anyone from interfering with Eurasian boar eradication activities.

The proposed regulations provide appropriate exceptions for state and federal wildlife agencies, law enforcement agencies, and persons permitted to take Eurasian boar pursuant to ECL 11-0521 to alleviate nuisance, property damage, or threats to public health or welfare.

4. Costs:

Adoption of these regulations will impose no additional costs to the Department beyond normal administrative costs, but failure to eradicate and prevent Eurasian boars in New York would result in substantial costs in natural resource damages, as well as future response and control efforts. Adoption of these regulations also will not result in any increased expenditures by State or local governments or the general public.

5. Local government mandates:

These amendments do not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork:

The proposed rule does not require or impose any new record keeping or additional paperwork from any regulated party.

7. Duplication:

The proposed regulation does not duplicate any state or federal action or requirement.

8. Alternatives:

We considered the following alternatives to the proposed rulemaking:

(a) Adopt no regulations. This would allow licensed hunters and others to take Eurasian boars (which are currently considered “unprotected wildlife” according to the ECL) at any time and in any number. This would maintain an unintended incentive for people to illegally import and release Eurasian boars to establish “hunnable” populations in the wild. It would also undermine efforts by the Department and USDA to eradicate Eurasian boars, as people who wish to see the population grow could attempt to interfere with removal efforts with impunity. Without the proposed regulation, Eurasian boar populations could grow rapidly as a result of these activities, resulting in significant harm to natural resources, agricultural interests, and public and private properties throughout New York State.

(b) Propose more comprehensive regulations. Some consideration was given to require landowner reporting of Eurasian boar sightings, to prohibit possession of any Eurasian boar carcass (or parts thereof), or to require landowners to allow Department or USDA staff access for eradication activities, but such measures were deemed too intrusive on private citizens. DEC and USDA both favor a cooperative, voluntary and, if necessary, an incentive-based approach to working with property owners and other stakeholders to eradicate and prevent establishment of free-ranging Eurasian boars in New York.

9. Federal standards:

There are no federal environmental standards or criteria relevant to the subject matter of this rule making.

10. Compliance schedule:

All persons must comply with this rule making immediately upon adoption.

Regulatory Flexibility Analysis

The purpose of this rule making is to prohibit hunting, trapping or taking of free-ranging Eurasian boars, and to prohibit disturbance or interference with Eurasian boar capture activities being conducted by the Department or its cooperators. This rule will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local governments. Therefore, a Regulatory Flexibility Analysis is not required.

Rural Area Flexibility Analysis

The purpose of this rule making is to prohibit hunting, trapping or taking of free-ranging Eurasian boars, and to prohibit disturbance or interference with Eurasian boar capture activities being conducted by the Department or its cooperators. This rule making does not require any new or additional reporting or record-keeping by entities in rural areas, and no professional services will be needed for people living in rural areas to comply with the proposed rule. In a few isolated cases, private landowners who may have Eurasian boars on their property will not be able to obtain income from hunters willing to pay to hunt their lands, but the locations of such opportunities are unpredictable and not known to exist currently. Furthermore, the potential damage that free-ranging Eurasian boars can cause to agriculture and other rural area interests far outweigh any potential economic benefits associated with hunting of these animals. Therefore, the Department has concluded that this rule making does not require a Rural Area Flexibility Analysis.

Job Impact Statement

The purpose of this rule making is to prohibit hunting, trapping or taking of free-ranging Eurasian boars, and to prohibit disturbance or interference with Eurasian boar capture activities being conducted by the Department or its cooperators. Because the number of free-ranging Eurasian boars in the state is still relatively small, the Department is not aware of any measureable amount of hunting activity, or persons who provide Eurasian boar hunting services as a means of employment. Therefore, the department has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities, and a job impact statement is not required.

Department of Health

EMERGENCY RULE MAKING

Capital Projects for Federally Qualified Health Centers (FQHCs)

I.D. No. HLT-46-13-00005-E

Filing No. 1159

Filing Date: 2013-11-26

Effective Date: 2013-11-26

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

Action taken: Amendment of section 86-4.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-z(9)

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

Specific reasons underlying the finding of necessity: The proposed amendment establishes a payment methodology to reimburse Federally Qualified Health Centers for the costs of capital projects with a total budget of less than \$3 million exempt from Certificate of Need (CON) requirements.

Public Health Law section 2807-z(9) provides the Commissioner of Health with authority to issue emergency regulations in order to implement the provisions of PHL Section 2807-z. Emergency adoption of the proposed regulation is necessary to provide timely revision to rate-setting regulations to comply with the requirements of PHL Section 2807-z.

Subject: Capital Projects for Federally Qualified Health Centers (FQHCs).

Purpose: Capital Projects with a total budget of less than \$3 million shall be exempt from Certificate of Need (CON) requirements.

Text of emergency rule: Subdivision (d) of section 86-4.16 of 10 NYCRR is amended to read as follows:

(d) Documented increases in overall operating costs of a facility resulting from capital renovation, expansion, replacement or the inclusion of new programs, staff or services approved by the commissioner through the certificate of need (CON) process may be the basis for an application for revision of a certified rate, *provided, however, that such CON approval shall not be required with regard to such applications for rate revisions which are submitted by federally qualified health centers or rural health centers which are exempt from such CON approval pursuant to section 2807-z of the Public Health Law.* To receive consideration for reimbursement of such costs in the current rate year, a facility shall submit, at the time of appeal or as requested by the commissioner, detailed staffing documentation, proposed budgets and financial data, anticipated utilization expressed in terms of threshold visits and/or procedures and, where relevant, the final certified costs of construction approved by the department. An appeal may be submitted pursuant to this paragraph at any time throughout the rate period. Any modified rate certified or approved pursuant to this paragraph shall be effective on the date the new service or program is implemented or, in the case of capital renovation, expansion or replacement, on the date the project is completed and in use.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-46-13-00005-P, Issue of November 13, 2013. The emergency rule will expire January 24, 2014.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Public Health Law (PHL) § 2807-z(9), which authorizes the Commissioner to promulgate regulations implementing the provisions of PHL § 2807-z, which, among other things, exempts diagnostic and treatment centers (DTCs) which are federally qualified health centers (FQHCs) from certificate of need (CON) requirements for capital projects which are budgeted at under \$3 million. The rate regulation revisions presented here are set forth in section 86-4.16(d) of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR) and allows certain Medicaid rate adjustments related to such CON exempt capital projects.

Legislative Objectives:

PHL § 2807-z exempts FQHCs from having to seek CON review and approval for certain capital projects with budgeted costs under \$3 million. This will allow such projects to go forward more quickly. The proposed regulation amendment implements this statute by deleting the requirement in § 86-4.16(d) for CON approval as a condition for FQHCs to secure Medicaid rate adjustments associated with such now CON exempt capital projects.

Needs and Benefits:

The proposed regulation implements the provisions of PHL Section 2807-z, which exempts certain types of diagnostic and treatment centers from CON review for capital projects under \$3 million. As specified in PHL § 2807-z(6) and (7), the exempted facilities are those which receive federal grant funding reflecting their designation by the federal government as FQHCs or as rural health centers.

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

The enacted state budget for SFY 2012-13 does not include any state share annually to cover the anticipated 12 month total incremental cost to the Medicaid Program for providing reimbursement related to eligible capital projects. As the FQHC payment rate will not be effective until after January 1, 2013, less spending will occur in the current SFY due to the nine month delay in implementation.

Costs of Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

No additional paperwork is required to be filed by FQHCs.

Duplication:

This regulation does not duplicate any existing federal, state or local government regulation.

Alternatives:

No significant alternatives are available. The enhanced reimbursement available to FQHCs as a result of this proposed regulation ensures that their Medicaid rates reflect appropriate adjustments related to CON exempt capital projects and are therefore, are reasonable to meet the needs of the diverse patient populations they serve.

Federal Standards:

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

Compliance Schedule:

The proposed regulation conforms Medicaid rate regulations with the provisions of enacted provisions of the Public Health Law. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation establishes a Federally Qualified Health Center (FQHC) rate-setting methodology to reimburse Diagnostic and Treatment Centers for the capital costs of less than \$3 million which are not subject to the regulation regarding certificate of need process or requirements. The proposed regulation has no adverse implications for job opportunities. Rather, the additional revenue generated by FQHCs as a result of the new payment

rate may provide them with the financial resources they need to add staff, thus enhancing their ability to provide expanded services.

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

Hospital Indigent Care Pool Payment Methodology

I.D. No. HLT-50-13-00001-EP

Filing No. 1131

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Proposed Action: Addition of section 86-1.47 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-k(5-d)

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

Specific reasons underlying the finding of necessity: The proposed regulation establishes a distribution methodology for indigent care pool payments to general hospitals for the three-year period January 1, 2013 through December 31, 2015.

Public Health Law section 2807-k(5-d)(b) provides the Commissioner of Health with the authority to issue the regulation on an emergency basis. Emergency adoption of the proposed regulation with an effective date of January 1, 2013 is necessary to satisfy the statutory timeframe prescribed by Chapter 56 of the Laws of 2013 and to secure federal approval of the associated Medicaid State Plan Amendment.

The State may not begin making hospital indigent care payments using the new distribution methodology until the regulation is adopted and the associated Medicaid State Plan Amendment is approved.

Subject: Hospital Indigent Care Pool Payment Methodology.

Purpose: To establish the methodology for indigent care pool payments to general hospitals for the 3 year period 1/1/13 through 12/31/15.

Text of emergency/proposed rule: Subpart 86-1 of title 10 of NYCRR is amended by adding a new section 86-1.47 to read as follows:

86-1.47 Hospital indigent care pool payments.

(a) *Effective for periods on and after January 1, 2013, payments pursuant to subdivision 5-d of section 2807-k of the Public Health Law shall be made in accordance with the provisions of this section.*

(b) *For the purposes of distributions in accordance with this section, each hospital's relative uncompensated care need amount shall be determined in accordance with the following:*

(1) *All uninsured inpatient units of service as reported in Exhibit 32 of the Institutional Cost Report from the cost reporting year two years prior to the distribution year, but excluding hospital-based residential health care facility ("RHCF") and hospice units of service, shall be multiplied by the average applicable Medicaid inpatient rate in effect for January 1 of the distribution year.*

(2) *All uninsured outpatient units of service as reported in Exhibit 33 of the Institutional Cost Report from the cost reporting year two years prior to the distribution year, but excluding referred ambulatory and home health services, shall be multiplied by the average applicable Medicaid outpatient rate in effect for January 1 of the distribution year.*

(3) *The inpatient amounts determined pursuant to paragraph (1) of this subdivision for each hospital shall be summed and adjusted by a statewide inpatient cost adjustment factor equivalent to the aggregate sum of the inpatient uninsured units multiplied by the step-down cost per unit for each applicable inpatient service, excluding hospital-based RHCF and hospice services, for all hospitals statewide, divided by the aggregate sum of the amounts determined pursuant to paragraph (1) of this subdivision for all hospitals statewide.*

(4) *The outpatient amounts determined pursuant to paragraph (2) of this subdivision for each hospital shall be summed and adjusted by a statewide outpatient cost adjustment factor equivalent to the aggregate sum of the outpatient uninsured units multiplied by the step-down cost per unit for each applicable outpatient service, excluding referred ambulatory and home health services, for all hospitals statewide, divided by the aggregate sum of the amounts determined pursuant to paragraph (2) of this subdivision for all hospitals statewide.*

(5) *The adjusted inpatient and outpatient amounts determined pursuant to paragraphs (1) through (4) of this subdivision for each hospital shall be summed and reduced by the sum of all of the cash payments collected from such uninsured patients as reported in the Institutional Cost*

Report from the cost reporting year two years prior to the distribution year to determine each hospital's net adjusted uncompensated care need.

(6) *The uncompensated care nominal need for each hospital shall be calculated as the net adjusted uncompensated care need multiplied by the sum of: (i) 0.40, and (ii) the Medicaid inpatient utilization rate multiplied by 0.60. The Medicaid inpatient utilization rate shall be calculated based on discharge data reported in Exhibit 32 of the Institutional Cost Report from the cost reporting year two years prior to the distribution year and shall include fee-for-service and managed care discharges for acute and exempt services.*

(c) *For the 2013 calendar year, payments shall be made as follows:*

(1) *One hundred thirty nine million four hundred thousand dollars (\$139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than two and a half percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.*

(2) *Nine hundred ninety four million nine hundred thousand dollars (\$994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than two and a half percent less than the average distributions such hospitals received pursuant to § 2807-k and § 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.*

(3) *Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available, the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.*

(d) *For the 2014 calendar year, payments shall be made as follows:*

(1) *One hundred thirty nine million four hundred thousand dollars (\$139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than five percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.*

(2) *Nine hundred ninety four million nine hundred thousand dollars (\$994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than five percent less than the average distributions such hospitals received pursuant to § 2807-k and 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.*

(3) *Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available,*

the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.

(e) For the 2015 calendar year, payments shall be made as follows:

(1) One hundred thirty nine million four hundred thousand dollars (\$139,400,000) shall be distributed as Medicaid disproportionate share hospital ("DSH") payments to major public general hospitals, including the hospitals operated by public benefit corporations, on the basis of each hospital's uncompensated care nominal need, as determined in accordance with the provisions of subdivision (b) of this section, as a share of the aggregate uncompensated care nominal need for all major public general hospitals, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than seven and a half percent less than the average distributions such hospitals received pursuant to § 2807-k of the Public Health Law for the three year period January 1, 2010, through December 31, 2012.

(2) Nine hundred ninety four million nine hundred thousand dollars (\$994,900,000) shall be distributed as Medicaid DSH payments to eligible general hospitals, other than major public general hospitals, on the basis of each hospital's uncompensated care need share, as determined in accordance with the provisions of subdivision (b) of this section, further adjusted by a transition factor that shall be calculated such that no hospital shall experience a reduction in payments pursuant to this section that is greater than seven and a half percent less than the average distributions such hospitals received pursuant to § 2807-k and § 2807-w of the Public Health Law, excluding academic medical center grants received pursuant to § 2807-k(5-b)(b)(v) of the Public Health Law, and after any reductions made pursuant to § 2807-k(17) of the Public Health Law, for the three year period January 1, 2010, through December 31, 2012.

(3) Payments made pursuant to paragraphs (1) and (2) of this subdivision shall be further adjusted such that such payments made to hospitals that experience increases in payments, as compared to the average of such payments made pursuant to this section for the three year period January 1, 2010 through December 31, 2012, shall be further adjusted on a percentage basis, as determined by the Commissioner, sufficient to ensure, in conjunction with such other funding as may be made available, the full funding of the transition adjustments described in paragraphs (1) and (2) of this subdivision.

(f)(1) Funds reserved in the Financial Assistance Compliance Pool ("FACP") pursuant to § 2807-k(5-d)(b)(iv) of the Public Health Law for the calendar years 2014 and 2015 shall be distributed to hospitals which demonstrate substantial compliance, as determined by the Commissioner, with the provisions of § 2807-k(9-a) of the Public Health Law (the "financial assistance law" or "FAL").

(2) Hospitals which are determined to be in substantial FAL compliance by the end of the 2013 calendar year shall receive their 2014 FACP payments as soon as practical in 2014 in accordance with subdivision (b) of this section. Hospitals which are determined to be in substantial FAL compliance by the end of the 2014 calendar year shall receive their 2015 FACP funds as soon as practical in 2015 in accordance with subdivision (b) of this section, provided, however, that those hospitals which were determined to be not in such substantial compliance by the end of 2013, but which are determined to be in such substantial compliance by the end of 2014, shall receive both their 2014 and 2015 FACP payments as soon as practical in 2015.

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 February 17, 2014.

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

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

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

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2807-k(5-d) of the Public Health Law (PHL), as enacted by Section 1 of Part C of Chapter 56 of the Laws of 2013, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to the establishment of a distribution methodology to make annual indigent care pool payments to general hospitals for the three-year period January 1, 2013 through December 31, 2015. The distribution methodology will be set forth in Section 86-1.47 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York.

Legislative Objectives:

The legislation requires the Department of Health to develop an indigent care distribution methodology which conforms to federal DSH ("Disproportionate Share Hospital") reform guidelines by targeting payments to hospitals which provide a disproportionate share of uncompensated care to the uninsured and Medicaid inpatient population and also to strengthen hospital compliance with the Financial Aid Law contained in Section 2807-k(9-a) of the Public Health Law. The legislation further requires that the distribution methodology be set forth in a regulation with an effective date of January 1, 2013.

The State provides over \$1.1 billion annually in hospital indigent care (DSH) payments which are funded through a fifty percent federal match. Beginning in October 2013, the federal government will begin reducing DSH payments to states that don't target their DSH payments solely to hospitals with high uncompensated care provided to the uninsured and Medicaid population. To minimize the State's share of these federal cuts and to respond to industry and public pressure to tie indigent care payments directly to care provided to the poor, the Department developed the new distribution methodology set forth in the proposed regulation.

Needs and Benefits:

The proposed regulation establishing the new indigent care distribution methodology replaces an outdated and complex distribution methodology which expired December 31, 2012.

The proposed regulation contains the detailed calculations required to determine a hospital's relative uncompensated care need, incorporating both uninsured and Medicaid inpatient volume, which forms the basis for allocation of a proportional share of the total available pool funds.

The proposed regulation also provides for a transition payment, in each of the three years 2013-2015, to ensure that no hospital experiences severe financial instability resulting from the redistribution of funding among the hospitals as a result of the change in methodology. This transition payment will establish a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the previous three years (2010-2012). Hospitals which experience gains will have their distributions similarly capped by a set percentage of the average indigent care pool payments received in the previous three years (2010-2012).

In addition, the proposed regulation grants the Commissioner the authority to withhold one percent of the total indigent care pool funds available for years 2014 and 2015 in order to strengthen hospital compliance with the Financial Aid Law contained in Section 2807-k(9-a) of the Public Health Law. Hospitals must demonstrate compliance with the provisions of the Financial Aid Law to receive their share of the one percent withheld funds for years 2014 and 2015.

The benefits of the regulatory changes include a simpler, more transparent methodology which relates indigent care pool payments directly to care of low-income patients and incentives for hospitals to comply with the provisions of the Financial Aid Law. Further, federal DSH matching funds are optimized by the State's conformance with federal guidelines.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The proposed regulation utilizes information contained in the Institutional Cost Reports which hospitals are already required to submit to the Department on an annual basis.

Costs to State Government:

There is no increase in Medicaid expenditures anticipated as a result of this regulation.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

There are no new reporting requirements, forms or additional paperwork as a result of this amendment.

Duplication:

This proposed regulation does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. The Department developed the distribution methodology with extensive input from the industry associations representing the hospitals subject to the proposed regulation. The regulations are mandated by the terms of the recently enacted § 2807-k(5-d) of the Public Health Law.

Federal Standards:

State statutory provisions contained in PHL § 2807-k(5-d) establish a system of hospital indigent care payments, that exceed the minimum requirement for such payments established in federal law and the proposed regulations reflects those enhanced payment levels.

Compliance Schedule:

The proposed regulation grants the Commissioner of Health the authority to withhold one percent of the total indigent care pool funds available for years 2014 and 2015. Hospitals must demonstrate compliance with the provisions of the Financial Aid Law contained in Section 2807-k(9-a) of the Public Health Law to receive their share of the one percent withheld funds for years 2014 and 2015. There are no additional compliance efforts required by the hospitals.

Regulatory Flexibility Analysis

Effect of Rule:

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

Some hospitals subject to this regulation may see a decrease in their indigent care payments as a result of this regulation but, as noted above, transition payments will help minimize the impact so that no hospital experiences severe financial instability as a result of the change in methodology.

Hospitals operated by local governments will be impacted in the same manner as other hospitals, but this rule will have no direct effect on local governments.

Compliance Requirements:

The proposed regulation grants the Commissioner of Health the authority to withhold one percent of the total indigent care pool funds available for years 2014 and 2015. All hospitals must demonstrate compliance with the provisions of the Financial Aid Law as set forth in Section 2807-k(9-a) of the Public Health Law to receive their share of the funds held in this pool for years 2014 and 2015. No other compliance efforts are required.

A small business regulation guide is not required.

The rule will have no direct effect on local governments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

Minimizing Adverse Impact:

A transition payment will be provided, in each of the three years, to ensure that no hospital experiences severe financial instability resulting from the change in methodology. This transition payment will establish a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the previous three years (2010-2012).

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

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register on December 26, 2012, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include hospitals with 100 or fewer FTEs.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Allegany Hamilton Schenectady

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

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

Albany	Monroe	Orange
Broome	Niagara	Saratoga
Dutchess	Oneida	Suffolk
Erie	Onondaga	

Compliance Requirements:

The proposed regulation grants the Commissioner of Health the authority to withhold one percent of the total indigent care pool funds available for years 2014 and 2015. All hospitals must demonstrate compliance with the provisions of the Financial Aid Law as set forth in Section 2807-k (9-a) of the Public Health Law to receive their share of the funds held in this pool for years 2014 and 2015. No other compliance efforts are required.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

A transition payment will be provided, in each of the three years, to ensure that no hospital experiences severe financial instability resulting from the change in methodology. This transition payment will establish a minimum payment as a set percentage of the average indigent care pool payments received by the hospital in the previous three years (2010-2012).

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

Rural Area Participation:

The State filed a Federal Public Notice, published in the State Register on December 26, 2012, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including rural area members and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

Draft regulations, prior to filing with the Secretary of State, were shared with the industry associations representing hospitals and comments were solicited from all affected parties. Such associations include members from rural areas.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed regulation establishes the hospital indigent care pool payment methodology for the three-

year period January 1, 2013 through December 31, 2015. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

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

Advance Directives

I.D. No. HLT-50-13-00005-P

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

Proposed Action: Amendment of section 400.21; and repeal of sections 405.43 and 700.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803, 2993 and 2994-t

Subject: Advance Directives.

Purpose: To establish a decision making process to allow competent adults to appoint an agent to decide about health care treatment.

Text of proposed rule: Section 405.43 is repealed.

Section 700.5 is repealed.

Section 400.21 is amended to read as follows:

§ 400.21 Advance directives

(a) Statement of purpose. [Recent advances in medical technology have brought forth a multitude of choices about medical treatment. Advances in emergency medical services have expanded the capacity of the health care system to save the lives of victims who previously would not have survived acute trauma. New drugs and new surgical techniques may prolong life, but may not necessarily halt the spread of progressive or degenerative illness. Life support systems can maintain unconscious patients for months or even years. Decisions about medical treatment based on the availability of this burgeoning medical technology are deeply personal. They reflect basic values, personality traits and religious attitudes. An adult's capacity to tolerate pain, disfigurement or dependency must be considered.] The New York State Health Care Proxy Law allows an adult to designate another adult, such as a trusted friend or loved one who knows the person and his/her wishes, to make [these] treatment decisions if the adult becomes incapacitated and is unable to do so. The Health Care Proxy Law guarantees an adult's right to self-determination and the expression of this right through another adult. Advance directives [like the Health Care Proxy] also allow an adult to express his or her preference regarding health care treatment, including a desire to continue or to refuse treatment and life supports. In the absence of a health care proxy, [adults who express their wishes orally or in writing concerning life-sustaining treatment in a clear and convincing manner are entitled, based on decisions of both the United States Supreme Court and the New York State Court of Appeals, to have those wishes recognized] *the Family Health Care Decisions Act allows a surrogate (a family member or close friend) to make treatment decisions on behalf of a patient, in accordance with the patient's wishes, if known, or if the patient's wishes are not known, in accordance with the patient's best interests.* Facilities must ensure that all adult patients/residents are informed of their rights and are supported and protected as they exercise their right to formulate written or oral instructions regarding their health care in the event such adults become incapacitated and are unable to direct their own health care.

(b) Definitions. The following words or phrases shall have the following meanings:

(1) An advance directive means a type of written or oral instruction relating to the provision of health care when an adult becomes incapacitated, including but not limited to a health care proxy, a consent [pursuant to Article 29-B of the Public Health Law] to the issuance of an order not to resuscitate or other medical orders for life-sustaining treatment (MOLST) recorded in a patient's/resident's medical record, and a living will.

(2) A health care proxy means a document created pursuant to Article 29-C of the Public Health Law which delegates the authority to another adult known as a health care agent to make health care decisions on behalf of the adult when that adult is incapacitated.

(3) A living will means a document which contains specific instructions concerning an adult's wishes about the type of health care choices and treatments that an adult does or does not want to receive[, but which does not designate an agent to make health care decisions].

(4) A health care agent or agent means an adult to whom authority to make health care decisions is delegated under a health care proxy.

(5) An adult means any person who is 18 years of age or older, or is the parent of a child, or has married.

(6) *Medical orders for life-sustaining treatment (MOLST) means medical orders to provide, withhold or withdraw life-sustaining treatment. The MOLST form is an alternative form authorized by the Commissioner*

under subdivision six of section twenty-nine hundred ninety-four-dd of the public health law. The MOLST form and guidance and checklists for using the MOLST form for any patient in any setting are posted on the department's website.

(c) Facility compliance. The facility shall ensure compliance with the requirements of law governing advance directives, including but not limited to Articles [29-B and] 29-C, 29-CC and 29-CCC of the Public Health Law.

(d) Policies and procedures. The facility shall be responsible for developing, implementing and maintaining written policies and procedures addressing advance directives and shall:

(1) [furnish] *make the following material available* to each adult patient/resident, or if the adult patient/resident lacks capacity, to the family member or other adult who speaks on the patient's/resident's behalf at or prior to the time of admission to the facility as an inpatient or an outpatient and to each member of the facility's staff who provides patient/resident care. A facility need not provide these items more than once to an outpatient receiving services on a recurring basis:

(i) the description of State law prepared by the department entitled [“Planning in Advance for your Medical Treatment,”] *“Deciding About Health Care: A Guide for Patients and Families,”* which summarizes the rights, duties and requirements of Articles [29-B and] 29-C, 29-CC and 29-CCC [and the right of an adult to formulate advance directives as expressed in final decisions of courts of competent jurisdiction]; *and*

(ii) the pamphlet prepared by the department entitled *“Health Care Proxy: Appointing your Health Care Agent [-in New York State’s Proxy Law],”* containing a sample health care proxy form; and

(iii) a summary of the facility's policy regarding the implementation of these rights];

(2) ensure that there is documentation in each adult's medical record indicating whether or not the adult has executed a health care proxy under Article 29-C of the Public Health Law, or whether the adult has provided written or oral advance instructions about treatment to facility staff responsible for the patient's care or to facility employees upon admission;

(3) assess advance directives other than those described in Articles [29-B and] 29-C, 29-CC and 29-CCC of the Public Health Law. Nothing herein shall be construed to require that a facility must or may not seek a court determination that any individual advance directive has been expressed in a clear and convincing manner;

(4) provide in-service education to staff involved in the provision of care including medical staff concerning the facility's policies and procedures concerned with advance directives;

(5) provide (individually or with others) education to the community on issues concerning advance directives;

(6) ensure that an adult is not discriminated against in the provision of care or otherwise discriminated against based on whether or not the adult has executed an advance directive; and

(7) in addition, a nursing home shall:

(i) educate adult residents about the authority delegated under a health care proxy, what a proxy may include or omit, and how a proxy is created, revoked, or changed as requested by the resident;

(ii) ensure that each resident who creates a proxy while residing at the facility does so voluntarily; and

(iii) designate one or more individuals to educate the residents, respond to questions and assist residents in creating, revoking or changing a proxy.

(e) *Medical orders for life-sustaining treatment (MOLST). To implement a patient's wishes regarding cardiopulmonary resuscitation (CPR) and other life-sustaining treatment, facilities may, if appropriate, utilize the department approved MOLST form for patients with serious health conditions who:*

(1) *want to avoid or receive any or all life-sustaining treatment; or*

(2) *can reasonably be expected to die within one year.*

(f) Rights to be publicized. The facility shall post in a public place in the facility the rights, duties and requirements of this section. Such statement may be included in any other statement of patient's/resident's rights required to be posted.

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803, 2993 and 2994-t. PHL Section 2803 authorizes the Public Health and Health Planning Council (PHHPC)

to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. PHL Sections 2993 and 2994-t authorize the Commissioner in consultation with the Commissioners of the Offices of Mental Health (OMH) and People With Developmental Disabilities (OPWDD) to establish such regulations as may be necessary for the implementation of Article 29-C (Health Care Agents and Proxies) and Article 29-CC (Family Health Care Decisions Act) respectively.

Legislative Objectives:

The legislative intent of PHL Article 28 is to provide for the protection and promotion of the health of the inhabitants of the State of New York by delivering high quality hospital and related services in a safe and efficient manner at a reasonable cost. The intent of PHL Article 29-C is to establish a decision making process to allow competent adults to appoint an agent to decide about health care treatment in the event they lose decision-making capacity. PHL Article 29-CC establishes a decision-making process applicable to decisions in general hospitals and nursing homes whereby a surrogate is selected and empowered to make health care decisions for patients who lack capacity to make their own health care decisions and who have not otherwise appointed an agent to make health care decisions pursuant to Article 29-C or provided clear and convincing evidence of their treatment wishes.

Needs and Benefits:

While the Health Care Proxy Law in PHL Article 29-C outlines health care agent and proxy provisions to allow someone to designate another adult to make treatment decisions if he/she becomes incapacitated and is unable to do so, the Family Health Care Decisions Act in Article 29-CC would fill the gap by establishing a decision making process where a surrogate is selected and empowered to make such decisions for incapacitated individuals who have not otherwise appointed an agent pursuant to the Health Care Proxy Law, or provided clear and convincing evidence of their treatment wishes. This amendment will conform the regulations to the Public Health Law as amended by Chapter 8 of the Laws of 2010, which added the Family Health Care Decisions Act (FHCDA – Article 29-CC), made Article 29-B no longer applicable to PHL Article 28 facilities and added a new PHL Article 29-CCC, which provides authority for Medical Orders for Life-Sustaining Treatment (MOLST).

Costs:

This proposal will not increase costs to the Department or to the facilities required to comply. These amendments merely update the regulation to reflect current practice and to conform to statutory changes.

Local Government Mandates:

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

Paperwork:

Facilities must be responsible for developing, implementing and maintaining written policies and procedures addressing advance directives and furnish to each adult patient/resident or family member or other adult who speaks on the patient’s behalf if the patient/resident lacks capacity: (1) the description of the State law “Deciding About Health Care: A Guide for Patients and Families,” and (2) the pamphlet prepared by the Department entitled “Health Care Proxy: Appointing your Health Care Agent in New York State.” Facilities must also ensure that there is documentation in each adult’s medical record indicating whether or not the adult has executed a health care proxy under PHL Article 29-C, or whether the adult has provided written or oral advance instructions about treatment to facility staff responsible for the patient’s care or to facility employees upon admission. Facilities may utilize the Department approved form for Medical Orders for Life-Sustaining Treatment (MOLST) to implement a patient’s wishes regarding cardiopulmonary resuscitation (CPR) and other life sustaining treatment. Facilities must provide information about MOLST to patients with serious health conditions who: (1) want to avoid or receive any or all life-sustaining treatment, or (2) can reasonably be expected to die within one year.

Duplication:

This regulation does not duplicate any other state or federal law or regulation.

Alternatives:

The current regulation is out of date. This proposal updates the regulation to reflect current practice and statutory changes.

Federal Standards:

This regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

The proposed rule will become effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Pursuant to section 202-b of the State Administrative Procedure Act, a regulatory flexibility analysis is not required. The proposed rule will not

impose an adverse economic impact on any of the facilities and will not impose a negative impact on local governments. These provisions will not impose any additional recordkeeping, reporting and other compliance requirements on any party since the proposal simply updates already existing advance directive requirements.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

Pursuant to section 202-bb of the State Administrative Procedure Act, a rural area flexibility analysis is not required. This measure implements provisions set forth in the Family Health Care Decisions Act (FHCDA) that establishes a decision making process, applicable to decisions in general hospitals and nursing homes, whereby a surrogate is selected and empowered to make health care decisions for patients who lack capacity to make their own health care decisions or provided clear and convincing evidence of their wishes.

The proposed rule will not impose an adverse economic impact on hospitals and diagnostic treatment centers located in rural areas in New York State and will not impose any additional recordkeeping, reporting and other compliance requirements since the proposal simply updates already existing advance directive requirements.

Job Impact Statement

A Job Impact Statement is not included because it is apparent from the nature and purpose of these amendments that they will not have a substantial adverse impact on jobs and employment opportunities. This proposal merely updates the advance directive provisions in section 400.21 of 10 NYCRR to reflect current practice and statutory changes.

Department of Labor

NOTICE OF ADOPTION

Minimum Wage

I.D. No. LAB-41-13-00012-A

Filing No. 1165

Filing Date: 2013-11-26

Effective Date: 2013-12-31

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

Action taken: Amendment of Parts 141, 142, 143 and 146 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652(2) and (6)

Subject: Minimum Wage.

Purpose: To comply with chapter 57 of the Laws of 2013 that increased the minimum wage.

Text or summary was published in the October 9, 2013 issue of the Register, I.D. No. LAB-41-13-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Harry Dunsker, Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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

The agency received no public comment.

Office for People with Developmental Disabilities

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Change to Previous Regulations on Reimbursement of Prevocational Services Delivered in Sheltered Workshops

I.D. No. PDD-29-13-00014-ERP

Filing No. 1160

Filing Date: 2013-11-26

Effective Date: 2013-11-26

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

Action Taken: Amendment of section 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 43.02

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. The amendments make a change to a previous emergency regulation to allow for Medicaid reimbursement of prevocational services delivered in sheltered workshops for individuals who were enrolled in this service before July 1, 2013 but did not begin receiving this service until on or after July 1st. The previous regulation limited reimbursement for services provided to only those individuals who were actually receiving this service before July 1st.

Without the emergency amendments, federal funding is not available for reimbursement to providers for the previously excluded individuals. Even though New York State would reimburse providers for these individuals in order to promote their best interest and maintain continuity and quality of services, State funds would be taken away from and be unavailable for service provision elsewhere in the OPWDD system, which could jeopardize the health, safety, and welfare of individuals receiving services. Consequently, it is necessary to promulgate these amendments on an emergency basis in order to preserve the health, safety, and welfare of all individuals receiving services in the OPWDD system.

Subject: Change to previous regulations on reimbursement of prevocational services delivered in sheltered workshops.

Purpose: To allow reimbursement for individuals who were enrolled in prevocational services in sheltered workshops before July 1, 2013.

Text of emergency/revised rule: Subdivision 635-10.5(e) is amended by the addition of a new paragraph (10) as follows:

(10) *Reimbursement of prevocational services delivered in sheltered workshops.*

(i) *Effective July 1, 2013, reimbursement of prevocational services delivered in a sheltered workshop is limited to individuals who:*

(a) *were receiving prevocational services in a sheltered workshop on a regular basis as of June 30, 2013; and who*

(b) *continuously receive prevocational services in a sheltered workshop on a regular basis on and after July 1, 2013.*

(ii) *Notwithstanding the requirements in subparagraph (i) of this paragraph, reimbursement shall be provided for individuals who were enrolled in prevocational services at a sheltered workshop on or before June 30, 2013 but began receiving such services after June 30, 2013 and continuously received such services on and after the date that the individual began services.*

(iii) *Reimbursement of prevocational services delivered in a sheltered workshop is limited to services provided to the individuals specified in subparagraphs (i) and (ii) of this paragraph by either:*

(a) *the same provider with which the individual was enrolled to receive services on or before June 30, 2013 or from which the individual was receiving services on a regular basis as of June 30, 2013; or*

(b) *by a different provider if the individual's receipt of the services from the different provider is the result of one provider assuming operation or control of the initial provider's operations and/or programs, or is the result of a merger or consolidation of providers.*

Note: Current paragraphs (10) – (13) are renumbered to be paragraphs (11) – (14).

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on July 17, 2013, I.D. No. PDD-29-13-00014-EP. The emergency rule will expire February 23, 2014.

Emergency rule compared with proposed rule: Substantive revisions were made in section 635-10.5(e)(10)(ii) and (iii).

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

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

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

Revised Regulatory Impact Statement

1. Statutory authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction, as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory responsibility for setting Medicaid rates and fees for services in facilities licensed or operated by OPWDD pursuant to the New York State Mental Hygiene Law Section 43.02.

2. Legislative objectives: The emergency/revised proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, 16.00, and 43.02 of the Mental Hygiene Law. The emergency/revised proposed amendments make a change to a previous emergency/proposed regulation concerning the reimbursement of prevocational services delivered in sheltered workshops to permit reimbursement for individuals who were enrolled in this service before July 1, 2013 but did not begin receiving services until on or after July 1st.

3. Needs and benefits: OPWDD previously promulgated emergency amendments that limit Medicaid reimbursement for prevocational services delivered in sheltered workshops to only those individuals who were actually receiving these services before July 1, 2013. However, upon promulgating these regulations, OPWDD realized that the language in the regulation excluded individuals who were enrolled in prevocational services at sheltered workshops before July 1st but did not begin receiving services until on or after July 1st. The new emergency/revised proposed amendments allow providers to be reimbursed with both State and federal funding for services provided to these individuals. The new amendments supersede the previous emergency regulation.

OPWDD's intention in promulgating the previous emergency/proposed regulation was to prohibit funding for "new admissions" to prevocational services delivered in sheltered workshops on and after July 1, 2013 while permitting funding for all "new admissions" that occurred before July 1st. However, OPWDD has realized that the language in the previous emergency/proposed regulation is not consistent with its interpretation of a "new admission," which OPWDD considers to include individuals who were enrolled in services before July 1st even if these individuals did not begin services until after July 1st. Since the previous emergency regulation explicitly limited reimbursement to providers for only those individuals who were actually receiving services on a regular basis as of June 30th, the regulation was not consistent with OPWDD's intention for the provision of Medicaid reimbursement to providers.

Consequently, the new emergency/revised proposed amendments

are necessary in order to bring the previous regulation in line with OPWDD's original intention and to ensure that providers of services are reimbursed by Medicaid for the provision of prevocational services in sheltered workshops to the affected individuals.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

The amendments will not result in any additional costs for New York State. Conversely, the promulgation of these regulations on an emergency basis will result in additional federal funding to New York State for reimbursement to providers that was originally limited by the previous emergency/proposed regulation. Without these new emergency/revised proposed amendments, the State will not receive this additional federal funding for the reimbursement of prevocational services for those individuals who were allowed to enroll in services before July 1st but did not receive services until on or after July 1st. Consequently, reimbursement would have to be provided solely through State funding. There are approximately 102 individuals who are excluded from reimbursement by the previous regulations. The total maximum reimbursement for services provided to these individuals on a monthly basis is approximately \$173,000. Without these amendments the State would be responsible for the entire amount of the reimbursement. With the amendments, the maximum monthly State reimbursement is approximately \$86,500. In the future, as individuals transition to competitive employment (with supported employment services) and/or other services, the total reimbursement for these prevocational services will be commensurately reduced.

These amendments will not have any fiscal impact on local governments. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

OPWDD expects that the provision of services to individuals who were enrolled in prevocational services at sheltered workshops before July 1st but did not begin receiving services until on or after July 1st will have no fiscal impact for OPWDD as a provider of services. The emergency/revised proposed amendments merely make a change to the source of reimbursement provided to OPWDD as a provider. Rather than being reimbursed for the previously excluded individuals with solely state funds, reimbursement will include federal funds as a result of the new emergency/proposed amendments.

b. Costs to private regulated parties: There are no initial capital or investment costs. The emergency/revised proposed amendments will have no fiscal impact on private regulated parties for the same reasons stated above in this section for state-operated services.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork is required by the emergency/revised proposed amendments.

7. Duplication: The emergency/revised proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD could have opted to limit Medicaid reimbursement for prevocational services delivered in sheltered workshops to only those who were actually receiving services before July 1st, thereby retaining the previous emergency/proposed regulation. However, OPWDD considers that limiting reimbursement in this way would not be in the best interest of individuals who were enrolled in prevocational services at sheltered workshops before July 1st but not receiving services until on or after July 1st. Although New York State would provide reimbursement for these excluded individuals in order to promote their best interest and maintain continuity and quality of services, such funds would be taken away from and be unavailable for service provision elsewhere in the OPWDD system, which is not an ideal outcome. OPWDD considers that the promulgation of the new emergency/revised proposed amendments is the most desirable option as the amendments will secure the necessary federal funding to assist with reimbursement to providers.

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

10. Compliance schedule: The emergency rule is effective November 26, 2013. OPWDD has concurrently filed the rule as a Notice of Revised Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments do not impose any new requirements with which regulated parties are expected to comply as the amendments only concern reimbursement for services provided. However, OPWDD has informed all providers of the new emergency/revised proposed amendments around the time of their effective date.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments do not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The emergency/revised proposed amendments make a change to a previous emergency/proposed regulation concerning the reimbursement of prevocational services delivered in sheltered workshops. The amendments allow Medicaid reimbursement for services provided to individuals who were enrolled in services before July 1, 2013 but did not begin receiving services until on or after July 1st. The previous emergency/proposed regulation limited Medicaid reimbursement to providers for only those individuals who were enrolled in and started services prior to July 1st. OPWDD expects that New York State would have provided reimbursement for services to the previously excluded individuals even without the new amendments in order to promote their best interest and maintain quality and continuity of service provision. The new amendments merely allow providers to be reimbursed with federal funding instead of solely with State funding. Consequently, since these amendments do not result in a loss of reimbursement to providers, OPWDD expects that their adoption will not have any adverse economic impact on regulated parties that are businesses or local governments. Further, these amendments do not impose any requirements on local governments.

Revised Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments do not impose any adverse impactor significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The emergency/revised proposed amendments make a change to a previous emergency/proposed regulation concerning the reimbursement of prevocational services delivered in sheltered workshops. The amendments allow Medicaid reimbursement for services provided to individuals who were enrolled in services before July 1, 2013 but did not begin receiving services until on or after July 1st. The previous emergency/proposed regulation limited Medicaid reimbursement to providers for only those individuals who were enrolled in and started services prior to July 1st. OPWDD expects that New York State would have provided reimbursement for services to the previously excluded individuals even without the new amendments in order to promote their best interest and maintain quality and continuity of service provision. The new amendments merely allow providers to be reimbursed with federal funding instead of solely with State funding. Consequently, since these amendments do not result in a loss of reimbursement to providers, OPWDD expects that their adoption will not have any adverse impact on public or private entities in rural areas.

Revised Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/revised proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/revised proposed amendments make a change to a previous emergency/proposed regulation concerning Medicaid reimbursement of prevocational services delivered in sheltered workshops. The amendments allow Medicaid reimbursement for services provided to individuals who were enrolled in services before July 1, 2013 but did not begin receiving services until on or after July 1st. The previous emergency/proposed regulation limited Medicaid reimbursement to providers for only those individuals who were enrolled in and started services prior to July 1st. OPWDD expects that New York State would have provided reimbursement for services to the previously excluded individuals even without the new amendments in order to promote their best interest and maintain quality and continuity of service provision. The new amendments merely allow providers to be reimbursed with federal funding instead of solely with State funding. Consequently, since these amendments do not result in a loss of reimbursement to providers, they will not have a substantial adverse impact on jobs or employment opportunities.

Assessment of Public Comment

OPWDD received comments from three providers of services to people with developmental disabilities, a provider association, and a board member of a provider, family members of seven people receiving services in sheltered workshops, a service recipient who attends a sheltered workshop, and a member of the public.

Comment: A provider of services to people with developmental disabilities strongly encourages that the proposed regulation be made permanent for the protections of individuals with developmental disabilities and the sustained use and quality of vocational rehabilitation.

Response: OPWDD agrees and appreciates the provider's support.

Comment: A provider association suggested that OPWDD define the term "sheltered workshop" for the purpose of the proposed regulation and clarify that the restriction on new admissions to prevocational services in sheltered workshops does not apply to integrated employment settings. The provider association suggested specific language for the finalized regulation.

Response: OPWDD disagrees with the suggestion to add additional language and a definition and considers that the additional language suggested by the provider association is unnecessary.

Providers should refer to the existing guidance document, OPWDD Employment Transformation Questions and Answers (June 10, 2013), to determine whether the finalized regulation applies to them. If upon reviewing such guidance there is still uncertainty about whether the regulation applies and whether a specific facility is a sheltered workshop, providers should contact OPWDD.

Comment: A provider asserted that satisfying OPWDD's transformation agreement with the Centers for Medicare and Medicaid Services (CMS) is not a rational basis for the proposed regulation because the transformation agreement was not subject to notice and comment rule making.

Response: The State Administrative Procedure Act requires notice and a comment period in connection with rule makings, and OPWDD provided notice and an opportunity to comment on this regulation.

Comment: Two providers of services to people with developmental disabilities, a board member of a provider, family members of five people receiving services in sheltered workshops, a service recipient who attends a sheltered workshop, and a member of the public all expressed concerns in response to the proposed regulation.

A provider expressed concern that by taking away the option to attend sheltered workshops, OPWDD is taking away a choice from individuals. A member of the public commented that one choice is not appropriate for all and that there is a need for both a restrictive environment and competitive employment. Another provider argued that by taking away choice, OPWDD is not acting in line with any "Olmstead Plan" since a key element of Olmstead is choice.

A board member of a provider agency and two family members expressed concerns about the ability of individuals with disabilities to be engaged in community employment. A family member further stated that individuals with disabilities need to be sheltered from endangering themselves in "normal" work environments and also from potential physical, mental, and sexual abuse. Another family member argued that adults with special needs have the right to work in a sheltered, safe environment and to not be forced to try and cope, understand, or compete in a "regular/normal" work force, as to do so would have a harmful and devastating effect on their lives.

A family member expressed that sheltered workshops are more than just a place to go; they are the center of their attendees' worlds and are places that teach life skills, social skills and survival. Three family members and a board member pointed out that sheltered workshops give adults with special needs the opportunity to get out of their homes, socialize, receive a paycheck, and feel a sense of pride/accomplishment and now OPWDD is taking this away from them. A family member stated that stopping admission to therapeutic work programs cheats individuals out of meeting their highest growth potential and the opportunity to become proud independent contributors and apart of society. Further, a family member commented that sheltered workshops provide the business community with local, quality assembly and packaging services that may otherwise be sent offshore. The family member commented that sheltered workshops support the economic development of local communities through sales and wages paid to workers.

Family members and a service recipient expressed concern that New York State is taking away the rights and freedom of individuals with developmental disabilities. A service recipient argued that people with developmental disabilities are entitled to the same rights as the general population. The service recipient asserted that OPWDD should keep the sheltered workshops open to afford these individuals the right to work, pay bills, go places, and pay for whatever meets their needs.

A family member asserted that the decision to stop funding for new admissions to prevocational services at sheltered workshops is poorly

researched. Further, a provider argued that there is no empirical support for OPWDD's justification that eliminating facility based employment services will facilitate individuals in gaining competitive employment or better prepare them for such employment. The provider asserts that, on the contrary, its sheltered workshop, which has been transformed over the years into a multi-faceted work center that offers a variety of facility based training and support services, is an essential element of continuum of supports and services that increases the likelihood of individuals gaining competitive employment and that it supports individuals with a meaningful option when, for any number of reasons, such individuals are not able to be competitively employed in the community. Additionally, as previously mentioned, the same provider disagrees with OPWDD's justification that the proposed regulation is consistent with the Governor's Olmstead Implementation Plan.

Finally, a family member expressed safety concerns about whether background checks that are currently conducted for sheltered workshops will be conducted in the competitive work environment, and whether transportation to new job sites will be provided for individuals who leave sheltered workshops for the competitive work environment. Another family member commented that a lack of transportation option puts service recipients who cannot travel without supervision at risk of harm/danger.

A family member recommends that OPWDD consider leaving sheltered workshops in place as an option for those who have no other viable alternative. To completely remove the workshop option harms too many people, who, on paper, may appear well suited or supported employment, but are nonetheless, for various reasons, far better served through a prevocational and sheltered workshop option. A provider also recommends that, rather than eliminating a service option, OPWDD should develop programs that will create incentives for placing and supporting individuals in competitive employment.

Response: After consideration of the concerns expressed in the comments submitted, OPWDD still plans to finalize the proposed regulations to eliminate funding for new admissions at sheltered workshops.

OPWDD disagrees with the assertion that the elimination of funding for new admissions to prevocational services at sheltered workshops is taking away choice from individuals receiving services. The U.S. Department of Justice has provided clear guidance to states that sheltered workshops are segregated settings in violation of the U.S. Supreme Court Olmstead Decision and Americans with Disability Act. OPWDD intends to create a new employment service option in the near future that puts individuals on the pathway to employment in integrated settings. By phasing out a service that is not consistent with its goal to improve services for individuals and by introducing a new service that is consistent with this goal, OPWDD considers that it is more effectively meeting the needs of individuals served in its system. In the meantime, OPWDD currently offers pre-employment services such as prevocational services in the community. This service is designed to provide the same type of vocational habilitation that prevocational services in sheltered workshops provide, however, this service is provided in the community so that individuals will receive the benefit of integration into society. With existing integrated employment service options, a new service on the horizon and other services such as self direction, OPWDD considers that it has a variety of employment service options to offer and that the proposed regulation is not limiting choice for individuals as is asserted in the comments submitted.

OPWDD recognizes that, over the years, sheltered workshops have been very beneficial to the growth of individuals; however, OPWDD considers that integrated employment service options offer greater opportunities for individuals to contribute to society, gain a sense of independence and pride, improve social skills, and secure adequate wages. In striving to meet its mission, OPWDD must continue to evolve and improve its service delivery system, and this requires OPWDD to phase out outdated service delivery models and to replace such models with more effective and efficient ones. However, OPWDD would like to point out that the intent behind the new regulation is not for providers to close their sheltered workshops, rather the regulations merely eliminate funding for new admissions at sheltered workshops. OPWDD acknowledges that its long term goal is to eliminate all funding for sheltered workshops; however, this does not necessarily mean that such workshops will close, especially if they still serve a purpose for the individuals served by a provider. Providers will have discretion as to how to best meet the needs of the individuals they serve. By reducing and eventually eliminating funding for sheltered workshops, OPWDD is merely encouraging providers to update their service delivery systems and to realize the benefits of service provision in integrated settings.

OPWDD disagrees with the assertion that it is taking away individuals' right to work. The new regulation actually makes it possible for individuals who are ready for competitive employment to effectively make this transition.

As part of the process of developing the draft employment plan, OPWDD convened several Community Dialogues to solicit feedback from

parents, providers and self advocates. The comments from these sessions are very consistent with the comments on the new regulation. The draft employment plan addresses many of these concerns while also addressing the need to increase competitive employment options for individuals receiving OPWDD services.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modifications of Prior Order Approving Waiver of the Retirement Notice Period So That it May be Transferred and Demolished

I.D. No. PSC-50-13-00002-EP

Filing Date: 2013-11-21

Effective Date: 2013-11-21

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

Proposed Action: The Public Service Commission adopted an order on October 28, 2013, modifying a prior order issued on April 22, 2013, granting Dynegy Danskammer LLC an extension of the period for providing notification that its generation facility located in Newburgh, New York has been retired and will be demolished and authorizing the transfer of the obligation to provide notice to another party.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (8), (10) and 70

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). The modifications are necessary to address the consequences of FERC's creation of the new Hudson Valley capacity zone. Electric rates within the new zone are expected to escalate dramatically as of its implementation, which would adversely affect businesses, retard economic development, reduce employment opportunities and cause homeowners to experience financial stress. The modifications to the Notice Period Order will open the possibility of returning the Danskammer facility to operation for the purpose of constraining those rate increases. As a result, compliance of the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the modification of the Notice Period Order is necessary for the preservation of the health, safety and general welfare pursuant to SAPA § 202(6).

Subject: Modifications of prior order approving waiver of the retirement notice period so that it may be transferred and demolished.

Purpose: To modify the prior order approving waiver of the retirement notice period so that it may be transferred and demolished.

Substance of emergency/proposed rule: The Public Service Commission adopted an order on October 28, 2013, modifying a prior order issued April 22, 2013 in Case 13-E-0012, granting Dynegy Danskammer LLC (Danskammer) an extension of the period for providing notification that its generation facility located in Newburgh, New York has been retired and will be demolished and authorizing the transfer of the obligation to provide notice to another party. The modifications to the prior order will open the possibility of returning the generation facility Danskammer owns to operation for the purpose of constraining rate increases. The Commission may adopt, reject or modify, in whole or in part, the relief adopted in the Order and may resolve related matters.

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 February 18, 2014.

Text of rule may be obtained from: 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: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-E-0012EP1)

NOTICE OF ADOPTION

Approval of Petition of Soundview Management Associates, LLC to Submeter Electricity at 50 and 80 Guion Place, New Rochelle

I.D. No. PSC-22-13-00011-A

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Action taken: On 11/14/13, the PSC adopted an order approving the petition of Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle, 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 Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle.

Purpose: To approve the petition of Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle.

Substance of final rule: The Commission, on November 14, 2013 adopted an order approving the petition of Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle, 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.

(13-E-0189SA1)

NOTICE OF ADOPTION

Granting, in Part, a Temporary Waiver of 16 NYCRR, Section 96.7(a)(1) and (b)

I.D. No. PSC-32-13-00008-A

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Action taken: On 11/14/13, the PSC adopted an order granting, in part, a temporary waiver of 16 NYCRR, section 96.7(a)(1) and (b).

Statutory authority: Public Service Law, sections 4, 30-53, 65 and 66

Subject: Granting, in part, a temporary waiver of 16 NYCRR, section 96.7(a)(1) and (b).

Purpose: To grant, in part, a temporary waiver of 16 NYCRR, section 96.7(a)(1) and (b).

Substance of final rule: The Commission, on November 14, 2013, adopted an order granting, in part, the requests filed by Quadlogic Controls Corporation, AMPS/ELEMCO, Inc., Bay City Metering Company, Inc., Leviton Manufacturing Co., Inc., Incorporated, E-Mon, LLC and Intech21, Inc. for a temporary waiver of 16 NYCRR Parts 96.7(a)(1) and 96.7(b) to provide time for compliance with the meter standards and implementation of testing procedures, 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-M-0710SA3)

NOTICE OF ADOPTION

Allowing Central Hudson to Make Modifications to Their Economic Development Program

I.D. No. PSC-33-13-00026-A

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Action taken: On 11/14/13, the PSC adopted an order approving a petition by Central Hudson Gas & Electric Corporation (Central Hudson) to modify its Economic Development Program.

Statutory authority: Public Service Law, sections 4, 5, 66 and 70

Subject: Allowing Central Hudson to make modifications to their Economic Development Program.

Purpose: To allow Central Hudson to make modifications to their Economic Development Program.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving a petition filed by Central Hudson Gas and Electric Corporation to make modifications to its Economic Development Program, 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-M-0192SA2)

NOTICE OF ADOPTION

Denying PULP's "Objection" to GSS as a Holder of a Golden Share Stock

I.D. No. PSC-35-13-00007-A

Filing Date: 2013-11-26

Effective Date: 2013-11-26

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

Action taken: On 11/14/13, the PSC adopted an order denying an "objection" by Public Utility Law Project of N.Y., Inc. (PULP) to GSS Holdings, Inc. (GSS) as holder of a golden share stock as determined in the Commission's June 26, 2013 order approving acquisition.

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

Subject: Denying PULP's "objection" to GSS as a holder of a golden share stock.

Purpose: To deny PULP's "objection" to GSS as a holder of a golden share stock.

Substance of final rule: The Commission, on November 14, 2013, adopted an order denying an "objection" made by the Public Utility Law Project of N.Y., Inc. to the Commission's June 26, 2013 order nominating GSS Holdings to be appointed holder of a golden share stock, 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-M-0192SA4)

NOTICE OF ADOPTION

Denying Petitions for Rehearing of the Commission's June 26, 2013 Order Approving a Merger

I.D. No. PSC-35-13-00008-A

Filing Date: 2013-11-26

Effective Date: 2013-11-26

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

Action taken: On 11/14/13, the PSC adopted an order denying petitions by Assembly Member Kevin A. Cahill, Citizens for Local Power et al., and Public Utility Lay Project of N.Y. seeking rehearing of the Commission's June 26, 2013 order approving a merger.

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

Subject: Denying petitions for rehearing of the Commission's June 26, 2013 order approving a merger.

Purpose: To deny petitions for rehearing of the Commission's June 26, 2013 order approving a merger.

Substance of final rule: The Commission, on November 14, 2013, adopted an order denying petitions for rehearing filed by Assembly Member, Kevin A. Cahill, Public Utility Law Project of N.Y., Inc. and Citizens for Local Power and Consortium in Opposition to the Acquisition for the June 26, 2013 order approving the acquisition by Fortis, Inc., through subsidiaries, of CH Energy Group, Inc. and indirectly, Central Hudson Gas and Electric Corporation, 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-M-0192SA3)

NOTICE OF ADOPTION

Approving the Petition of Leviton for the Use of the Mini Meter Electric Submeter

I.D. No. PSC-38-13-00005-A

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Action taken: On 11/14/13, the PSC adopted an order approving the petition filed by Leviton Manufacturing Co., Inc. (Leviton) for the use of the Mini Meter electric submeter.

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

Subject: Approving the petition of Leviton for the use of the Mini Meter electric submeter.

Purpose: To approve the petition of Leviton for the use of the Mini Meter electric submeter.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving the petition filed by Leviton Manufacturing Co., Inc. to use the Leviton Mini Meter electric submeter in residential

submetering applications, 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.

(13-E-0386SA1)

NOTICE OF ADOPTION

Approving the Petition of Intech21, Inc. to Use the PM-2104 Electric Submeter

I.D. No. PSC-39-13-00016-A

Filing Date: 2013-11-20

Effective Date: 2013-11-20

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

Action taken: On 11/14/13, the PSC adopted an order approving the petition filed by Intech21, Inc. for use of the PM-2104 electric submeter.

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

Subject: Approving the petition of Intech21, Inc. to use the PM-2104 electric submeter.

Purpose: To approve the petition of Intech21, Inc. to use the PM-2104 electric submeter.

Substance of final rule: The Commission, on November 14, 2013, adopted an order approving the petition filed by Intech21, Inc. to use the PM-2104 electric submeter in residential submetering applications, 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.

(13-E-0401SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Maximum Daily Quantity (MDQ) Provisions

I.D. No. PSC-50-13-00006-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 a tariff filing by Central Hudson Gas & Electric Corporation to revise the SC No. 11 Firm Transportation—Core Maximum Daily Quantity Provision in its tariff schedule P.S.C. No. 12—Gas to become effective 3/1/2014.

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

Subject: Maximum Daily Quantity (MDQ) Provisions.

Purpose: To allow downward revisions to the MDQ provision for all SC No. 11 customers.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas & Electric Corporation (the Company) to modify Service Classification (SC) No. 11 Firm Transportation - Core Maximum Daily Quantity (MDQ) Provisions in its tariff schedule P.S.C. No. 12 - Gas. The existing tariff only discusses downward adjustments to MDQ for customers taking service under Distribution Service – Large Mains. The Company

proposes to incorporate tariff language to include all SC No. 11 customers under this special provision, including Transmission and Distribution Service customers. The filing has an effective date of March 1, 2014.

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

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

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

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

(13-G-0531SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-50-13-00007-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 93 Worth LLC to submeter electricity at 93 Worth Street, New York, New York.

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

Subject: Petition for submetering of electricity.

Purpose: To consider the request of 93 Worth LLC to submeter electricity at 93 Worth Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 93 Worth LLC to submeter electricity at 93 Worth Street, New York, New York, located in the territory of Consolidated Edison of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(13-E-0508SP1)

Department of State

NOTICE OF ADOPTION

Temporary Licenses and Verification of Education

I.D. No. DOS-18-13-00006-A

Filing No. 1132

Filing Date: 2013-11-21

Effective Date: 2013-12-11

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

Action taken: Amendment of section 160.5 and 160.33 of Title 19 NYCRR.

Statutory authority: General Business Law, section 402

Subject: Temporary licenses and verification of education.

Purpose: To implement the appearance enhancement phase of the E-Licensing initiative.

Text or summary was published in the May 1, 2013 issue of the Register, I.D. No. DOS-18-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.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

The agency received no public comment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Tax Return Preparers

I.D. No. TAF-38-13-00002-A

Filing No. 1154

Filing Date: 2013-11-25

Effective Date: 2013-12-11

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

Action taken: Addition of Part 2600; repeal of section 158.12(1)(iv); and amendment of section 158.12(1)(v)-(ix) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 32, 171, subdivision First, 697(a); and L. 2009, ch. 59, part VV, section 4

Subject: Tax Return Preparers.

Purpose: To regulate the tax return preparer industry.

Substance of final rule: Section 32 of the Tax Law, enacted by Part VV of Chapter 59 of the Laws of 2009, sets forth the registration requirements for tax return preparers, as well as certain conduct requirements and penalties for non-compliance with section 32 or regulations promulgated by the Commissioner. Section 4 of Part VV required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report ("the Report") regarding the regulation of tax return preparers, and authorizes the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force.

This rule adds a new Part 2600 to 20 NYCRR to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including educational qualifications, continuing professional education requirements ("CPE"), and standards of conduct.

The rule provides that commercial tax return preparers (those who prepare 10 or more returns annually for compensation) who prepare New York State tax returns must attain certain minimum qualifications. (The department may initially limit the testing and education requirements to tax return preparers who prepare personal income tax returns in order to gain experience in administering the requirements before imposing them on other tax return preparers.) Commercial tax return preparers must attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of New York State tax preparation, take a 16-hour basic tax course;
- Pass a New York State competency exam prior to preparing returns for compensation;
- Annually participate in 4 hours of continuing professional education ("CPE") in New York State tax; and

- Be at least 18 years old and a high school graduate or equivalent.

The rule also provides minimum standards of conduct for registered tax return preparers. Violation of these standards could result in a range of disciplinary actions, from remedial education to suspension or cancellation of a preparer's registration. A tax return preparer who receives notice of disciplinary action may request a hearing before the Division of Tax Appeals, under Article 40 of the Tax Law. The rule outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule also repeals section 158.12(d)(1)(iv) of 20 NYCRR, which indicates that a person may be considered an income tax return preparer without regard to educational qualifications and professional status requirements, as new Part 2600 requires that registered tax return preparers satisfy minimum age, education, competency, and conduct requirements.

Credentialed tax return preparers (attorneys, certified public accountants, public accountants, and enrolled agents) are generally not subject to the requirements of new Part 2600; however, the rule provides that the department will coordinate with other taxing authorities and professional licensing or other regulatory bodies to make disciplinary referrals with respect to such individuals.

This rule is effective upon publication in the State Register. The educational and testing requirements, however, are to be phased in over time. Thus, the annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 2600-2.1, 2600-5.1 and Subpart 2600-3.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Statement in Lieu of a Job Impact Statement are not required to be submitted because the revisions made to the proposed amendments, which are not substantial, do not affect any of the statements made in these documents.

The revisions consist merely of the addition of references to statutory provisions regarding the impact of failure to comply with child support obligations on certain licenses and the correction of two typographical errors.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

Assessment of Public Comment

Written comments were received regarding proposal TAF-38-13-00002-P from the New York State Society of Certified Public Accountants ("NYSSCPA"), the New York State Society of Enrolled Agents ("NYSSEA") Government Relations Committee, and New York State Assembly Members Kenneth P. Zebrowski, Assembly Chair of the Administrative Regulations Review Commission, Helene Weinstein, Chair of the Judiciary Committee, and Herman D. Farrell, Jr., Chair of the Ways and Means Committee. The department also received comments from an individual who is both an enrolled agent ("EA") and a certified public accountant ("CPA") and from a tax return preparer who prepares returns for a small number of clients, including senior citizens. As described below, no changes to the rule were made in response to the comments from NYSSCPA, NYSSEA, the EA/CPA, or the tax return preparer. Changes were made, however, in response to the comments by the Assembly Members.

Section 4 of Part VV of Chapter 59 of the Laws of 2009 required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report (the "Report") regarding the regulation of tax return preparers, and authorized the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force. This rule was proposed pursuant to this authority to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including,

but not limited to, educational qualifications and continuing professional education requirements (“CPE”).

Both NYSSCPA and NYSSEA expressed support for the regulation of tax return preparers generally but articulated concerns with certain provisions of the proposed rule. NYSSEA is of the opinion that the number of credits of continuing professional education (“CPE”) required for commercial tax return preparers should be increased from the proposed initial 16 credits annually for beginning tax return preparers and 4 credits a year thereafter, and 4 credits annually for experienced commercial tax return preparers. NYSSEA also recommended strict requirements for determining whether a preparer would be considered “experienced”. The Task Force reviewed the CPE requirements imposed on tax preparers by other states and the IRS and concluded, as does the department, that the proposed requirements achieved the appropriate balance between ensuring competency and honesty in the field of tax preparation and creating undue barriers to working in the field. (Task Force Report, page 13)

NYSSEA recommended that, in the interest of the tax paying public, the competency examination requirement should be phased in over 1 year, rather than the proposed 3-year phase-in period. The tax return preparer, on the other hand, advocated for a “grandfather” clause waiving the exam for tax return preparers with an extended record of preparing New York State tax returns without errors or client complaints. The Task Force examined the CPE requirements for tax return preparers in other states and at the federal level, and determined that a 3-year phase in period would appropriately balance these competing concerns—the taxpayers’ interest in competent tax preparation and the need to avoid unduly burdening tax return preparers. (Task Force Report, page 14) The department concurs.

The EA/CPA took the view that the department should dispense with its exam entirely and require all commercial tax return preparers to pass the IRS enrolled agent exam. New York State recognizes the professional requirements applicable to EAs by exempting them from the registration and exam requirements. However, it was the opinion of the Task Force, which is shared by the department, that it is critical that a New York State commercial tax return preparer demonstrate state tax competence in addition to federal tax competence. For this reason, the rule requires commercial tax return preparers to pass a state tax competency test in addition to the IRS exam for registered tax return preparers, should such an exam be required for federal purposes. The EA exam does not test issues related specifically to New York State tax preparation. Further, while the EA exam is comprehensive in the covered areas, it tests areas, such as IRS representation and procedures, not directly related to New York return preparation. Accordingly, the rule contemplates the development of a system of testing tailored to New York tax preparation that will help to ensure that New York State commercial tax return preparers possess the requisite competence in both federal and state tax return preparation.

NYSSEA, while noting that the language of subparagraphs (f)(1) and (2) of proposed section 2600-4.3 of the regulations is consistent with section 10.28 of Treasury Department Circular 230, asserted that subparagraph (f)(2) nonetheless should be modified. Specifically, NYSSEA expressed concern over the exclusion of documents prepared by the preparer from the definition of client records required to be returned to the client upon request, if the documents are being withheld pending the client’s performance of its contractual obligation to pay fees with respect to such documents. NYSSEA believes that this provision “requires a customer to pay a fee before they can evaluate the quality of the work of their commercial income tax preparer.” This criticism ignores the fact that tax return preparers are not required to withhold such documents pending payment; they are merely permitted to do so. Likewise, the client is not obliged to pay a fee prior to reviewing and approving the work of the preparer. The rule merely requires the preparer to return the client’s own records to him or her upon request, while distinguishing the preparer’s work product from the client records.

NYSSCPA approved of stricter regulation of tax return preparers but, noting that the New York State Education Department is responsible for disciplining CPAs in New York State, questioned what disciplinary referrals the department would make under section 2600-1.1(b) respecting CPAs who prepare tax returns. The rule provides that the department may coordinate with federal, state, and local taxing authorities and professional licensing or other regulatory bodies to exchange information and make disciplinary referrals regarding the conduct of any individual who prepares a substantial portion of a tax return for compensation, irrespective of whether that individual is required to be registered under section 32 of the Tax Law. The conduct requirements set forth in the rule are minimum standards of conduct to which all practitioners should adhere. Under the rule, the department may refer CPAs violating the rule’s standards of conduct to the Education Department, the IRS, or any other entity responsible for regulating the conduct of CPAs.

NYSSCPA also opined that the terms “fraud,” “deceit,” “dishonest,” and “unscrupulous” contained in section 2600-2.1(e) and (f) “are too broad in terms of identifying activity and require further clarification if they are

to be made the basis to deny someone registration.” The department disagrees. This terminology is consistent with the recommendations of the Task Force and IRS Circular 230 and in plain language describes extreme conduct. Moreover, the rule provides that tax return preparers subjected to denial of registration or other disciplinary action under the rule may request a hearing as a matter of right pursuant to Article 40 of the Tax Law.

NYSSCPA characterized section 2600-4.3(2) as overbroad with respect to providing guidance on acceptable fees, opining that the “sheer number of facts and circumstances that are involved in the setting of fees warrants clear standards” and noting that the New York Division of Consumer Protection is “set up to handle such issues.” Again, the department disagrees; the rule prohibits unconscionable fees, and provides that a fee is unconscionable if the amount of the fee is either excessive or unreasonable based on all of the relevant facts and circumstances, including the complexity of the underlying issue or issues to be addressed with respect to the matter and the time required to resolve the matter before the department. The reasonableness of a fee may be evaluated by reference to industry standards. Moreover, the prohibition is not against excessive fees, but unconscionable (i.e., shockingly excessive) fees. Further, tax return preparers are entitled to a hearing regarding any disciplinary action imposed for violation of the acceptable fee provisions of the rule.

The Assembly Members noted that the rule provides for denial of registration or other disciplinary action where a court issues an order under section 458-b of the Family Court Act, which provides for suspension of the license, permit, registration or authority to practice of an individual whose child support obligations are equal to or exceed the amount of support due for a period of 4 months. The Members believed it would be appropriate to include a reference to section 244-c of the Domestic Relations Law in sections 2600-2.1 and 2600-5.1 of the proposed rules, as section 244-c similarly provides for the issuance of a court order to suspend the license, permit, registration, or authority to practice of an individual who has accumulated support arrears equal to or exceeding the amount of support due for a period of 4 months. The department concurs, and has made this technical amendment to reflect current New York State law.

The Assembly Members also thought it appropriate to include a reference to section 3-503 of the General Obligations Law in section 2600-2.1 of the rules, relating to grounds for denial of registration. Section 3-503 requires that every applicant for a certificate, license, permit or grant of permission required by New York State law must certify in the application in a written statement under oath that, as of the date the application is filed, he or she has satisfied certain requirements with respect to child support obligations. If the applicant is unable to so certify, the department may issue or renew the registration, but it will expire in six months unless before that time the applicant submits a written certification in accordance with section 3-503. Once again, the department agrees with the Assembly Members, and has made the necessary technical amendment to the rule to reflect current New York State law.

The registration applications reflecting the adoption of this rule will conform with the technical amendments made to these sections of the rule.

NOTICE OF ADOPTION

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

I.D. No. TAF-39-13-00006-A

Filing No. 1155

Filing Date: 2013-11-25

Effective Date: 2013-11-25

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2013 through December 31, 2013.

Text or summary was published in the September 25, 2013 issue of the Register, I.D. No. TAF-39-13-00006-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 E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

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

NOTICE OF ADOPTION**Mailing of Certain Excise Tax Documents**

I.D. No. TAF-39-13-00007-A

Filing No. 1156

Filing Date: 2013-11-25

Effective Date: 2013-12-11

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

Action taken: Amendment of sections 68.3, 68.4, 73.1 and 417.2 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First; 436 (not subdivided) and 475 (not subdivided)

Subject: Mailing of certain excise tax documents.

Purpose: To eliminate references to the mailing of certain excise tax documents by the Department.

Text or summary was published in the September 25, 2013 issue of the Register, I.D. No. TAF-39-13-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.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 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Offers in Compromise**

I.D. No. TAF-39-13-00008-A

Filing No. 1157

Filing Date: 2013-11-25

Effective Date: 2013-12-11

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

Action taken: Amendment of Parts 5000 and 5005, and section 4000.4; and repeal of section 7-4.5 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subs. First, Fifteenth, Eighteenth-a and 1096(a); and L. 2011, ch. 469

Subject: Offers in Compromise.

Purpose: To reflect the amendments made by chapter 469 of the Laws of 2011 and to define what constitutes undue economic hardship.

Substance of final rule: Section 32 of the Tax Law, enacted by Part VV of Chapter 59 of the Laws of 2009, sets forth the registration requirements for tax return preparers, as well as certain conduct requirements and penalties for non-compliance with section 32 or regulations promulgated by the Commissioner. Section 4 of Part VV required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report ("the Report") regarding the regulation of tax return preparers, and authorizes the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force.

This rule adds a new Part 2600 to 20 NYCRR to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including educational qualifications, continuing professional education requirements ("CPE"), and standards of conduct.

The rule provides that commercial tax return preparers (those who prepare 10 or more returns annually for compensation) who prepare New

York State tax returns must attain certain minimum qualifications. (The department may initially limit the testing and education requirements to tax return preparers who prepare personal income tax returns in order to gain experience in administering the requirements before imposing them on other tax return preparers.) Commercial tax return preparers must attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of New York State tax preparation, take a 16-hour basic tax course;
- Pass a New York State competency exam prior to preparing returns for compensation;
- Annually participate in 4 hours of continuing professional education ("CPE") in New York State tax; and
- Be at least 18 years old and a high school graduate or equivalent.

The rule also provides minimum standards of conduct for registered tax return preparers. Violation of these standards could result in a range of disciplinary actions, from remedial education to suspension or cancellation of a preparer's registration. A tax return preparer who receives notice of disciplinary action may request a hearing before the Division of Tax Appeals, under Article 40 of the Tax Law. The rule outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule also repeals section 158.12(d)(1)(iv) of 20 NYCRR, which indicates that a person may be considered an income tax return preparer without regard to educational qualifications and professional status requirements, as new Part 2600 requires that registered tax return preparers satisfy minimum age, education, competency, and conduct requirements.

Credentialed tax return preparers (attorneys, certified public accountants, public accountants, and enrolled agents) are generally not subject to the requirements of new Part 2600; however, the rule provides that the department will coordinate with other taxing authorities and professional licensing or other regulatory bodies to make disciplinary referrals with respect to such individuals.

This rule is effective upon publication in the State Register. The educational and testing requirements, however, are to be phased in over time. Thus, the annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4000.4 and 5000.3(f).

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

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and Statement in Lieu of a Job Impact Statement are not required to be submitted because the revisions made to the proposed amendments, which are not substantial, do not affect any of the statements made in these documents.

The revisions consist merely of the addition of references to statutory provisions regarding the impact of failure to comply with child support obligations on certain licenses and the correction of two typographical errors.

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 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Written comments were received regarding proposal TAF-38-13-00002-P from the New York State Society of Certified Public Accountants ("NYSSCPA"), the New York State Society of Enrolled Agents ("NYSSEA") Government Relations Committee, and New York State Assembly Members Kenneth P. Zebrowski, Assembly Chair of the Administrative Regulations Review Commission, Helene Weinstein, Chair of the Judiciary Committee, and Herman D. Farrell, Jr., Chair of the Ways and Means Committee. The department also received comments from an individual who is both an enrolled agent ("EA") and a certified public accountant ("CPA") and from a tax return preparer who prepares returns for a small number of clients, including senior citizens. As described below, no changes to the rule were made in response to the comments from NYS-SCPA, NYSSEA, the EA/CPA, or the tax return preparer. Changes were made, however, in response to the comments by the Assembly Members.

Section 4 of Part VV of Chapter 59 of the Laws of 2009 required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the “Task Force”) to prepare a report (the “Report”) regarding the regulation of tax return preparers, and authorized the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force. This rule was proposed pursuant to this authority to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including, but not limited to, educational qualifications and continuing professional education requirements (“CPE”).

Both NYSSCPA and NYSSEA expressed support for the regulation of tax return preparers generally but articulated concerns with certain provisions of the proposed rule. NYSSEA is of the opinion that the number of credits of continuing professional education (“CPE”) required for commercial tax return preparers should be increased from the proposed initial 16 credits annually for beginning tax return preparers and 4 credits a year thereafter, and 4 credits annually for experienced commercial tax return preparers. NYSSEA also recommended strict requirements for determining whether a preparer would be considered “experienced”. The Task Force reviewed the CPE requirements imposed on tax preparers by other states and the IRS and concluded, as does the department, that the proposed requirements achieved the appropriate balance between ensuring competency and honesty in the field of tax preparation and creating undue barriers to working in the field. (Task Force Report, page 13)

NYSSEA recommended that, in the interest of the tax paying public, the competency examination requirement should be phased in over 1 year, rather than the proposed 3-year phase-in period. The tax return preparer, on the other hand, advocated for a “grandfather” clause waiving the exam for tax return preparers with an extended record of preparing New York State tax returns without errors or client complaints. The Task Force examined the CPE requirements for tax return preparers in other states and at the federal level, and determined that a 3-year phase in period would appropriately balance these competing concerns—the taxpayers’ interest in competent tax preparation and the need to avoid unduly burdening tax return preparers. (Task Force Report, page 14) The department concurs.

The EA/CPA took the view that the department should dispense with its exam entirely and require all commercial tax return preparers to pass the IRS enrolled agent exam. New York State recognizes the professional requirements applicable to EAs by exempting them from the registration and exam requirements. However, it was the opinion of the Task Force, which is shared by the department, that it is critical that a New York State commercial tax return preparer demonstrate state tax competence in addition to federal tax competence. For this reason, the rule requires commercial tax return preparers to pass a state tax competency test in addition to the IRS exam for registered tax return preparers, should such an exam be required for federal purposes. The EA exam does not test issues related specifically to New York State tax preparation. Further, while the EA exam is comprehensive in the covered areas, it tests areas, such as IRS representation and procedures, not directly related to New York return preparation. Accordingly, the rule contemplates the development of a system of testing tailored to New York tax preparation that will help to ensure that New York State commercial tax return preparers possess the requisite competence in both federal and state tax return preparation.

NYSSEA, while noting that the language of subparagraphs (f)(1) and (2) of proposed section 2600-4.3 of the regulations is consistent with section 10.28 of Treasury Department Circular 230, asserted that subparagraph (f)(2) nonetheless should be modified. Specifically, NYSSEA expressed concern over the exclusion of documents prepared by the preparer from the definition of client records required to be returned to the client upon request, if the documents are being withheld pending the client’s performance of its contractual obligation to pay fees with respect to such documents. NYSSEA believes that this provision “requires a customer to pay a fee before they can evaluate the quality of the work of their commercial income tax preparer.” This criticism ignores the fact that tax return preparers are not required to withhold such documents pending payment; they are merely permitted to do so. Likewise, the client is not obliged to pay a fee prior to reviewing and approving the work of the preparer. The rule merely requires the preparer to return the client’s own records to him or her upon request, while distinguishing the preparer’s work product from the client records.

NYSSCPA approved of stricter regulation of tax return preparers but, noting that the New York State Education Department is responsible for disciplining CPAs in New York State, questioned what disciplinary referrals the department would make under section 2600-1.1(b) respecting CPAs who prepare tax returns. The rule provides that the department may coordinate with federal, state, and local taxing authorities and professional licensing or other regulatory bodies to exchange information and make disciplinary referrals regarding the conduct of any individual who prepares

a substantial portion of a tax return for compensation, irrespective of whether that individual is required to be registered under section 32 of the Tax Law. The conduct requirements set forth in the rule are minimum standards of conduct to which all practitioners should adhere. Under the rule, the department may refer CPAs violating the rule’s standards of conduct to the Education Department, the IRS, or any other entity responsible for regulating the conduct of CPAs.

NYSSCPA also opined that the terms “fraud,” “deceit,” “dishonest,” and “unscrupulous” contained in section 2600-2.1(e) and (f) “are too broad in terms of identifying activity and require further clarification if they are to be made the basis to deny someone registration.” The department disagrees. This terminology is consistent with the recommendations of the Task Force and IRS Circular 230 and in plain language describes extreme conduct. Moreover, the rule provides that tax return preparers subjected to denial of registration or other disciplinary action under the rule may request a hearing as a matter of right pursuant to Article 40 of the Tax Law.

NYSSCPA characterized section 2600-4.3(2) as overbroad with respect to providing guidance on acceptable fees, opining that the “sheer number of facts and circumstances that are involved in the setting of fees warrants clear standards” and noting that the New York Division of Consumer Protection is “set up to handle such issues.” Again, the department disagrees; the rule prohibits unconscionable fees, and provides that a fee is unconscionable if the amount of the fee is either excessive or unreasonable based on all of the relevant facts and circumstances, including the complexity of the underlying issue or issues to be addressed with respect to the matter and the time required to resolve the matter before the department. The reasonableness of a fee may be evaluated by reference to industry standards. Moreover, the prohibition is not against excessive fees, but unconscionable (i.e., shockingly excessive) fees. Further, tax return preparers are entitled to a hearing regarding any disciplinary action imposed for violation of the acceptable fee provisions of the rule.

The Assembly Members noted that the rule provides for denial of registration or other disciplinary action where a court issues an order under section 458-b of the Family Court Act, which provides for suspension of the license, permit, registration or authority to practice of an individual whose child support obligations are equal to or exceed the amount of support due for a period of 4 months. The Members believed it would be appropriate to include a reference to section 244-c of the Domestic Relations Law in sections 2600-2.1 and 2600-5.1 of the proposed rules, as section 244-c similarly provides for the issuance of a court order to suspend the license, permit, registration, or authority to practice of an individual who has accumulated support arrears equal to or exceeding the amount of support due for a period of 4 months. The department concurs, and has made this technical amendment to reflect current New York State law.

The Assembly Members also thought it appropriate to include a reference to section 3-503 of the General Obligations Law in section 2600-2.1 of the rules, relating to grounds for denial of registration. Section 3-503 requires that every applicant for a certificate, license, permit or grant of permission required by New York State law must certify in the application in a written statement under oath that, as of the date the application is filed, he or she has satisfied certain requirements with respect to child support obligations. If the applicant is unable to so certify, the department may issue or renew the registration, but it will expire in six months unless before that time the applicant submits a written certification in accordance with section 3-503. Once again, the department agrees with the Assembly Members, and has made the necessary technical amendment to the rule to reflect current New York State law.

The registration applications reflecting the adoption of this rule will conform with the technical amendments made to these sections of the rule.

NOTICE OF ADOPTION

Service of Process on the Department

I.D. No. TAF-39-13-00009-A

Filing No. 1158

Filing Date: 2013-11-25

Effective Date: 2013-12-11

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

Action taken: Amendment of section 2391.3(a) of Title 20 NYCRR.

Statutory authority: Tax Law, section 171, subdivision First; and Civil Practice Law and Rules, section 307

Subject: Service of process on the department.

Purpose: Elimination of the option to personally serve the department with process at its district offices.

Text or summary was published in the September 25, 2013 issue of the Register, I.D. No. TAF-39-13-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance Division, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.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 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

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

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

I.D. No. TAF-50-13-00003-P

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

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

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

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

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2014 through March 31, 2014.

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

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxii) October - December 2013					
16.0	24.0	42.6	16.0	24.0	40.85
(lxxiii) January - March 2014					
16.0	24.0	42.4	16.0	24.0	40.65

Text of proposed rule and any required statements and analyses may be obtained from: Thomas E. Curry, Tax Regulations Specialist 4, Department of Taxation and Finance, Taxpayer Guidance, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4145, email: tax.regulations@tax.ny.gov

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

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

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

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