

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-13-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Education Department, by deleting therefrom the position of Coordinator for Planning, Research and Program Accountability and by increasing the number of positions of Executive Coordinator from 2 to 3.

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

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

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

Regulatory Impact Statement

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

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-06-13-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Multimedia Production Technician (18).

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

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

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

Regulatory Impact Statement

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Regulatory Flexibility Analysis

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Rural Area Flexibility Analysis

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Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform**I.D. No.** EDV-06-13-00002-E**Filing No.** 59**Filing Date:** 2013-01-18**Effective Date:** 2013-01-18

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

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

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

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

Specific reasons underlying the finding of necessity:

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

Subject: Empire Zones reform.

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

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

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

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

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

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

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory

definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

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

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

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

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

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

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

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

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

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Com-

missioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 17, 2013.

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books

relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

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

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Indirect Sources of Air Contamination

I.D. No. ENV-06-13-00005-P

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

Proposed Action: Repeal of Part 203; and amendment of Parts 200 and 621 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301 and 19-0303

Subject: Indirect Sources of Air Contamination.

Purpose: Part 203 is a regulation that applies to any new or modified indirect source of air contamination south of 60th Street Manhattan.

Public hearing(s) will be held at: 2:00 p.m., March 26, 2013 at Department of Environmental Conservation, Region 2 Office, One Hunters Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of proposed rule: Subdivision 200.1(f) is amended to read as follows:

(f) 'Air contamination source or emission source.' Any apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system[,] or air cleaning device[, but excepting an indirect source of air contamination as defined in Part 203 of this Title]. Where a process at an emission unit uses more than one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.

Existing Part 203 is repealed.

Section 621.1 Applicability.

Subdivision 621.1(g) is amended as follows:

(g) Air Pollution Control, ECL article 19, (implemented by 6 NYCRR Parts 201[, 203,] and 231): including construction and operation of a new emission source or a modification to an existing emission source of air contamination, and construction of indirect sources of air contamination;

Section 621.4 Requirements for specific permit applications.

Subdivision 621.4(g) is amended as follows:

(g) Air Pollution Control, permits under Parts 201, [203,] 215 and 231 of this Title, article 19 of the ECL:

Subparagraph 621.4(g)(2)(ix) is amended as follows:

[(ix) projects involving the construction of new highways or roads, or modification of any existing section of highway or road, which require an indirect source permit under Part 203 of this Title.]

Text of proposed rule and any required statements and analyses may be obtained from: Michael Sheehan, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8396, email: 203isac@gw.dec.state.ny.us.

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

Public comment will be received until: April 2, 2013.

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration, and a Coastal Assessment Form have been prepared and are on file.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

STATUTORY AUTHORITY

The Department of Environmental Conservation (the Department or DEC) is proposing to repeal 6 NYCRR Part 203 (Part 203), Indirect Sources of Air Contamination, and simultaneously revise 6 NYCRR Parts 200, General Provisions, and Part 621, Uniform Procedures, to remove all references to Part 203. Indirect source permitting is an intrastate air pollution control regulation that exclusively applies to any new or modified indirect source of air contamination located in New York County (Manhattan) south of 60th Street. An indirect source of air contamination is any facility, structure or installation where the associated vehicular movements (i.e., the traffic related to the source) contribute to air pollution. The principle air pollutant of concern for the regulation is carbon monoxide (CO), although the regulation also addresses ozone and nitrogen dioxide (NO₂) in the case of the construction of highway sections of certain size. The existing regulation prohibits the construction or modification of an indirect source of air contamination without the Department issuing a permit to construct prior to construction or modification. The Department is proposing to repeal Part 203 and revise 6 NYCRR Part 200, General Provisions and Part 621, Uniform Procedures, to remove all references to Part 203. Part 203 has become obsolete and has been superseded by other regulations, most notably 6 NYCRR Part 240 (Part 240), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws; 40 CFR 93 Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans; and 6 NYCRR Part 617, State Environmental Quality Review. Therefore the Department proposes to repeal Part 203 in order to trim redundancy from the State's environmental regulations.

Since the promulgation of Part 203 in September of 1971, other federal and state regulations have been adopted which regulate air pollution from indirect sources. The construction and operation of highway projects for CO and ozone control is now covered under Part 240, including the establishment of motor vehicle emission budgets and "hot spot" (sensitive local area) evaluation procedures. Non-highway, non-federal projects, such as private office buildings or parking garages, are subject to review under the State Environmental Quality Review Act, 6 NYCRR Part 617. The reviews required by these regulations either duplicate or are more comprehensive than the analyses required under Part 203. In addition, the Department is in the process of preparing a limited maintenance plan for CO, the primary air pollutant of concern under Part 203, because the CO design value in the maintenance area is equal to or less than 85 percent of the CO National Ambient Air Quality Standard. Furthermore, a review of the Department's records determined that only one Part 203 Permit has been issued since 1988. This permit, issued in 1995, is for the New York State Department of Transportation (NYSDOT) Route 9A Reconstruction Project. The conditions attached to the permit are generic, and could apply to any Department permit. There is nothing contained within the permit that provides any additional environmental protection beyond the Department's current regulations and programs.

The statutory authority to repeal Part 203 in New York State (NYS) derives primarily from the Department's obligation to prevent and control air pollution, as set out in the Environmental Conservation Law (ECL) at Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303. Following are brief synopses and legislative objectives for these sections.

Section 1-0101. This section declares NYS's policy to: conserve, improve and protect its natural resources and environment and to prevent, abate and control air pollution in order to enhance the health, safety and welfare of the people of NYS and their overall economic and social well being; coordinate the State's environmental plans, functions, powers and programs with those of the federal government and other regions and manage air resources so that the State may fulfill its responsibility as trustee of the environment for present and future generations; and foster, promote, create and maintain conditions by which man and nature can thrive in harmony by preserving special resources such as the Adirondack and Catskill forest preserves and taking care of air resources that are shared with other states in the manner of a good neighbor.

Section 3-0301. This section empowers the Department to coordinate and develop programs to carry out the environmental policy of NYS set forth in section 1-0101. Section 3-0301 specifically empowers the Department to: provide for the prevention and abatement of air pollution; cooperate with officials and representatives of the federal government, other States and interstate agencies regarding problems affecting the environment of NYS; encourage and undertake scientific investigation and research on the ecological process, pollution prevention and abatement, and other areas essential to understanding and achievement of the environmental policy set forth in section 1-0101; monitor the environment to afford more effective and efficient control practices; identify changes in ecological systems and to warn of emergency conditions; enter into contracts with any person to do all things necessary or convenient to carry out the functions, powers and duties of the Department; and adopt such regulations as may be necessary, convenient or desirable to effectuate the environmental policy of the State.

Section 19-0103. This section declares the policy of NYS to maintain a reasonable degree of purity of air resources. The Department is required to balance public health and welfare, the industrial development of the State, propagation and protection of flora and fauna, and the protection of personal property and other resources. To that end, the Department must use all practical and reasonable methods to prevent and control air pollution in the State.

Section 19-0105. This section declares that it is the purpose of Article 19 of the ECL to safeguard the air resources of NYS under a program which is consistent with the policy expressed in section 19-0103 and in accordance with other provisions of Article 19.

Section 19-0301. This section declares that the Department has the power to promulgate regulations for preventing, controlling or prohibiting air pollution, and shall include in such regulations provisions prescribing the degree of air pollution that may be permitted and the extent to which air contaminants may be emitted to the air by any source in any area of the State.

Section 19-0303. This section provides that the terms of any air pollution control regulation promulgated by the Department may differentiate between particular types and conditions of air pollution and air contamination sources. Section 19-0303 also provides that the Department, in adopting any regulation which contains a requirement that is more stringent than the CAA or its implementing regulations, must include in the Regulatory Impact Statement an evaluation of the cost-effectiveness of the proposed regulation in comparison to the cost-effectiveness of reasonably available alternatives and a review of the reasonably available alternative

measures along with an explanation of the reasons for rejecting such alternatives.

LEGISLATIVE OBJECTIVES

Article 19 of the ECL was adopted for the purpose of safeguarding the air resources of New York State from pollution. To facilitate this purpose, the Legislature bestowed general and specific powers and duties on the Department including the power to formulate, adopt, promulgate, amend, and repeal regulations for preventing, controlling or prohibiting air pollution.

The Department promulgated Part 203 to prevent and control air pollution by requiring the issuance of a permit to construct for any proposed indirect sources of air contamination south of 60th Street in New York County (Manhattan). Indirect sources of air contamination are facilities such as highways, shopping centers, parking lots, stadiums, apartment or office complexes or airports that attract significant levels of traffic. The permit to construct can be issued after the Department has determined that the proposed indirect source would not cause or worsen any violations of the ambient air quality standards for carbon monoxide, nitrogen dioxide, or ozone. The Department now recommends the repeal of Part 203 because it has become both redundant and obsolete, as it has been superseded by other regulations, most notably Part 240, 40 CFR 93 Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, and Part 617.

NEEDS AND BENEFITS

There is no longer a regulatory need for Part 203 because it has been superseded by other federally enforceable regulations, namely Part 240, 40 CFR 93 Subpart B and Part 617. These regulations address whether sources of air contamination are compatible with applicable ambient air quality standards, and reach geographic areas of the State that are not covered by Part 203. New York's Transportation Conformity regulation, Part 240, applies state-wide and requires both that federally funded or regionally significant transportation projects be consistent with the goals and measures contained in the New York State Implementation Plan and that carbon monoxide "hot spots" (i.e., localized areas of high pollutant concentrations) do not occur. Part 240 provides a more exacting review of air quality impacts than does Part 203. General Conformity, 40 CFR Part 93 Subpart B, is implemented by the federal government and ensures that federal actions such as the construction of office buildings or airports conform to the SIP, and that all emissions from these sources, including reasonably foreseeable indirect emissions, are fully offset within the same nonattainment area. Like Part 240, General Conformity provides for greater scrutiny of federal projects than does Part 203. Finally, Part 617 incorporates the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, Part 617 requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement. Together, these regulations meet or exceed the intent and requirements of Part 203.

In addition, the permit provisions of Part 203 add no specificity in the way of terms or conditions that provide added environmental protection; indeed, other regulatory provisions go much further than Part 203. Repeal of Part 203 will allow the Department to continue to regulate indirect sources of air contamination through its current programs without the use of a specialized permit program that does not provide additional environmental benefits.

COSTS

The only costs associated with this rulemaking will be the Department's costs for newspaper publication and the preparation of transcripts.

LOCAL GOVERNMENT MANDATES

There are no local government mandates associated with the repeal of Part 203.

PAPERWORK

No additional recordkeeping, reporting, or other requirements will be imposed under this rulemaking.

DUPLICATION

This proposal does not duplicate any other federal or state regulations or statutes. Part 203 itself is partially a duplication of Part 240, and the federal General Conformity regulation. The repeal of Part 203 will eliminate this duplication.

ALTERNATIVES

There are two alternatives to the recommended repeal of Part 203:

1. Revise the current language in Part 203 to reflect the Department's current policies for indirect sources. In general, the Department's actions on proposed indirect sources are predicated on public comments received through the SEQR process, and may vary depending upon individual situations. As discussed above, Part 240 contains procedures for identifying CO hot spots for analysis, the primary concern under Part 203. In addition,

tion, revised regulatory text would require significant resources to ensure that the revisions are developed in a manner that does not create confusion or require duplicative actions by project sponsors. Even with extensive revision, application of Part 203 would still be redundant.

2. Use enforcement discretion to not enforce Part 203. This alternative is not likely to be accepted by the general public and environmental groups as it may be construed as the Department deliberately ignoring an air pollution control regulation.

FEDERAL STANDARDS

There are no minimum federal standards exceeded by the repeal of Part 203 or from the revisions to Parts 200 and 621.

COMPLIANCE SCHEDULE

There is no compliance schedule required by the repeal of Part 203.

Regulatory Flexibility Analysis

The Department of Environmental Conservation (the Department or DEC) is proposing to repeal 6 NYCRR Part 203 (Part 203), Indirect Sources of Air Contamination, and coincidentally revise 6 NYCRR Parts 200, General Provisions, and Part 621, Uniform Procedures, to remove all references to Part 203. Indirect source permitting is an intrastate air pollution control regulation that exclusively applies to any new or modified indirect source of air contamination located in New York County (Manhattan) south of 60th Street. An indirect source of air contamination is any facility, structure or installation where the associated vehicular movements (i.e., the traffic related to the source) contribute to air pollution. The principle air pollutant of concern for the regulation is carbon monoxide (CO), although the regulation also addresses ozone and nitrogen dioxide (NO₂) in the case of the construction of highway sections of certain size. As written, the regulation prohibits the construction or modification of an indirect source of air contamination without the Department issuing a permit to construct prior to construction or modification. The Department is proposing to repeal Part 203 and revise 6 NYCRR Part 200, General Provisions and Part 621, Uniform Procedures, to remove all references to Part 203. However, Part 203 has become obsolete and has been superseded by other regulations, most notably 6 NYCRR Part 240 (Part 240), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws; 40 CFR 93 Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans; and 6 NYCRR Part 617, State Environmental Quality Review. Therefore the Department proposes to repeal Part 203 in order to trim redundancy from the State's environmental regulations.

1. Effects on Small Businesses.

No small businesses will be directly affected by the repeal of Part 203.

2. Compliance Requirements.

There are no compliance requirements associated with the repeal of Part 203 for small business or local governments.

3. Professional Services.

There are no professional services requirements that will be imposed under this rulemaking.

4. Compliance Costs.

There are no costs to affected parties as a result of this rulemaking. The only costs associated will be those associated with the rulemaking process including newspaper publication and the preparation of transcripts.

5. Minimizing Adverse Impact.

There will be no adverse impacts attributable to the repeal of Part 203.

6. Small Business and Local Government Participation.

Small businesses and local government will have the opportunity to participate in the repeal of Part 203 during the public comment period which will commence when the regulation is formally proposed.

7. Economic and Technological Feasibility.

There are no economic impacts of compliance with the proposed amendment. There is no issue of technological feasibility as this is not a technology-forcing measure, but an administrative one.

8. Cure Period.

Pursuant to NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period.

Rural Area Flexibility Analysis

The Department of Environmental Conservation (the Department or DEC) is proposing to repeal 6 NYCRR Part 203 (Part 203), Indirect Sources of Air Contamination, and coincidentally revise 6 NYCRR Parts 200, General Provisions, and Part 621, Uniform Procedures, to remove all references to Part 203. Indirect source permitting is an intrastate air pollution control regulation that exclusively applies to any new or modified indirect source of air contamination located in New York County (Manhattan) south of 60th Street. An indirect source of air contamination is any facility, structure or installation where the associated vehicular movements (i.e., the traffic related to the source) contribute to air pollution. The principle air pollutant of concern for the regulation is carbon monoxide (CO), although the regulation also addresses ozone and nitrogen dioxide

(NO₂) in the case of the construction of highway sections of certain size. As written, the regulation prohibits the construction or modification of an indirect source of air contamination without the Department issuing a permit to construct prior to construction or modification. However, Part 203 has become obsolete and has been superseded by other regulations, most notably 6 NYCRR Part 240 (Part 240), Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws; 40 CFR 93 Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans; and 6 NYCRR Part 617, State Environmental Quality Review. Therefore the Department proposes to repeal Part 203 in order to trim redundancy from the State's environmental regulations.

TYPES AND ESTIMATED NUMBER OF RURAL AREAS AFFECTED

Part 203 applies only to indirect sources of air contamination located south of 60th Street in New York County (Manhattan). There are no rural areas south of 60th Street.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

No additional recordkeeping, reporting, or other requirements will be imposed under this rulemaking.

COSTS

There are no costs to affected parties as a result of this rulemaking. The only costs associated will be those associated with the rulemaking process including newspaper publication and the preparation of transcripts.

MINIMIZING ADVERSE IMPACT

There will be no adverse impacts attributable to the repeal of Part 203.

RURAL AREA PARTICIPATION

There are no rural areas affected by the repeal of Part 203.

Job Impact Statement

1. Nature of impact:

The Department of Environmental Conservation (the Department) proposes to repeal 6 NYCRR Part 203 (Part 203), Indirect Sources of Air Contamination. It is essentially an administrative action and will not have an adverse impact on job and employment opportunities.

2. Categories and numbers affected:

Not Applicable.

3. Regions of adverse impact:

This rulemaking will only affect areas south of 60th Street in New York County (Manhattan). There will be no adverse job impacts attributable to this rulemaking to the area.

4. Minimizing adverse impact:

There will be no adverse impacts attributable to the repeal of Part 203.

5. Self-employment opportunities:

There will be no self-employment opportunities as the result of the repeal of Part 203.

Department of Financial Services

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-06-13-00001-E

Filing No. 58

Filing Date: 2013-01-17

Effective Date: 2013-01-17

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The Federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings

bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of Federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: PART 117

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds \$1 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York;

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.¹ In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

i. Eligible guarantee.

ii. Qualifying master netting agreement.

iii. Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such

bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) *Collateral.* In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced where such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) *Hedging.* In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.7 Interim Method.

Until and including June 30, 2013, a bank may calculate its credit exposures arising from derivative transactions utilizing any method, provided that the bank reasonably determine that such method appropriately reflects such exposures. On and after July 1, 2013, a bank must calculate its credit exposures arising from derivative transactions in accordance with a method prescribed by, or otherwise permitted under, this part.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

¹ In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 16, 2013.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The Federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to Federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, includ-

ing derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable Federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the Federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 2012), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and Federal and State Savings Associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The Federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable Federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable Federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The Federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize

derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable Federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivative transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable Federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already

have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

Public Service Commission

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

Waiver of Certain Tariff Requirements Related Temperature Controlled Interruptible Gas Service

I.D. No. PSC-06-13-00013-EP

Filing Date: 2013-01-22

Effective Date: 2013-01-22

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

Proposed Action: The PSC adopted an order providing a waiver of the requirements of certain tariff provisions of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid related to the provision of non-firm gas service to Temperature Controlled customers whose equipment necessary to comply with the tariffs was damaged, or cannot be repaired in conformity with the tariff, as a result of Hurricane Sandy.

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

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). Failure to grant the waiver on an emergency basis could result in the interruption of gas service to certain customers who cannot switch to back up fuel during periods of severe cold weather because of equipment damaged by Hurricane Sandy, or could result in the imposition of penalties to customers who fail to switch to a back up fuel because of storm damaged equipment that cannot be repaired due to contractor and materials shortages resulting from other Hurricane Sandy restoration efforts. Such results would adversely impact the public safety, health and general welfare of the citizens of New York. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and an immediate waiver of certain requirements of 16 NYCRR § 255.604 is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain tariff requirements related temperature controlled interruptible gas service.

Purpose: The waiver will allow uninterrupted gas service to customers whose equipment was impacted by Hurricane Sandy.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission, on January 22, 2013, adopted an order waiving, on a temporary basis, the requirements of certain tariff provisions of The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid related to the provision of non-firm gas service to Temperature Controlled customers whose equipment necessary to comply with the tariffs was damaged, or cannot be repaired in conformity with the tariff, as a result of Hurricane Sandy, subject to the terms and conditions set forth in the order.

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 April 21, 2013.

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: Jeffrey Cohen, Acting 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-G-0006SA1)

NOTICE OF ADOPTION

Attorney General's Petition for Modification of Verizon New York Inc.'s Service Quality Improvement Plan

I.D. No. PSC-21-12-00008-A

Filing Date: 2013-01-18

Effective Date: 2013-01-18

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

Action taken: On 1/18/13, the PSC adopted an order resolving the petition filed by the New York State Attorney General on April 25, 2012.

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

Subject: Attorney General's petition for modification of Verizon New York Inc.'s Service Quality Improvement Plan.

Purpose: To resolve the Attorney General's petition for modification of Verizon New York Inc.'s Service Quality Improvement Plan.

Substance of final rule: The Commission, on January 18, 2013 adopted an order resolving the petition filed by the New York State Attorney General on April 25, 2012 to modify Verizon New York Inc.'s Service Quality Improvement Plan.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 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.

(10-C-0202SA2)

NOTICE OF ADOPTION

Adoption of Amendments to 16 NYCRR, Part 255

I.D. No. PSC-42-12-00006-A

Filing No. 75

Filing Date: 2013-01-22

Effective Date: 2013-01-22

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

Action taken: Amendment of Part 255 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections (1), 66(1), 64, 65, 71, 72, 72-a, 75, 79 and 210

Subject: Adoption of amendments to 16 NYCRR, Part 255.

Purpose: To adopt amendments to 16 NYCRR, Part 255.

Substance of final rule: The Commission, on January 17, 2013, approved a Memorandum and Resolution adopting amendments relating to pipeline facilities contained in 16 NYCRR, Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas. The changes incorporate the Distribution Integrity Management Rule adopted in Title 49, Code of Federal Regulations, Part 192, Transportation of Natural Gas, subject to the terms and conditions set forth in this order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 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.

(10-G-0228SA1)

NOTICE OF ADOPTION

Issuance of Securities, with Conditions

I.D. No. PSC-47-12-00009-A

Filing Date: 2013-01-18

Effective Date: 2013-01-18

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

Action taken: On 1/18/13, the PSC adopted an order, with conditions, approving New York American Water to issue up to \$38,645,633 million of new long-term debt.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of Securities, with conditions.

Purpose: To authorize issuance of securities, with conditions.

Substance of final rule: The Commission, on January 18, 2013 adopted an order approving, with conditions, New York American Water Company's f/k/a Long Island Water Corporation's request to issue up to \$38,645,633 million of new long-term debt no later than December 31, 2014, 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, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-W-0493SA1)

NOTICE OF ADOPTION

Approval of Transfer of Ownership from WPS to Lakeside

I.D. No. PSC-47-12-00012-A

Filing Date: 2013-01-22

Effective Date: 2013-01-22

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

Action taken: On 1/17/13, the PSC adopted an order approving the transfer of ownership of WPS Beaver Falls, WPS Syracuse and WPS Empire to Lakeside New York LLC.

Statutory authority: Public Service Law, sections 70 and 83

Subject: Approval of transfer of ownership from WPS to Lakeside.

Purpose: To approve the transfer of ownership.

Substance of final rule: The Commission, on January 17, 2013, adopted an order approving the transfer of ownership of WPS Beaver Falls, WPS Syracuse and WPS Empire State, Inc. (collectively, WPS) to Lakeside New York, LLC (Lakeside), 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, 3 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-0491SA1)

NOTICE OF ADOPTION**Removal of References to Standby Sales Service****I.D. No.** PSC-48-12-00005-A**Filing Date:** 2013-01-17**Effective Date:** 2013-01-17

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

Action taken: On 1/17/13, the PSC adopted an order approving Central Hudson Gas & Electric Corp.'s request to modify its rates, charges, rules and regulations contained in P.S.C. No. 12—Gas.

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

Subject: Removal of references to Standby Sales Service.

Purpose: To approve the removal of references to Standby Sales Service.

Substance of final rule: The Commission, on January 17, 2013, adopted an order approving a request by Central Hudson Gas & Electric Corporation to modify its gas tariff schedule PSC No. 12—Gas, to remove references to Standby Sales Service because it is no longer offered to Interruptible Transportation customers.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-G-0498SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Allocation of Tax Refunds****I.D. No.** PSC-06-13-00009-P

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

Proposed Action: The Commission is considering whether to approve, modify, or reject, in whole or in part a petition by Consolidated Edison Company of New York, Inc., proposing the sharing of the net proceeds from certain tax refunds between the utility and customers.

Statutory authority: Public Service Law, sections 4(1), 5(1) and 113(2)

Subject: Allocation of tax refunds.

Purpose: To determine the appropriate allocation of tax refunds between the utility and its customers.

Public hearing(s) will be held at: 10:00 a.m., April 16, 2013 at Three Empire State Plaza, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: By petition filed November 5, 2012, Consolidated Edison of New York, Inc., (Con Edison) seeks authorization to retain 14% of the net savings realized from the settlement of various tax lawsuits, and to defer the remaining 86% for the benefit of ratepayers. Con Edison states that the refunds resulted from its aggressive efforts to challenge the property tax assessments that were the subject of the lawsuits, and that the sharing it proposes is consistent with the Commission's tax incentive policy. The Commission will consider the petition and may grant or deny, in whole or in part, or modify the relief sought, or take such other actions as may be authorized by law.

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, NY 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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

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

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

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

(12-M-0506SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Transfer of Utility Assets in Excess of \$100,000****I.D. No.** PSC-06-13-00006-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 petition filed by New York State Electric & Gas Corporation (NYSEG) regarding sale of certain underground streetlight cables and steel streetlight standards to the City of Auburn.

Statutory authority: Public Service Law, section 70

Subject: Transfer of utility assets in excess of \$100,000.

Purpose: To grant or deny the sale of underground streetlight cables and steel from NYSEG to the City of Auburn for \$1, no contingencies.

Substance of proposed rule: The Commission is considering whether to approve, reject, or modify a petition submitted by New York State Electric & Gas Corporation (NYSEG), pursuant to Public Service Law § 70, seeking permission to transfer certain underground streetlight cables and steel streetlight standards to the City of Auburn. NYSEG seeks to sell certain underground streetlight cables and steel streetlight standards to the City of Auburn for \$1, with no contingencies. The Commission may grant, deny or modify the petition or take other action related to it, and may apply its decision here to other utilities.

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

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

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

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

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

(12-M-0496SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Compliance Filing by Consolidated Edison Proposing Revisions to Its Fuel Cost Allocation****I.D. No.** PSC-06-13-00007-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a compliance filing by Consolidated Edison revising its East River Repowering Project fuel allocation and request to reconsider reinstatement of its prior incremental fuel allocation method.

Statutory authority: Public Service Law, sections 65, 66, 78 and 79

Subject: Compliance filing by Consolidated Edison proposing revisions to its fuel cost allocation.

Purpose: To consider a compliance filing and reconsideration request by Consolidated Edison to revise its fuel cost allocation.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject in whole or in part, a compliance filing and reconsideration request made by Consolidated Edison Company of New York, Inc. (ConEd) regarding the allocation of fuel costs associated with ConEd's East River Repowering Project (ERRP). Specifically, ConEd proposes a phase-in for implementing the above market methodology of allocating ERRP's fuel costs between ConEd's electric and steam customers, commencing October 1, 2013. ConEd's phase-in proposal is being made in compliance with the Public Service Commission's Order Establishing Three-Year Steam and Gas Rate Plans and Determining East River Repowering Project Cost Allocation Methodology, issued September 22, 2010 in Case 09-S-0794. Also included in ConEd's filing is a request that the Commission reinstate its prior Incremental Method of allocating ERRP's fuel costs. The Commission decision here may apply as precedent for its regulation of other utilities.

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

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

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

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

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

(09-S-0794SP5)

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

Verizon New York Inc.'s Retail Service Quality

I.D. No. PSC-06-13-00008-P

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

Proposed Action: The Commission is considering proposals on addressing Verizon New York Inc.'s service quality for Core and certain business customers to enhance retail service quality.

Statutory authority: Public Service Law, sections 91 and 97

Subject: Verizon New York Inc.'s retail service quality.

Purpose: To investigate Verizon New York Inc.'s retail service quality.

Substance of proposed rule: The Commission is considering whether to approve, modify or deny, in whole or in part, proposals on addressing Verizon New York Inc.'s service quality as it pertains to Core customers (those on Lifeline, with special needs or have no alternative provider) and certain business customers, including making certain modifications to Verizon New York Inc.'s tariff, Service Quality Improvement Plan or the adoption of other metrics and incentives to enhance the Company's retail service quality. In addition, the Commission may take additional action as necessary.

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

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

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

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

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

(10-C-0202SP3)

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

Deferred Payment Agreements (DPA)

I.D. No. PSC-06-13-00010-P

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

Proposed Action: The Commission is considering a filing by National Fuel Gas Distribution Corporation proposing revisions to the Company's rates, charges, rules and regulations contained in P.S.C. No. 8—Gas regarding Deferred Payment Agreements.

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

Subject: Deferred Payment Agreements (DPA).

Purpose: Approval of a pilot program allowing customers to negotiate the terms of a DPA over the phone and sign the DPA electronically.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by National Fuel Gas Distribution Corporation for approval of a pilot program that would allow customers to negotiate the terms of a Deferred Payment Agreement (DPA) over the phone and have an electronic document prepared for the customer's pre-signing review. The customer would execute the DPA using electronic signature protocols authorized under New York's Electronic Signature and Records Act. The filing has a proposed effective date of April 24, 2013. The Commission may resolve related matters and may apply its decision here to other companies.

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

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

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

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

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

(13-G-0016SP1)

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

Approval of the Transfer of Ownership Interests the Roseton Generating Station

I.D. No. PSC-06-13-00011-P

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

Proposed Action: The Commission is considering a petition filed by Dynegy Roseton LLC requesting the approval of the transfer of ownership interests in the Roseton Generating Station to CCI Roseton LLC.

Statutory authority: Public Service Law, section 70

Subject: Approval of the transfer of ownership interests the Roseton Generating Station.

Purpose: Consideration of the approval of the transfer of ownership interests the Roseton Generating Station.

Substance of proposed rule: The Public Service Commission is considering a petition filed on January 16, 2013 by Dynegy Roseton LLC requesting the approval of its transfer, to CCI Roseton LLC, of all of the ownership interests in the 1,160 MW Roseton Electric Generating Station located in Newburgh, New York. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-E-0019SP1)

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

Natural Gas Vehicle Service (NGV)

I.D. No. PSC-06-13-00012-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 filing by National Fuel Gas Distribution Corporation proposing revisions to the Company's rates, charges, rules and regulations contained in P.S.C. No. 8—Gas.

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

Subject: Natural Gas Vehicle Service (NGV).

Purpose: To allow for payment of service for fuel for a NGV at the point of sale.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by National Fuel Gas Distribution Corporation to allow for any person seeking to fuel a natural gas vehicle that they can pay for service at the point of sale versus having to pre-establish an account with the Company. NFG also requests approval for market-based and negotiated rate authority for Natural Gas Vehicle (NGV) service. The filing has a proposed effective date of May 1, 2013. The Commission may resolve related matters and may apply its decision here to other companies.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (13-G-0017SP1)

Workers' Compensation Board

NOTICE OF ADOPTION

Medical Treatment Guidelines

I.D. No. WCB-47-12-00013-A

Filing No. 74

Filing Date: 2013-01-22

Effective Date: 2013-03-01

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

Action taken: Amendment of Part 324 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 141, 13, 13-a, 13-b, 13-k, 13-l and 13-m

Subject: Medical Treatment Guidelines.

Purpose: Requires use of the Medical Treatment Guidelines for covered injuries and creates processes for their use.

Substance of final rule: The proposed amendments to Part 324 of 12 NYCRR adopt Medical Treatment Guidelines (MTG) for Carpal Tunnel Syndrome (CTS).

In addition, the Guidelines for the neck, back, shoulder and knee have been amended to permit 10 chiropractic, physical therapy or occupational therapy visits each year following a determination that the claimant has reached maximum medical improvement (MMI) and has chronic pain. No variance is allowed from the maximum of 10 annual visits.

Section 324.2(d)(2) has been amended to remove anterior acromioplasty and chondroplasty from the list of procedures that require prior authorization by the payer.

Section 324.3 has also been amended to prohibit the repeated submission of variance requests by a treating medical provider for substantially similar treatment when an earlier variance request has not yet been denied or without additional information when the earlier substantially similar request has been previously denied.

Paragraph (3) of subdivision (a) of Section 324.3 has been amended to specifically state that a variance must be submitted within two business days of the preparation of the request.

Paragraph (5) of subdivision (a) has been added to provide that no variance is required for ongoing maintenance care.

Section 324.3 has been amended to remove the requirement that the parties attempt to informally resolve disputes for eight days and to direct that requests for review of a denial of a variance request will be directed to medical arbitration unless the claimant or payer requests review by a Workers' Compensation Law Judge.

In addition, Section 324.3 has been amended to give the Chair discretion to direct the resolution of variance denials based on the claimant's failure to appear for an independent medical examination.

The Board proposes further changes to Part 324 of 12 NYCRR by modification of the definition of MMI to conform it to the definition developed by the Advisory Committee and incorporated in the Board's 2012 Guidelines for the Determination of Permanent Impairment and Loss of Wage Earning Capacity.

At subdivision (c) of section 324.1, the proposed amendment adds a definition of "Denial, deny or denies" to include instances when the carrier or Special Fund partially grants or approves only a portion of a variance or request for optional prior approval.

Throughout the regulation the language has been modified from use of words like "form" and "file" to terms such as "format prescribed by the Chair" and "submit."

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 324.2(a), (b) and 324.3(c)(3).

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to March 1, 2013; 2) correct the web address for obtaining copies of the Medical Treatment Guidelines; 3) and add clarifying language regarding the time to file depositions when requesting review of a variance denial via an expedited hearing.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to March 1, 2013; 2) correct the web address for obtaining copies of the Medical Treatment Guidelines; 3) and add clarifying language regarding the time to file depositions when requesting review of a variance denial via an expedited hearing.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial,

do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to March 1, 2013; 2) correct the web address for obtaining copies of the Medical Treatment Guidelines; 3) and add clarifying language regarding the time to file depositions when requesting review of a variance denial via an expedited hearing.

Revised Job Impact Statement

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change the statement that the rule making will not have an adverse impact on jobs. Specifically the changes are to: 1) change the effective date to March 1, 2013; 2) correct the web address for obtaining copies of the Medical Treatment Guidelines; 3) and add clarifying language regarding the time to file depositions when requesting review of a variance denial via an expedited hearing.

Assessment of Public Comment

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB471200013 commenced on November 21, 2012, and expired on January 7, 2013. The Chair and the Workers' Compensation Board (Board) accepted formal written public comments on the proposed rule through January 10, 2013.

The Chair and Board received written comments from two groups: the Business Council of New York State (Business Council) and from the Joint Legislative Task Force of the New York State Chiropractic Association and the New York Chiropractic Council (Chiropractors' Task Force). These comments were reviewed and assessed.

The Business Council objects to the addition of ongoing maintenance care (OMC), including up to 10 chiropractic or physical therapy or occupational visits per year, to the MTG. The Business Council asserts that the regulations allow the "routine use" of maintenance care visits without "appropriate and compelling evidence of such a treatment's efficacy." The Board respectfully disagrees. The ongoing maintenance care section acknowledges that "the current body of scientific evidence does not support the routine use of this intervention." However, the Chair's Medical Advisory Committee, which includes three doctors appointed by the Business Council, determined that maintenance care "may be indicated in certain situations." The maintenance care recommendations provide criteria to identify the patient population that may benefit. OMC is permitted to maintain a patient's functional status if there has been a previously observed and documented (in the medical record) objective deterioration in functional status without the identified treatment. In order to qualify for ongoing maintenance care, the claimant must have chronic pain, reached maximum medical improvement (MMI), have a permanent disability and a decline in functional status without the identified treatment. Furthermore, specific, objective functional goals must be identified, measured and met in order to support the need for ongoing maintenance care. Therefore, OMC is not provided in a routine manner, but rather with requirements that must be met in order to qualify for such care.

The Chiropractors' Task Force requests a revision in the definition of "insurance carrier or Special Fund's medical professionals" who are permitted to review variance requests to include chiropractors. The medical professional may be required to review variance requests involving any of the medical treatment guidelines. Since chiropractors' scope of practice is limited to the neck and back, they do not have the breadth of medical practice necessary to act as a medical professional for review of all variance requests. Accordingly, the Board will continue to require that a carrier or Special Fund use a physician, physician's assistant, registered professional nurse or nurse practitioner as its medical professional.

The Chiropractors' Task Force suggests that requiring that a variance request be granted by the carrier or Special Fund prior to permitting the requested treatment prolongs disability, pain and suffering. The Board notes that this requirement is not a change from the variance process. The added language is simply a clarification. Variances are used to seek approval for treatment that is outside of or in excess of the MTGs recommendations. Accordingly no treatment outside of or in excess of the MTG may occur until and unless it is approved by the carrier, Special Fund or Board decision. The Board notes that there are time constraints for all parties to assure that variance requests are handled in an expeditious manner.

The Chiropractors' Task Force suggests that medical providers be able to request a variance following completion of ongoing maintenance care treatment. The Chair, in connection with the Medical Advisory Committee, determined that when a claimant has reached maximum medical improvement, an ongoing maintenance program that includes periodic therapy, patient self-management, periodic therapeutic withdrawal, and a self-directed pain management program is appropriate. Variance requests

to allow additional passive therapy are not consistent with this recommendation.

The Chiropractors' Task Force submitted several comments concerning what constitutes a substantially similar variance request. The Chiropractic Task Force presents some scenarios and seeks further explanation as to what may constitute a substantially similar request. After review of these comments, the Board maintains that the plain meaning of "substantially similar" provides a sufficient basis for evaluation and comparison of two or more variance requests. In addition, the regulations provide the additional safeguard of administrative review in the event that it appears that there is not a sufficient basis for the finding that the variance request was substantially similar.

The Chiropractor's Task Force suggests that the regulation should require the carrier to supply a detailed explanation when rejecting a variance request on the basis that the medical provider has not met his or her burden of proof. When requesting a variance, the provider must present basic information showing that the proposed treatment, which is outside of or in excess of the MTGs, is necessary and likely to be effective. Sufficient documentation in support of the variance request is necessary for proper evaluation by the carrier or Special Fund. The responsibility to meet the burden of proof (appropriate medical documentation to support a variance request) rests with the provider. The Board has developed training which is available on its website as well as a published Frequently Asked Question that provides detailed information as to what documentation is required in order to meet the variance request burden of proof. Of note, the MG-2 "Attending Doctor's Request for Approval of a Variance and Carrier's Response" includes a space for the inclusion of a carrier's/Special Fund's explanation of its basis for the burden of proof denial.

The Chiropractor's Task Force also requests that treating providers should be permitted to seek review of a variance denial. It is well settled that only a claimant, an employer or an insurance carrier has standing to appear in a Worker's Compensation case as to any of the primary issues involved in a case. The relationship between medically necessary treatment and a compensable accident or occupational disease is a primary issue. Therefore, a health care provider has no standing to contest the carrier or Special Fund's denial of a variance or a medical arbitrator's or WCLJ's determination of that issue.

The Chiropractor's Task Force suggests that informal resolution should not be mandatory. The Board has removed the eight day requirement for informal dispute resolution and the informal dispute resolution process is no longer mandatory. This permits the claimant to seek review of a variance denial as soon as it becomes apparent that an informal resolution will not occur. However, the Board encourages the medical provider and carrier/Special Funds to informally resolve disputes concerning variance requests and has required all carriers and Special Funds to identify a contact person for discussion of variance approvals.

The Chiropractor's Task Force suggests that the regulations be modified to permit cross-examination of a medical provider whose variance request has been denied based on failure to meet the burden of proof for such request. A variance request that is denied due to failure to meet the burden of proof means that the medical provider submitting the request failed to provide sufficient documentation or explanation in support of the variance request. Testimony of the provider will not make the variance request sufficient. It is noted that a variance that is denied due to failure to meet the burden of proof may be re-submitted by the provider with proper documentation and written justification.

The Chiropractor's Task Force suggests that the MTG be amended to permit a second course of ongoing maintenance care by a second provider if a first medical provider's ongoing maintenance care was ineffective. As in order to meet the eligibility criteria for maintenance care, the MTG requires a demonstration that the maintenance care has been previously effective for this claimant. In the scenario put forth by the Chiropractor's Task Force the eligibility criteria would not be met. Accordingly, no change has been made to the MTG.

Finally, the Chiropractor's Task Force suggests that term "spinal manipulation" should be changed to "active and passive therapy." The Board notes that the guidelines use the terms PT and OT along with spinal manipulation and are not intended to preclude any qualified provider from using active and passive therapies as a component of a qualified course of ongoing maintenance care. As the medical terms used in the MTG were carefully considered and selected by the Medical Advisory Committee and the Board, the Board has not made this suggested change.

CHANGES TO THE REGULATION:

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the November 21, 2012 State Register:

- In section 324.2(a) the edition and effective dates have been changed to January 14, 2013 and March 1, 2013 respectively. The edition change reflects minor typographical errors that have been corrected as of January 14, 2013. The effective date has been extended to permit all stakeholders

the opportunity to fully familiarize themselves with the changes and complete training.

- In section 324.2 (b), the Board’s web address has been updated from “GENERAL__INFORMATION@WCB.STATE.NY.US” to GENERAL__INFORMATION@wcb.ny.gov.”

- Section 324.3(c)(3) contains a correction regarding the expedited hearing process that was inadvertently omitted from the published regulation: “If the medical professionals are deposed, transcripts shall be provided to the Board on or before the hearing and within thirty days of the request for the expedited hearing.” The change conforms to the expedited hearing process in the original regulation and the process observed by the Board in compliance with WCL § 25(3)(d).