

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Incorporation by Reference in 1 NYCRR of the 2011 Edition of National Institute of Standards and Technology (NIST) Handbook 133

I.D. No. AAM-37-12-00002-A
Filing No. 1243
Filing Date: 2012-12-17
Effective Date: 2013-01-02

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

Action taken: Amendment of section 221.11 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Incorporation by reference in 1 NYCRR of the 2011 edition of National Institute of Standards and Technology (NIST) Handbook 133.

Purpose: To incorporate by reference in 1 NYCRR the 2011 edition of NIST Handbook 133.

Text or summary was published in the September 12, 2012 issue of the Register, I.D. No. AAM-37-12-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Mike Sikula, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3452, email: mike.sikula@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Various Trees and Plants of the Prunus Species

I.D. No. AAM-39-12-00005-A
Filing No. 1251
Filing Date: 2012-12-18
Effective Date: 2013-01-02

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

Action taken: Amendment of sections 140.1 and 140.3 of Title 1 NYCRR.

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

Subject: Various trees and plants of the Prunus species.

Purpose: To deregulate a regulated area in Wayne County, since the plum pox virus has not been detected. To make technical changes.

Text or summary was published in the September 26, 2012 issue of the Register, I.D. No. AAM-39-12-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Kevin S. King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, e-mail: rick.arnold@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal of Outdated Forms and Conforming Amendments

I.D. No. ASA-01-13-00004-P

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

Proposed Action: Repeal of Appendix 1; and amendment of section 15.1(c) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Repeal of outdated forms and conforming amendments.

Purpose: To eliminate antiquated and irrelevant forms.

Text of proposed rule: Section 1. Subdivision (c) of Section 15.1 of Title 14 NYCRR is amended to read as follows:

(c) Except as otherwise provided, patients and residents may be admitted to facilities only on the forms and in accordance with the procedures prescribed by the Commissioner. [All forms prescribed for use in admission of patients are included in Appendix 1 of this Title, infra.] Detailed admission procedures are included in the following manuals issued and periodically revised for particular groups of facilities by the department.

Note: Paragraphs (1) – (7) of this subdivision remain unchanged.

Section 2. Appendix 1 of Volume A of Title 14 NYCRR is REPEALED.

Text of proposed rule and any required statements and analyses may be obtained from: Sara Osborne, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: SaraOsborne@oasas.ny.gov

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (“the Commissioner”) to ensure that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment which is effective and of high quality.

Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by article 32 of the Mental Hygiene Law.

Section 32.07(a) of the Mental Hygiene Law gives the Commissioner of the Office of Alcoholism and Substance Abuse Services the power to adopt regulations to effectuate the provisions and purposes of article 32 of the Mental Hygiene Law.

The relevant sections of the Mental Hygiene Law cited above, authorize the Commissioner to regulate the provision of services to patients, how such chemical dependency services are delivered, establish standards for the provision of such services, and qualifications of staff.

2. Legislative Objectives:

Chapter 558 of the Laws of 1999 requires the promulgation of rules and regulations to regulate and assure the consistent high quality of services provided within the state to persons suffering from chemical abuse or dependence, their families and significant others, as well as those who are at risk of becoming chemical abusers. The proposed amendments will further the legislative objectives of chapter Article 32 of the Mental Hygiene Law by the deletion of outdated, antiquated regulations.

3. Needs and Benefits:

14 NYCRR Part 15, Admission and Transfer of Patients, and Appendix 1 of Volume A, were promulgated in the 1970s by the Department of Mental Hygiene. When these Parts were promulgated, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People With Developmental Disabilities, or “OPWDD”), and the Office of Alcoholism and Substance Abuse (now known as the Office of Alcoholism and Substance Abuse Services, or “OASAS”), were all a part of the Department of Mental Hygiene, and none had its own rule making authority. In 1977, the New York State Mental Hygiene Law was recodified, and the Department of Mental Hygiene was divided into three autonomous agencies, all of which have independent rule making authority.

Appendix 1 of Volume A of Title 14 NYCRR is substantively obsolete. The forms listed in Appendix 1 pertain to services delivered at OMH psychiatric centers, OPWDD developmental centers, and services delivered at specified facilities in the pre-OASAS two-division system. These forms are outdated and do not reflect current service environments. With the elimination of the requirements to use the specific forms, OMH, OPWDD and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of the individuals receiving services. In addition, state agencies will have the ability to update forms in the future as needs change. Conforming amendments are also included in this proposed rule making to repeal language which specifically refers to the deleted forms. Although OPWDD, OMH and OASAS are filing concurrent proposed amendments to delete Appendix 1 and make the conforming change in Part 15, neither provisions are currently applicable in the OASAS system of voluntary admissions. OPWDD is seeking to amend language in Part 17 which refers to the deleted forms; however, Part 17 no longer applies to OMH as the agency has superseded Part 17 with provisions found at 14 NYCRR Part 517; the provision is not applicable in the OASAS system of voluntary admissions.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local Government Mandates:

These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork:

These regulatory amendments should not increase the paperwork requirements of providers. Replacement forms will be less confusing and better reflective of current terminology and situations of individuals receiving services.

7. Duplication:

These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives:

The Office of Mental Health considered repealing only those forms which pertain to OMH and not filing proposed regulations concurrently with OPWDD and OASAS. However, since all these agencies agree the forms are outdated and Appendix 1 should be repealed, it was decided that it would be more efficient to repeal all of the forms together.

9. Federal Standards:

The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the Office of Mental Health has determined the amended rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small business and local governments. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the Office of Alcoholism and Substance Abuse Services has determined the amended rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

State Commission of Correction

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Inmate Packages

I.D. No. CMC-01-13-00013-P

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

Proposed Action: Amendment of sections 7005.7 and 7025.2 of Title 9 NYCRR.

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

Subject: Inmate packages.

Purpose: To allow local correctional facilities to regulate the source of incoming inmate packages.

Text of proposed rule: Subdivisions (c) and (f) of section 7005.7 of Title 9 are amended to read as follows:

(c) Women prisoners shall be permitted to wear brassieres. Women prisoners shall be permitted to receive brassieres from any source, *subject to the limitations of subdivision (d) of section 7025.2 of this Title*, and to wear such brassieres within the facility.

(f) Prisoners who are not required to wear facility-issued clothing shall be permitted to wear clothing worn by such prisoners at the time of admission to the facility and [or] clothing received from any other source, *subject to the limitations of subdivision (d) of section 7025.2 of this Title*.

Section 7025.2 of Title 9 is amended to read as follows:

§ 7025.2 Incoming prisoner packages

(a) The chief administrative officer shall maintain a list of items prisoners may receive.

(b) As used in this [section] *Part*, the term contraband shall mean any item in an incoming prisoner package which constitutes a threat to the safety, security or good order of a facility, or the health of any individual, or any item not permitted pursuant to subdivisions (a) and (d) of this section or any item which may constitute a criminal offense or may be the fruits or instruments of a crime [shall constitute contraband].

(c) Upon admission to the facility, prisoners shall be provided with a copy of the list referenced in subdivision (a) of this section.

(d) *In his or her discretion, the chief administrative officer may require that the contents of any incoming prisoner package be purchased from, and mailed to the facility by, a company whose ordinary business includes the sale and shipping of such items.*

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to promulgate minimum standards setting forth an inmate's entitlement to packages from friends and relatives.

3. Needs and benefits:

In response to Executive Order No. 17, Commission of Correction Chairman Thomas A. Beilein convened a workgroup to undertake a regulatory review of the Commission's Rules, Regulations and Minimum Standards for the Management of County Jails and Penitentiaries. Participants included sheriffs, jail administrators, and representatives of

the New York State Division of the Budget, New York State Sheriffs' Association and the New York State Association of Counties. Of the various issues discussed, many expressed their desire to amend the Commission's regulations requiring a local correctional facility's obligation to accept inmate packages, as it is believed that it is often a means for inmates to acquire contraband.

While there is no constitutional right to receive packages in a local correctional facility [Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861 (1979)], the Commission's minimum standards do provide for the receipt of packages by inmates. 9 NYCRR Part 7025. Specifically, 9 NYCRR § 7025.1 provides that "prisoner shall be permitted to receive packages and send packages to any person." Section 7025.2(a) requires the facility to maintain a list of items inmates may receive, while section 7025.2(c) requires that such list be provided to each inmate upon admission.

Inmate packages often contain items such as food and clothing, and are often sent directly from friends and relatives. As discussed in the workgroup, local correctional facilities have noticed an increased sophistication in the secretion of contraband in prisoner packages, including the practice of resealing food and clothing packages. Consequently, it is the Commission's opinion that such opportunities may be diminished if a local correctional facility can implement a rule whereby inmate packages must be purchased from, and mailed to the facility by, a company whose ordinary business includes the sale and shipping of such items. Further, given the ease by which items may now be ordered and delivered by such companies as Amazon, Walmart, etc., the Commission maintains that an inmate's access to packages will not be significantly limited by the proposed amendment.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The regulation allows for, but does not require, a local correctional facility's chief administrative officer to implement a rule that prisoner packages be purchased from, and mailed to the facility by, a company whose ordinary business includes the sale and shipping of such items.

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

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

5. Local government mandates:

None.

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

The alternative, maintaining the current regulations relative to inmate packages, was explored by the Commission. This alternative was rejected upon the Commission's finding, as set forth above, that the proposed amendment may diminish opportunities for inmates to acquire contraband, thus increasing the safety and security of local correctional facilities.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to allow local correctional facilities to regulate the source of incoming inmate packages. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to allow local correctional facilities to regulate the source of incoming inmate packages. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant recordkeeping, reporting, or other compliance requirements on private or public entities in rural areas.

Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to allow local correctional facilities to regulate the source of incoming inmate packages. As such, there will be no impact on jobs and employment opportunities.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Livingston Correctional Facility**I.D. No.** CCS-41-12-00001-A**Filing No.** 1241**Filing Date:** 2012-12-14**Effective Date:** 2013-01-02

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

Action taken: Amendment of section 100.127(c)(2) of Title 7 NYCRR.**Statutory authority:** Correction Law, section 70**Subject:** Livingston Correctional Facility.**Purpose:** To amend alcohol and substance abuse treatment bed count and classification.**Text or summary was published** in the October 10, 2012 issue of the Register, I.D. No. CCS-41-12-00001-P.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov**Assessment of Public Comment**

The agency received no public comment.

Delaware River Basin Commission

INFORMATION NOTICE

Information Notice Notice Of Final Rulemaking

Delaware River Basin Commission Amendments to the Water Code and Comprehensive Plan to Implement a Revised Water Audit Approach to Identify and Control Water Loss

I.D. No.: Not applicable.**Filing Date:** December 18, 2012

Effective Date: Upon filing with each of the signatory parties in accordance with Section 14.2 of the Delaware River Basin Compact and publication in the *Federal Register*. The rule was published in the *Federal Register* and incorporated by reference into the *Code of Federal Regulations* effective November 20, 2009.

The amendments to the Comprehensive Plan and Article 2 of the Water Code finalized by the Delaware River Basin Commission on March 11, 2009 phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the American Water Works Association (AWWA) and the International Water Association (IWA). Effective January 1, 2012, the owners of water supply systems serving the public with sources or service areas located in the Delaware River Basin must implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology and corresponding AWWA guidance. Effective January 1, 2013, reported "non-revenue water" must be

computed in accordance with the new methodology and guidance. During the period between publication of the Final Rule in the Federal Register on November 20, 2009, and December 31, 2011 water purveyors were encouraged to implement the new methodology and guidance on a voluntary basis.

Action Taken: On March 11, 2009, the Delaware River Basin Commission (DRBC or Commission) adopted amendments to its Water Code and Comprehensive Plan.

Statutory Authority: *Delaware River Basin Compact*, New York Laws of 1961, Chapter 148, Approved March 17, 1961.

Subject: Implement a requirement for water purveyors to follow an updated water audit approach to identify and control water loss in the Delaware River Basin.

Purpose: To phase in a program requiring water purveyors to perform a water audit and report their findings in accordance with a new audit structure established by the AWWA and the IWA. These new methods are widely regarded as superior to the existing approach, which entails tracking "unaccounted for water."

Supplemental Information: The DRBC is a federal-interstate regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states - Delaware, New Jersey, New York, and Pennsylvania - and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government.

An estimated 150 million gallons of treated and pressurized water is physically lost from public water supply distribution systems in the Delaware River Basin per day and current methods to account for, track and reduce this loss are inadequate. Water suppliers are experiencing real water losses due to physical infrastructure failures and apparent losses resulting from inaccurate meter readings and erroneous billing practices. As demand for water increases, it is essential to ensure that water supplies and the infrastructure delivering water are dependable and efficiently move water from source to customer.

The new water audit methodology provides a rational approach that will facilitate more consistent tracking and reporting than the existing approach allows. It will help water managers and regulators, including the Commission, state agencies, and utility managers, target their efforts to improve water supply efficiency, thereby reducing water withdrawals. Improving water accountability will contribute to achieving objective 1.3.C of the *Water Resources Plan for the Delaware River Basin*, which calls for ensuring maximum feasible efficiency of water use across all sectors.

The Commission's Water Management Advisory Committee (WMAC), which has taken primary responsibility for reviewing the proposed audit methodology and developing these amendments, is composed of representatives from a wide range of public and private sector organizations. Six water purveyors from the Delaware River Basin were identified to participate in the nationwide pilot study. The comments and feedback provided to AWWA led to improvements in the software. The software was approved by the AWWA Water Loss Control Committee and is available on the AWWA website to all users at no charge.

The WMAC and its subcommittee determined that the IWA/AWWA water audit methodology represents an improvement to the Commission's current practices and can lead to multiple benefits for water utilities and other stakeholders. It is anticipated that adoption of the IWA/AWWA approach will:

- Improve upon the traditional approach for identifying "unaccounted for water," which lacks standardized terminology and a clearly defined water audit structure.
- Provide a rational water audit structure to help identify water losses and improve water supply system efficiency.
- Provide meaningful performance indicators to help identify systems with the greatest losses. These indicators allow water utility managers to make reliable comparisons of performance and to identify best practices to control water loss in an economical way.
- Identify ways to improve water supply efficiency and thereby reduce water withdrawals that have no beneficial end use.
- Help to target efforts to reduce the estimated 150 million gallons per day that is physically lost from public water supply distribution systems in the Delaware River Basin.
- Enhance utility revenues by enabling utility managers to recover the significant revenue that is otherwise lost due to *apparent losses* such as theft of service, unbilled connections, meter discrepancies and data errors.
- Help utility managers and regulators identify *real losses* (such as leakage) that waste treated and pressurized water and increase operating costs. Significant real losses indicate opportunities for

improved asset management that can reduce the vulnerability of utilities to disruptive water main breaks, other service disruptions and water quality upsets.

Because the water audit approach is relatively new in a regulatory context, the amendments called for phased implementation. Information was gathered from within the Delaware River Basin and nationwide to assist in the establishment of performance indicators for water loss, which ultimately will replace the “unaccounted for water” targets. The amendments require water purveyors to perform an annual water audit conforming to the IWA/AWWA methodology and require changes in the way data pertaining to water loss are collected by the state agencies and shared with DRBC.

Assessment of public comment: Notice of the proposed amendments appeared in the *New York State Register* (p. 2) on August 20, 2008, as well as in the *Federal Register* (73 FR 44945) on August 1, 2008, the *Delaware Register of Regulations* (12 DE Reg. 275-278 (09/01/2008)) on September 1, 2008, the *New Jersey Register* (40 N.J.R. 4499) on August 4, 2008, and the *Pennsylvania Bulletin* (38 Pa. B. 4373) on August 9, 2008. A public hearing was held on September 25, 2008 and written comments were accepted through October 3, 2008. The Commission received one written submission and no oral testimony on the proposed amendment. The Commission made revisions to the proposed on its own initiative for clarification. A comment and response document summarizing the comments on the proposed rule and setting forth the Commission’s responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

The final form of the rule differs from the proposed rule in the following respects: For purposes of clarity, a definition of “non-revenue water” consistent with the AWWA definition was added to Section 2.1.6.A. of the rule. The definition of “unaccounted-for-water” in the same section was amended to include a definition of “unaccounted-for water percent.” This change was made because the computation must return a percentage value so that it can be measured against the performance target of less than 15% unaccounted-for water.

The Commission also added language to establish that until January 1, 2012, DRBC’s regulatory standards for leak detection and repair (*i.e.*, measurement and control of unaccounted-for-water), set forth in Section 2.1.6 of the Water Code, remained in force. System operators who voluntarily submitted audits in a form consistent with the new methodology prior to January 1, 2012, were advised in the Commission’s comment and response document that non-revenue water volume expressed as a percentage of input volume will be treated as the equivalent of unaccounted-for-water, the measure applicable under the existing rule. The comment and response document explains that once the Water Audit method is introduced through the Delaware River Basin and a body of data is available for analysis, a more meaningful measure of system performance will be established.

A copy of the rulemaking comment and response document is available on the Commission’s web site, at <http://drbc.net>. Commission Resolution No. 2009-1 adopting the rule includes versions of the amendments as proposed in August 2008, and as finally approved by the Commission on March 11, 2009 and incorporated by reference into the *Code of Federal Regulations* effective November 20, 2009.

Substance of final rule: By Resolution No. 2009-01 on March 11, 2009, the DRBC approved amendments to its *Water Code and Comprehensive Plan* to implement a requirement for water purveyors to follow an updated water audit approach to identify and control water loss in the Delaware River Basin.

Rule Text:

DRBC RESOLUTION NO. 2009-01 AMENDS THE COMPREHENSIVE PLAN AND ARTICLE 2 OF THE WATER CODE AS SET FORTH BELOW. ADDITIONS APPEAR IN BOLD FACE TYPE. DELETIONS APPEAR IN [BOLD FACE TYPE WITHIN BRACKETS]. CHANGES NOT INCLUDED IN THE PROPOSED RULEMAKING APPEAR IN BOLD FACE TYPE WITH UNDERSCORE, EXCEPT THAT RESTORED TEXT (EXISTING RULE TEXT ORIGINALLY PROPOSED TO BE DELETED) APPEARS IN NORMAL TYPE WITH UNDERSCORE. ITALICS DENOTE EDITOR’S NOTES.

2.1.2 New and Existing Users (Resolution Nos. 76-17 and 92-2).

C. Owners of water supply systems serving the public (purveyors) seeking approval under Section 3.8 of the Compact for a new or an expanded water withdrawal shall include as part of the application a water conservation plan. The plan shall describe the various programs adopted by the purveyor to achieve maximum feasible efficiency in the use of water.

1. The water conservation plan shall, at a minimum, describe the implementation of the following programs as required by the Commission:

a. Source metering (Resolution No. 86-12);

* * *

e. An ongoing water auditing program in accordance with section 2.1.8.

* * *

2.1.6 Leak detection and repair (Resolution No. 87-6 Revised).

A. Owners of water supply systems serving the public (purveyors) in the Delaware River Basin that distribute water supplies in excess of an average of 100,000 gallons per day (gpd) during any 30-day period shall develop and undertake a systematic program to monitor and control leakage within their water supply system. Such a program shall at a minimum include: periodic surveys to monitor leakage, enumerate non-revenue water (or in instances where AWWA methodology as set forth in Section 2.1.8 below has not yet been adopted, enumerate unaccounted-for water), and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. Each purveyor’s program shall be subject to review and approval by the designated agency in the state where the system is located.

“Non-revenue water” is defined by AWWA as the sum of unbilled authorized consumption, apparent losses and real losses. “Non-revenue water percent” is defined as non-revenue water divided by the amount of water entering the distribution system times 100 percent.

“Unaccounted-for water” is defined as the amount of water entering the distribution system minus the amount of water delivered through service meters. [difference between the “metered ratio” and 100 percent. The metered ratio is the amount of water delivered through service meters] “Unaccounted-for water percent” is defined as unaccounted-for water divided by the amount of water entering the distribution system times 100 percent.

The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Health, and Pennsylvania Department of Environmental Protection.

B. Each purveyor shall strive to minimize system leakage to levels as guided by IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

[Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency, within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date of this regulation or at such earlier date as shall be fixed by the designated state agency. Each] After a purveyor has submitted to the appropriate designated agency its initial program to monitor and control leakage, the purveyor shall prepare and submit a revised and updated program [to monitor and control leakage] every three years thereafter or at such greater frequency [earlier date] as [may][shall] be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted-for or non-revenue water that is in excess of 15 percent.

C. Any project approvals hereafter granted pursuant to Section 3.8 of the DRBC Compact or any renewal of a project approval shall be subject to the provisions of this regulation.

[D. To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with each of the designated agencies. . .]

* * *

2.1.8 Water Auditing (Resolution No. 2009-1).

A. **Policy Statement.** It shall be the policy of the Commission to establish [encourage owners of water supply systems serving the public to implement] a standardized water audit methodology for owners of water supply systems serving the public to ensure accountability in the management of water resources.

B. **Voluntary Water Audit.** [For the period beginning EFFECTIVE DATE and ending] Through December 31, 2011, owners of water supply systems serving the public[,] with sources or service areas located in the Delaware River Basin[,] are encouraged to implement an annual calendar year water audit program conforming to the IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

C. **Mandatory Water Audit.** Effective January 1, 2012, the owners of each water supply system serving the public[,] with sources or ser-

vice areas located in the Delaware River Basin[.] shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

D. Mandatory Reporting, Effective January 1, 2013, “Non-revenue water” reported under section 2.50.3. (Reporting Requirements), subsection B.1.b.ii. of this Water Code shall be computed in accordance with IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance.

2.50.3 Reporting Requirements (Resolutions Nos. 2001-8 and 2009-1)
Existing subsection 2.50.3 A. (Year 2000 Reporting Requirements) in its entirety is deleted.

A[B]. Annual Reporting Requirements [for Subsequent Years]

1. Water Supply Systems Serving the Public. **[Commencing with reporting year 2001, t]** The owner(s) of each water supply system serving the public and subject to requirements under subsection 2.50.1, subsection 2.50.2, and the Ground water Protected Area for Southeastern Pennsylvania[.] shall report the following data on an annual basis to the designated agency. **[Changes to any other information required under Section A above shall also be reported. All information required under Section A above shall be completed for new withdrawals for the first year of operation.]**

a. Source Data

* * *

b. Service Area Data. The following data shall be reported separately for each county served.

i. Service Area Name(s)

ii. Total Annual Water Use by Category (MG). **[All usage shall be reported according to the following categories:]**

- Residential metered (including apartment complexes)
- Commercial metered
- Institutional metered
- Industrial metered
- Bulk Sales
- Other metered (Specify)

- **Non-revenue water, including unbilled authorized consumption, apparent losses, and real losses computed in accordance with Section 2.1.8 D. of this Water Code**

- **Unaccounted for water (defined as the amount of water entering the distribution system minus the amount of water delivered through service meters)****

- Total

2. Other Withdrawals. **[Commencing with reporting year 2001, e]** Each person, firm, corporation or other entity, except water supply systems serving the public[.] subject to requirements under subsection 2.50.2 and the Ground Water Protected Area Regulations for Southeastern Pennsylvania[.] shall report the following data on an annual basis to the designated agency. . . .

B[C]. To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director is hereby authorized to enter into administrative agreements with the following designated agencies: . . .

* * *

December 18, 2012
 Pamela M. Bush
 Commission Secretary and Assistant General Counsel

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reciprocity Requirements for Classroom Teachers

I.D. No. EDU-01-13-00012-P

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

Proposed Action: Amendment of Part 80 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305, 3001, 3004, 3006, 3007 and 3009

Subject: Reciprocity requirements for classroom teachers.

Purpose: To establish a standardized reciprocity process for the review of teaching candidates from other jurisdictions.

Text of proposed rule: 1. Paragraph (39) of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education shall be amended, effective March 27, 2013, to read as follows:

Teacher means the holder of a valid teacher’s certificate issued by the Commissioner of Education [or a valid regional credential].

2. Section 80-1.4 of the Regulations of the Commissioner of Education shall be amended, effective March 27, 2013, to read as follows:

Section 80-1.4 Required study in child abuse identification and reporting, and school violence prevention and intervention.

All candidates for a certificate or license valid for administrative or supervisory service, classroom teaching service or school service shall have completed at least two clock hours of coursework or training regarding the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of sections 3003(4) and 3004 of the Education Law. In addition, all candidates for a certificate or license valid for administrative or supervisory service, classroom teaching service or school service, who apply for a certificate or license on or after February 2, 2001, shall have completed at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-2 of this Title. [An individual making application for a provisional or an initial certificate pursuant to section 3030 of the Education Law and/or section 80-2.2(e) of this Part shall satisfy the requirements of this section upon application for the permanent or professional certificate.]

3. Paragraph (2) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education is repealed and paragraphs (3) through (6) are renumbered as paragraphs (2) through (5) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education, effective March 27, 2013.

4. Paragraph (3) of subdivision (d) of section 80-3.2 of the Regulations of the Commissioner of Education is amended, effective March 27, 2013, to read as follows:

(3) The certificate, license or credential forms for supplemental school personnel, teaching in nonregistered evening schools[, regional credential,] and internship certificate shall be those prescribed in Subpart 80-5 of this Part.

5. Paragraph (3) of subdivision (e) of section 80-3.2 of the Regulations of the Commissioner of Education is amended, effective March 27, 2013, to read as follows:

(3) The certificate, license or credential titles for supplemental school personnel, teachers of adult, community and continuing education, [regional credential,] and internship certificate shall be those prescribed in Subpart 80-5 of this Part.

6. Paragraph (1) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is repealed and a new paragraph (1) is added to subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education, effective March 27, 2013, to read as follows:

(1) *Education. The candidate shall meet the education requirement by holding a baccalaureate degree from a regionally accredited institution of higher education or a higher education institution that the commissioner deems substantially equivalent or from an institution authorized by the Regents to confer degrees and whose programs are registered by the department, and shall satisfactorily complete a program registered pursuant to section 52.21 of this Title, which leads to the certificate sought, or its equivalent.*

7. Subparagraph (i) of paragraph (2) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (i) of paragraph (2) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is added, effective March 27, 2013, to read as follows:

(i) *Education. The candidate shall meet the education requirement by satisfactorily completing an associate degree program registered pursuant to section 52.21(b)(3)(xiii) of this Title as leading to an initial certificate under option A, or its equivalent.*

8. Subclause (2) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 of the Regulations of the Commissioner of Education is repealed and subclause (3) is renumbered as subclause (2) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 of the Regulations of the Commissioner of Education, effective March 27, 2013.

9. Section 80-5.8 of the Regulations of the Commissioner of Education is repealed and a new section 80-5.8 is added, effective March 27, 2013, to read as follows:

Section 80-5.8 Endorsement of certificates for service as a teacher in the classroom teaching service.

(a) *Teacher in the classroom teaching service.*

(1) *The commissioner may endorse the certificate or an equivalent authorization to practice from another state or territory of the United States or the District of Columbia for service as a teacher in the classroom teaching service, provided that the candidate meets the following requirements:*

(i) *The candidate shall hold a valid certificate or equivalent authorization to practice from another state or territory of the United States or the District of Columbia that is equivalent to the title and type of the certificate sought.*

(ii) *The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, and school violence prevention and intervention; and section 80-1.1 relating to a criminal history check.*

(iii) *The candidate shall have either:*

(a) *completed a teacher education program from a regionally accredited institution of higher education or an equivalently approved higher education institution; or*

(b) (i) *hold a baccalaureate degree or higher from a regionally accredited institution of higher education or an equivalently approved higher education institution, but have not completed a teacher education program; and*

(ii) *have at least two years of satisfactory experience in a public school (grades N-12) in another state or territory of the United States or the District of Columbia in a position that would have required the equivalent of an initial or professional certificate as a teacher in the classroom teaching service for employment in New York State and while under a certificate issued by such other state authorizing such service, which experience must have been completed within 10 years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner.*

(iv) *Examination. The candidate shall meet the examination requirements for the title and type of certificate sought.*

(2) *Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued an initial certificate as a teacher in the classroom teaching service pursuant to the requirements of this Part.*

(3) *If a candidate meets all of the endorsement requirements in paragraph (1) of this subdivision, except the examination requirements required for an initial certificate, the candidate shall be issued a two-year nonrenewable conditional initial certificate pursuant to section 80-5.17 of this Subpart.*

10. Section 80-5.11 of the Regulations of the Commissioner of Education is amended, effective March 27, 2013, to read as follows:

Section 80-5.11. Certificate of qualification.

The commissioner shall not issue certificates of qualification with issuance dates on or after September 2, 1998. Holders of certificates of qualification with issuance dates prior to September 2, 1998 may retain the certificate as evidence that the holder is eligible for a provisional certificate. At the commencement of regular employment in any public school in the State, during the period of validity of the certificate of qualification, the holder shall deliver such certificate to the chief school officer of the district offering employment, who shall forward such certificate to the commissioner for the issuance of a provisional certificate. The certificate of qualification is evidence that the holder is eligible for employment as a substitute teacher. Permanent certification will be issued upon completion of the requirements for permanent certification in effect at the time of issuance of the certificate of qualification [or regional certificate].

11. Section 80-5.17 of the Regulations of the Commissioner of Education is amended, effective March 27, 2013, to read as follows:

Section 80-5.17 Conditional initial certificate.

(a) Conditional initial certificate in the classroom teaching service. For initial certification in a certificate title in the classroom teaching service for which this Part requires completion of an examination requirement, the commissioner may issue to a candidate who has not met such examination requirement a two-year nonrenewable conditional initial certificate, notwithstanding that the examination requirement has not been met, and deem that all other requirements for the initial teacher's certificate in the certificate title in the classroom teaching service have been met, provided that the candidate holds a valid regular teacher's certificate or an authorization to practice that the commissioner deems equivalent in the same or an equivalent title by [a state which has contracted with the State of New York pursuant to section 3030 of the Education Law, the interstate agreement on the qualifications of educational personnel, or] another state or [country] or territory of the United States pursuant to section 80-5.8 of this Subpart [provided that the commissioner determines that the teacher's certificate issued by the other state or country evidences knowledge, skills

and abilities comparable to those required for certification in New York State].

(b) Conditional initial certificate in the title school building leader. The commissioner may issue a two-year nonrenewable conditional initial certificate in the title school building leader to a candidate who applies for the certificate after September 1, 2006 and meets the following requirements:

(1) . . .

(2) the candidate holds a valid regular certificate or an authorization to practice that the commissioner deems equivalent in an equivalent title to the title school building leader issued by [a state which has contracted with the State of New York pursuant to section 3030 of the Education Law, the interstate agreement on qualifications of educational personnel, or] another state or country provided that the commissioner determines that the certificate issued by the other state or country evidences knowledge, skills and abilities comparable to those required for certification in New York State.

(c) . . .

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

Subdivisions (1) and (2) of section 3007 of the Education Law provides that the Commissioner may in his discretion endorse a diploma issued by a teachers college of another state and/or a certificate issued by the chief educational officer or state board of another state, provided that certain training requirements are met.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by establishing the reciprocity requirements for out-of-state candidates seeking certification as a teacher in New York State.

3. NEEDS AND BENEFITS:

Interstate Agreement

Pursuant to section 3030 of the Education Law, New York State was a party to the Interstate Agreement on the Qualifications of Educational Personnel until 2010. This compact was created through the National Association of State Directors of Teacher Education and Certification (NASDTEC). Through this agreement, a State could enter into an agreement with another state for the acceptance of educational personnel where the other state's programs of education, certification standards or other qualifications were sufficiently comparable to the primary state. New York State was a party to this agreement until 2010, when the agreement expired. In 2010, NASDTEC asked each state to undergo a review of the requirements of other states' teacher education programs and licensure requirements to determine if they were comparable to their state before entering into a new agreement. At that time it was determined that the Office of Teaching Initiatives ("OTI") did not have the resources to review every other state's requirements and/or to continue to review changes made to such requirements over the period of the agreement. Instead, OTI decided to create a standardized reciprocity process for the review of candidates coming from another state.

Currently, the OTI has developed a reciprocity process based in large part on the requirements of the prior interstate compact. As part of this process the OTI looks at the applicant's educational background, his/her experience as a teacher and the type of certificate he/she holds from the other state.

Under the current reciprocity standards, if an applicant for a classroom teaching certificate holds a certificate equivalent to our initial/provisional, and three years of experience under that certificate in the jurisdiction of issuance and has graduated from a traditional education program, he/she can be approved for reciprocity. At this point, he/she will receive a conditional initial certificate, which allows the teacher to teach in NYS for two years during which time the candidate is required to pass the certification examinations.

However, over the past 10 years, teacher preparation programs have changed. For example, teachers often graduate from what are commonly known as alternative education programs. Under our current practice, graduates of these alternative education programs would not qualify for reciprocity. Instead we would require the person to go through the individual evaluation pathway, which is both time consuming for our staff and frustrating for the applicant.

In addition, over the past several years, New York has approved its own alternative pathway programs which allow students to teach under a Transitional B or C certificate while they complete their educational program requirements.

There are also individuals who have completed an education program from another state who do not have their teaching certificate, or they have a certificate but they did not graduate from an education program. These individuals currently apply through our individual evaluation pathway.

In order to address the various scenarios that exist in a more efficient and transparent manner, we recommend amending the Commissioner's Regulations, as set forth below, to establish clear and transparent requirements for the reciprocity of teachers seeking certification in this State. We would like to allow teachers that completed similar teacher education programs in other jurisdictions to be able to get certified in New York without additional educational training.

Proposed Reciprocity Requirements

1. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service and has completed a teacher education program from an out-of-state regionally accredited institution of higher education or a higher education institution that the Commissioner deems substantially equivalent, and he/she has received a satisfactory score on all required New York State teacher certification examinations, workshops and fingerprinting, the applicant will be issued an initial certificate.

2. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia; completes the required workshops, fingerprinting and receives a satisfactory passing score on New York State teacher certification examinations, the candidate will be issued an initial certificate if he/she meets the following requirements:

holds a baccalaureate degree or higher from a regionally accredited institution of higher education or an equivalently approved higher education institution, but has not completed a teacher education program; and the candidate has at least two years of satisfactory teaching experience in a public or non-public school (grades N-12) in another state or territory of the United States or the District of Columbia, within ten years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner.

3. If a teacher comes from another state and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia and meets all the requirements of # 1 or 2 above, except the examination requirements, the candidate shall be issued a conditional initial certificate, which will allow the candidate to teach in New York State for two years in order to complete the required certification examinations. The initial certificate will then be issued upon receipt of a satisfactory score on all required New York State teacher certification examinations.

4. COSTS:

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

Uniform certification standards must be applied throughout the State to ensure the consistency of teacher qualifications across the State. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the March meeting and will become effective on March 27, 2013.

Regulatory Flexibility Analysis

(a) Small businesses:

The purpose of the proposed rule is to establish the requirements for reciprocity for out-of-state teachers who seek to become certified in New York State. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small business. Because it is evident from the nature of the amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

1. EFFECT OF RULE:

The rule changes the reciprocity requirements for out-of-state candidates seeking to become certified in New York State.

2. COMPLIANCE REQUIREMENTS:

Interstate Agreement

Pursuant to section 3030 of the Education Law, New York State was a party to the Interstate Agreement on the Qualifications of Educational Personnel until 2010. This compact was created through the National Association of State Directors of Teacher Education and Certification (NASDTEC). Through this agreement, a State could enter into an agreement with another state for the acceptance of educational personnel where the other state's programs of education, certification standards or other qualifications were sufficiently comparable to the primary state. New York State was a party to this agreement until 2010, when the agreement expired. In 2010, NASDTEC asked each state to undergo a review of the requirements of other states' teacher education programs and licensure requirements to determine if they were comparable to their state before entering into a new agreement. At that time it was determined that the Office of Teaching Initiatives ("OTI") did not have the resources to review every other state's requirements and/or to continue to review changes made to such requirements over the period of the agreement. Instead, OTI decided to create a standardized reciprocity process for the review of candidates coming from another state.

Currently, the OTI has developed a reciprocity process based in large part on the requirements of the prior interstate compact. As part of this process the OTI looks at the applicant's educational background, his/her experience as a teacher and the type of certificate he/she holds from the other state.

Under the current reciprocity standards, if an applicant for a classroom teaching certificate holds a certificate equivalent to our initial/provisional, and three years of experience under that certificate in the jurisdiction of issuance and has graduated from a traditional education program, he/she can be approved for reciprocity. At this point, he/she will receive a conditional initial certificate, which allows the teacher to teach in NYS for two years during which time the candidate is required to pass the certification examinations.

However, over the past 10 years, teacher preparation programs have changed. For example, teachers often graduate from what are commonly known as alternative education programs. Under our current practice, graduates of these alternative education programs would not qualify for reciprocity. Instead we would require the person to go through the individual evaluation pathway, which is both time consuming for our staff and frustrating for the applicant.

In addition, over the past several years, New York has approved its own alternative pathway programs which allow students to teach under a Transitional B or C certificate while they complete their educational program requirements.

There are also individuals who have completed an education program from another state who do not have their teaching certificate, or they have a certificate but they did not graduate from an education program. These individuals currently apply through our individual evaluation pathway.

In order to address the various scenarios that exist in a more efficient and transparent manner, we recommend amending the Commissioner's Regulations, as set forth below, to establish clear and transparent requirements for the reciprocity of teachers seeking certification in this State. We

would like to allow teachers that completed similar teacher education programs in other jurisdictions to be able to get certified in New York without additional educational training.

Proposed Reciprocity Requirements

1. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service and has completed a teacher education program from an out-of-state regionally accredited institution of higher education or a higher education institution that the Commissioner deems substantially equivalent, and he/she has received a satisfactory score on all required New York State teacher certification examinations, workshops and fingerprinting, the applicant will be issued an initial certificate.

2. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia; completes the required workshops, fingerprinting and receives a satisfactory passing score on New York State teacher certification examinations, the candidate will be issued an initial certificate if he/she meets the following requirements:

holds a baccalaureate degree or higher from a regionally accredited institution of higher education or an equivalently approved higher education institution, but has not completed a teacher education program; and the candidate has at least two years of satisfactory teaching experience in a public or non-public school (grades N-12) in another state or territory of the United States or the District of Columbia, within ten years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner.

3. If a teacher comes from another state and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia and meets all the requirements of # 1 or 2 above, except the examination requirements, the candidate shall be issued a conditional initial certificate, which will allow the candidate to teach in New York State for two years in order to complete the required certification examinations. The initial certificate will then be issued upon receipt of a satisfactory score on all required New York State teacher certification examinations.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional compliance costs on local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional technological requirements on school districts or BOCES.

6. MINIMIZING ADVERSE IMPACT:

Uniform certification standards must be applied throughout the State to ensure the consistency of teacher qualifications across the State. Therefore, no alternatives were considered.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the development of the proposed amendment have been solicited from district superintendents across the State and the Big 5 city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

Interstate Agreement

Pursuant to section 3030 of the Education Law, New York State was a party to the Interstate Agreement on the Qualifications of Educational Personnel until 2010. This compact was created through the National Association of State Directors of Teacher Education and Certification (NASDTEC). Through this agreement, a State could enter into an agreement with another state for the acceptance of educational personnel where the other state's programs of education, certification standards or other qualifications were sufficiently comparable to the primary state. New York State was a party to this agreement until 2010, when the agreement expired. In 2010, NASDTEC asked each state to undergo a review of the requirements of other states' teacher education programs and licensure requirements to determine if they were comparable to their state before

entering into a new agreement. At that time it was determined that the Office of Teaching Initiatives ("OTI") did not have the resources to review every other state's requirements and/or to continue to review changes made to such requirements over the period of the agreement. Instead, OTI decided to create a standardized reciprocity process for the review of candidates coming from another state.

Currently, the OTI has developed a reciprocity process based in large part on the requirements of the prior interstate compact. As part of this process the OTI looks at the applicant's educational background, his/her experience as a teacher and the type of certificate he/she holds from the other state.

Under the current reciprocity standards, if an applicant for a classroom teaching certificate holds a certificate equivalent to our initial/provisional, and three years of experience under that certificate in the jurisdiction of issuance and has graduated from a traditional education program, he/she can be approved for reciprocity. At this point, he/she will receive a conditional initial certificate, which allows the teacher to teach in NYS for two years during which time the candidate is required to pass the certification examinations.

However, over the past 10 years, teacher preparation programs have changed. For example, teachers often graduate from what are commonly known as alternative education programs. Under our current practice, graduates of these alternative education programs would not qualify for reciprocity. Instead we would require the person to go through the individual evaluation pathway, which is both time consuming for our staff and frustrating for the applicant.

In addition, over the past several years, New York has approved its own alternative pathway programs which allow students to teach under a Transitional B or C certificate while they complete their educational program requirements.

There are also individuals who have completed an education program from another state who do not have their teaching certificate, or they have a certificate but they did not graduate from an education program. These individuals currently apply through our individual evaluation pathway.

In order to address the various scenarios that exist in a more efficient and transparent manner, we recommend amending the Commissioner's Regulations, as set forth below, to establish clear and transparent requirements for the reciprocity of teachers seeking certification in this State. We would like to allow teachers that completed similar teacher education programs in other jurisdictions to be able to get certified in New York without additional educational training.

Proposed Reciprocity Requirements

1. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service and has completed a teacher education program from an out-of-state regionally accredited institution of higher education or a higher education institution that the Commissioner deems substantially equivalent, and he/she has received a satisfactory score on all required New York State teacher certification examinations, workshops and fingerprinting, the applicant will be issued an initial certificate.

2. If a teacher comes from another State and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia; completes the required workshops, fingerprinting and receives a satisfactory passing score on New York State teacher certification examinations, the candidate will be issued an initial certificate if he/she meets the following requirements:

holds a baccalaureate degree or higher from a regionally accredited institution of higher education or an equivalently approved higher education institution, but has not completed a teacher education program; and the candidate has at least two years of satisfactory teaching experience in a public or non-public school (grades N-12) in another state or territory of the United States or the District of Columbia, within ten years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner.

3. If a teacher comes from another state and holds a valid certificate or authorization to practice that the Commissioner deems equivalent to the title and type of a teacher in the classroom teaching service, as appropriate for that certificate title, by another state or territory of the United States or the District of Columbia and meets all the requirements of # 1 or 2 above, except the examination requirements, the candidate shall be issued a conditional initial certificate, which will allow the candidate to teach in New York State for two years in order to complete the required certification examinations. The initial certificate will then be issued upon receipt of a satisfactory score on all required New York State teacher certification examinations.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

Uniform certification standards must be applied throughout the State to ensure the consistency of teacher qualifications across the State. Therefore, no alternatives were considered.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

The proposed amendment establishes the reciprocity requirements for out-of-state candidates seeking to be certified in New York State. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Sale of Black Bass

I.D. No. ENV-18-12-00002-A

Filing No. 1239

Filing Date: 2012-12-13

Effective Date: 2013-01-02

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

Action taken: Repeal of section 155.1; and addition of new section 155.1 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0507-01, 11-13-19 and 11-1909-02

Subject: Sale of Black Bass.

Purpose: Expanding the sale of black bass for human consumption purposes.

Text or summary was published in the May 2, 2012 issue of the Register, I.D. No. ENV-18-12-00002-P.

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

Revised rule making(s) were previously published in the State Register on September 5, 2012.

Text of rule and any required statements and analyses may be obtained from: Phil Hulbert, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8894, email: pxhulber@gw.dec.state.ny.us

Assessment of Public Comment

The following comments were received by the Department of Environmental Conservation (DEC or department) during the public comment period initiated by the filing of a revised rule making (NRR). Some comments have been grouped together because they are related or for convenience in providing an efficient response. The department's response is provided for each comment or group of comments.

Comment: The proposed regulation does not adequately protect our black bass natural resources and will foster development of a black market for wild black bass and those fish will be illegally sold. The paperwork requirements are not adequate as they do not require the tracking of individual fish.

Response: The record keeping requirements incorporated into the proposed regulation are intended to aid enforcement of the regulation and limit the entry of largemouth bass into the market for food. Individuals looking to sell wild fish illegally will not have the required records that trace farm reared bass back to a licensed black bass hatchery. Enforcement efforts will include checking to make sure that sellers of black bass can produce documentation indicating the origin from a lawful source. DEC Law Enforcement personnel have indicated that the current measures contained in the proposed rule making are acceptable for enforcement purposes (with the recognition that the individual tagging of fish is not considered practical and a viable requirement). Resources will be directed to enforcement of the proposed regulations.

With compliance, expanding the opportunity for farm reared bass to be sold should not impact wild bass populations.

Comment: New York waters have health advisories limiting/restricting the amount of fish individuals (particularly children, pregnant women) can safely consume. An arising black market will lead to individuals consuming fish with high levels of heavy metals (an example), thus putting their health at risk.

Response: The department does not anticipate that large numbers of angler-caught wild largemouth bass will enter food markets. Additionally, most waters in New York have fish consumption advisories that follow the general recommendation to eat up to four meals per month.

Comment: Allowing for the ability to harvest and sell bass will have an overwhelming negative impact on the state's population of this species.

Response: The sale of wild black bass will continue to be prohibited, and DEC does not anticipate wild populations will be depleted if the proposed regulations are adopted. It is already legal for hatchery reared black bass to be sold for stocking or for food purposes in New York by hatchery license holders. Such sales must be direct to retail customers or to other black bass hatchery license holders. Under the proposed regulations, hatchery reared black bass may also be sold by wholesale distributors, with the limitation that only largemouth bass may be sold by wholesale distributors for entry into the food markets and for human consumption. As a result of this rule making no allowances will be provided for the sale of smallmouth bass for human consumption, including the current limited opportunity of direct retail sale (with no resale) by licensed hatcheries.

Comment: DNA testing of bass shipments and bass inventories of purchasers should be required to identify hatchery versus wild caught fish.

Response: The proposed regulation authorizes department staff to enter and inspect a black bass facility and take representative samples of fish for the purpose of ascertaining compliance or noncompliance. Specific techniques that would be used to ascertain compliance are not identified in the proposed regulation, thus the department would have the flexibility to use any technology deemed useful and appropriate.

Department of Financial Services

EMERGENCY RULE MAKING

Registration and Financial Responsibility Requirements for Mortgage Loan Servicers

I.D. No. DFS-01-13-00003-E

Filing No. 1238

Filing Date: 2012-12-12

Effective Date: 2012-12-13

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

Action taken: Addition of Part 418 and Supervisory Procedures MB 109 and 110 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: Chapter 472 of the Laws of 2008, which requires mortgage loan servicers to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), went into effect on July 1, 2009. These regulations implement the registration requirement and inform servicers of the details of the registration process so as to permit applicants to prepare, submit and review applications for registrations on a timely basis.

Excluding persons servicing loans made under the Power New York Act from the mortgage loan servicer rules is necessary to facilitate the immediate implementation of such loan program so that the anticipated energy efficiency benefits can be realized without delay.

Subject: Registration and Financial Responsibility Requirements for Mortgage Loan Servicers.

Purpose: To require that persons or entities which service mortgage loans on residential real property on or after July 1, 2009 be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 418.1 summarizes the scope and application of Part 418. It notes that Sections 418.2 to 418.11 implement

the requirement in Article 12-D of the Banking Law that certain mortgage loan servicers (“servicers”) be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks), while Sections 418.12 and 418.13 set forth financial responsibility requirements that are applicable to both registered and exempt servicers. [Section 418.14 sets forth the transitional rules.]

Section 418.2 implements the provisions in Section 590(2)(b-1) of the Banking Law requiring registration of servicers and exempting mortgage bankers, mortgage brokers, and most banking and insurance companies, as well as their employees. Servicing loans made pursuant to the Power New York Act of 2011 is excluded. The Superintendent is authorized to approve other exemptions.

Section 418.3 contains a number of definitions of terms that are used in Part 418, including “Mortgage Loan”, “Mortgage Loan Servicer”, “Third Party Servicer” and “Exempted Person”.

Section 418.4 describes the requirements for applying for registration as a servicer.

Section 418.5 describes the requirements for a servicer applying to open a branch office.

Section 418.6 covers the fees for application for registration as a servicer, including processing fees for applications and fingerprint processing fees.

Section 418.7 sets forth the findings that the Superintendent must make to register a servicer and the procedures to be followed upon approval of an application for registration. It also sets forth the grounds upon which the Superintendent may refuse to register an applicant and the procedure for giving notice of a denial.

Section 418.8 defines what constitutes a “change of control” of a servicer, sets forth the requirements for prior approval of a change of control, the application procedure for such approval and the standards for approval. The section also requires servicers to notify the Superintendent of changes in their directors or executive officers.

Section 418.9 sets forth the grounds for revocation of a servicer registration and authorizes the Superintendent, for good cause or where there is substantial risk of public harm, to suspend a registration for 30 days without a hearing. The section also provides for suspension of a servicer registration without notice or hearing upon non-payment of the required assessment. The Superintendent can also suspend a registration when a servicer fails to file a required report, when its surety bond is cancelled, or when it is the subject of a bankruptcy filing. If the registrant cures the deficiencies its registration can be reinstated. The section further provides that in all other cases, suspension or revocation of a registration requires notice and a hearing.

The section also covers the right of a registrant to surrender its registration, as well as the effect of revocation, termination, suspension or surrender of a registration on the obligations of the registrant. It provides that registrations will remain in effect until surrendered, revoked, terminated or suspended.

Section 418.10 describes the power of the Superintendent to impose fines and penalties on registered servicers.

Section 418.11 sets forth the requirement that applicants demonstrate five years of servicing experience as well as suitable character and fitness.

Section 418.12 covers the financial responsibility and other requirements that apply to applicants for servicer registration, registered servicers and exempted persons (other than insured depository institutions to which Section 418.13 applies). The financial responsibility requirements include a required net worth (as defined in the section) of at least \$250,000 plus 1/4 % of total loans serviced or, for a Third Party Servicer, 1/4 of 1% of New York loans serviced; (2) a corporate surety bond of at least \$250,000 and (3) a Fidelity and E&O bond in an amount that is based on the volume of New York mortgage loans serviced, with a minimum of \$300,000.

The Superintendent is empowered to waive, reduce or modify the financial responsibility requirements for certain servicers who service an aggregate amount of loans not exceeding \$4,000,000.

Section 418.13 exempts from the otherwise applicable net worth and surety bond requirements, but not the Fidelity and E&O bond requirements, entities that are subject to the capital requirements applicable to insured depository institutions and that are considered at least adequately capitalized.

Section 418.14 provides a transitional period for registration of mortgage loan servicers. A servicer doing business in this state on June 30, 2009 which files an application for MLS registration by July 31, 2009 will be deemed in compliance with the registration requirement until notified that its application has been denied. A person who is required to register as a servicer solely because of the changes in the provisions of the rule regarding use of third party servicers which became effective on August 23, 2011 and who files an application for registration within 30 days thereafter will not be required to register until six months from the effective date of the amendment or until the application is denied, whichever is earlier.

Section 109.1 defines a number of terms that are used in the Supervisory Procedure.

Section 109.2 contains a general description of the process for registering as a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

Section 109.3 lists the documents to be included in an application for servicer registration, including the required fees. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent of Financial Services (formerly the Superintendent of Banks) can require additional information or an in person conference, and that the applicant can submit additional pertinent information.

Section 109.4 describes the information and documents required to be submitted as part of an application for registration as a servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, and other documents, such as fingerprint cards and background reports.

Section 110.1 defines a number of terms that are used in the Supervisory Procedure.

Section 110.2 contains a general description of the process for applying for approval of a change of control of a mortgage loan servicer (“servicer”) and contains information about where the necessary forms and instructions may be found.

Section 110.3 lists the documents to be included in an application for approval of a change of control of a servicer, including the required fees. It sets forth the time within which the Superintendent of Financial Services (formerly the Superintendent of Banks) must approve or disapprove an application. It also sets forth the execution and attestation requirements for applications. The section makes clear that the Superintendent can require additional information or an in person conference, and that the applicant can submit additional pertinent information. Last, the section lists the types of changes in a servicer’s operations resulting from a change of control which should be notified to the Department of Financial Services (formerly the Banking Department).

Section 110.4 describes the information and documents required to be submitted as part of an application for approval of a change of control of servicer. This includes various items of information about the applicant and its regulatory history, if any, information demonstrating continuing compliance with the applicable financial responsibility and experience requirements, information about the organizational structure of the applicant, a description of the acquisition and other documents regarding the applicant, such as fingerprint cards and background reports.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 11, 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 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Subprime Lending Reform Law (Ch. 472, Laws of 2008, hereinafter, the “Subprime Law”), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers (MLS) are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Subprime Law to add the definitions of “mortgage loan servicer” and “servicing mortgage loans”. (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). The registration requirements do not apply to an “exempt organization,” licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. (Note that under

Section 89 of Part A of Chapter 62 of the Laws of 2011, the functions and powers of the banking board have been transferred to the Superintendent.)

New Paragraph (d) was added to Subsection (5) of Section 590 by the Subprime Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Subprime Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Subprime Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Subprime Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Subprime Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Subprime Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Subprime Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for MLS registration applications and for MLS branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative objectives.

The Subprime Law is intended to address various problems related to residential mortgage loans in this State. The Subprime Law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Subprime Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

The regulations implement the first component of the mortgage servicing statute - the registration of mortgage servicers. In doing so, the rule utilizes the authority provided to the Superintendent to set standards for the registration of such entities. For example, the rule requires that a potential loan servicer would have to provide, under Sections 418.11 to 418.13 of the proposed regulations, evidence of their character and fitness to engage in the servicing business and demonstrate to the Superintendent their financial responsibility. The rule also utilizes the authority provided by the Legislature to revoke, suspend or otherwise terminate a registration or to fine or penalize a registered mortgage loan servicer.

Consistent with this requirement, the rule authorizes the Superintendent to refuse to register an applicant if he/she shall find that the applicant lacks the requisite character and fitness, or any person who is a director, officer, partner, agent, employee, substantial stockholder of the applicant has been convicted of certain felonies. These are the same standards as are applicable to mortgage bankers and mortgage brokers in New York. (See Section 418.7.)

Further, in carrying out the Legislature's mandate to regulate the mortgage servicing business, Section 418.8 sets out certain application requirements for prior approval of a change in control of a registered mortgage loan servicer and notification requirements for changes in the entity's executive officers and directors. Collectively, these various provisions

implement the intent of the Legislature to register and supervise mortgage loan servicers.

The Department has separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

3. Needs and benefits.

The Subprime Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry. It affected a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Previously, the Department of Financial Services (formerly the Banking Department) regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also may act as agents for owners of mortgages in negotiations relating to modifications. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; and erroneously force-placing insurance when borrowers already have insurance.

While minimum standards for the business conduct of servicers is the subject of another emergency regulation which has been promulgated by the Department. (3 NYCRR Part 419) Section 418.2 makes it clear that persons exempted by from the registration requirement must notify the Department that they are servicing mortgage loans and must otherwise comply with the regulations.

As noted above, these regulations relate to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It is intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers.

Further, consumers in this state will also benefit under these regulations because in the event there is an allegation that a mortgage servicer is involved in wrongdoing and the Superintendent finds that there is good cause, or that there is a substantial risk of public harm, he or she can suspend such mortgage servicer for 30 days without a hearing. And in other cases, he or she can suspend or revoke such mortgage servicer's registration after notice and a hearing. Also, the requirement that servicers meet minimum financial standards and have performance and other bonds will act to ensure that consumers are protected.

As noted above, the MLS regulations are divided into two parts. The Department had separately adopted emergency regulations dealing with business conduct and consumer protection requirements for MLSs. (3 NYCRR Part 419).

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to MLSs.

Under Section 418.2, a person servicing loans made under the Power New York Act of 2011 will not thereby be considered to be engaging in the business of servicing mortgage loans. Consequently, a person would not be subject to the rules applicable to MLSs by reason of servicing such loans.

4. Costs.

The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The amount of the application fee for MLS registration and for an MLS branch application is \$3,000.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System are set by that body. MLSs will also incur administrative costs associated with preparing applications for registration.

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and, through the timely response to consumers' inquiries, should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for potential mortgage loan servicers to apply for registration electronically through the National Mortgage Licensing System and Registry (NMLSR) - a national system, which currently facilitates the application process for mortgage brokers, bankers and loan originators. Therefore, the application process is virtually paperless; however, a limited number of documents, including fingerprints where necessary, would have to be submitted to the Department in paper form.

The specific procedures that are to be followed in order to apply for registration as a mortgage loan servicer are detailed in Supervisory Procedure MB 109.

7. Duplication.

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

An exemption was created under Section 418.13, from the otherwise applicable net worth and surety bond requirements, for entities that are subject to the capital requirements applicable to insured depository institutions and are considered adequately capitalized.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to register mortgage loan servicers while at the same time avoiding overly complex and restrictive rules that would have imposed unnecessary burdens on the industry. The Department is not aware of any alternative that is available to the instant regulations. The Department also has been cognizant of the possible burdens of this regulation, and it has accordingly concluded that an exemption from the registration requirement for persons or entities that are involved in a de minimis amount of servicing would address the intent of the statute without imposing undue burdens those persons or entities.

The procedure for suspending servicers that violate certain financial responsibility or customer protection requirements, which provides a 90-day period for corrective action, during which there can be an investigation and hearing on the existence of other violations, provides flexibility to the process of enforcing compliance with the statutory requirements.

9. Federal standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies. However, although not a registration process, in order for any mortgage loan servicer to service loans on behalf of certain federal instrumentalities such servicers have to demonstrate that they have specific amounts of net worth and have in place Fidelity and E&O bonds.

These regulations exceed those minimum standards, in that, a mortgage loan servicer will now have to demonstrate character and general fitness in order to be registered as a mortgage loan servicer. In light of the important role of a servicer - collecting consumers' money and acting as agents for mortgagees in foreclosure transactions - the Department believes that it is imperative that servicers be required to meet this heightened standard.

10. Compliance schedule.

The emergency regulations will become effective on September 17, 2012. Similar emergency regulations have been in effect since July 1, 2009.

The Department expects to approve or deny applications within 90 days of the Department's receipt (through NMLSR) of a completed application.

A transitional period is provided for mortgage loan servicers which were doing business in this state on June 30, 2009 and which filed an application for registration by July 31, 2009. Such servicers will be deemed in compliance with the registration requirement until notified by the Superintendent that their application has been denied.

Additionally, the version of Part 418 adopted on an emergency basis effective August 5, 2011 requires holders of mortgage servicing rights to register as mortgage loans servicers even where they have sub-contracted servicing responsibilities to a third-party servicer. Such servicers were given until October 15, 2011 to file an application for registration.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The emergency rule will not have any impact on local governments. It is estimated that there are approximately 120 mortgage loan servicers in the state which are not mortgage bankers, mortgage brokers or exempt organizations, and which are therefore required to register under the Subprime Lending Reform Law (Ch. 472, Laws of 2008) (the "Subprime Law"). Of these, it is estimated that a very few of the remaining entities will be deemed to be small businesses.

2. Compliance Requirements:

The provisions of the Subprime Law relating to mortgage loan servicers

has two main components: it requires the registration by the Department of Financial Services (formerly the Banking Department) of servicers who are not mortgage bankers, mortgage brokers or exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Subprime Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Subprime Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. The emergency MLS Registration Regulations here adopted implement that statutory requirement by providing a procedure whereby MLSs can apply to be registered and standards and procedures for the Department to approve or deny such applications. The emergency regulations also set forth financial responsibility standards applicable to applicants for MLS registration, registered MLSs and servicers which are exempted from the registration requirement.

Additionally, the regulations set forth standards and procedures for Department action on applications for approval of change of control of an MLS. Finally, the emergency regulations set forth standards and procedures for, suspension, revocation, expiration, termination and surrender of MLS registrations, as well as for the imposition of fines and penalties on MLSs.

3. Professional Services:

None.

4. Compliance Costs:

Applicants for mortgage loan servicer registration will incur administrative costs associated with preparing applications for registration. Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations. Registration fees of \$3000, plus fees for fingerprint processing and participation in the National Mortgage Licensing System and Registry (NMLS) will be required of non-exempt servicers.

5. Economic and Technological Feasibility:

The emergency rule-making should impose no adverse economic or technological burden on mortgage loan servicers who are small businesses. The NMLS is now available. This technology will benefit registrants by saving time and paperwork in submitting applications, and will assist the Department by enabling immediate tracking, monitoring and searching of registration information; thereby protecting consumers.

6. Minimizing Adverse Impacts:

The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLS, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

As noted above, most servicers are not small businesses. As regards servicers that are small businesses and not otherwise exempted, the regulations give the Superintendent of Financial Services (formerly the Superintendent of Banks) the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

7. Small Business and Local Government Participation:

Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Approximately 70 mortgage loan servicers have been registered by the Department of Financial Services or have applied for registration. Very few of these entities operate in rural areas of New York State and of those, most are individuals that do a de minimis business. As discussed below, the Superintendent can modify the requirements of the regulation in such cases.

Compliance Requirements. Mortgage loan servicers in rural areas which are not mortgage bankers, mortgage brokers or exempt organizations must be registered with the Superintendent to engage in the business of mortgage loan servicing. An application process will be established requiring a MLS to apply for registration electronically and to submit additional

background information and fingerprints to the Mortgage Banking unit of the Department.

MLSs are required to meet certain financial responsibility requirements based on their level of business. The regulations authorize the Superintendent of Financial Services (formerly the Superintendent of Banks) to reduce or waive the otherwise applicable financial responsibility requirements in the case of MLSs which service not more than \$4,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden which those requirements might otherwise impose on entities operating in rural areas.

Costs. The mortgage business will experience some increased costs as a result of the fees associated with MLS registration. The application fee for MLS registration will be \$3,000. The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry ("NMLSR") are set by that body. Applicants for mortgage loan servicer registration will also incur administrative costs associated with preparing applications for registration.

Applicants, registered MLSs and mortgage loan servicers exempted from the registration requirement may incur costs in complying with the financial responsibility regulations.

Minimizing Adverse Impacts. The regulations minimize the costs and burdens of the registration process by utilizing the internet-based NMLSR, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses an on-line application form for servicer registration. A common form will be accepted by New York and the other participating states.

Of the servicers which operate in rural areas, it is believed that most are mortgage bankers, mortgage brokers or exempt organizations. Additionally, in the case of servicers that operate in rural areas and are not otherwise exempted, the Superintendent has the authority to reduce, waive or modify the financial responsibility requirements for individuals that do a de minimis amount of servicing.

Rural Area Participation. Industry representatives have participated in outreach programs regarding regulation of servicers. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. In response to comments received regarding earlier versions of this regulation, the Department has modified the financial responsibility requirements. The revised requirements should generally be less burdensome for mortgage loan servicers, particularly smaller servicers and those located in rural areas.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Subprime Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans to be registered with the Superintendent of Financial Services (formerly the Superintendent of Banks). This emergency regulation sets forth the application, exemption and approval procedures for registration as a Mortgage Loan servicer (MLS), as well as financial responsibility requirements for applicants, registrants and exempted persons. The regulation also establishes requirements with respect to changes of officers, directors and/or control of MLSs and provisions with respect to suspension, revocation, termination, expiration and surrender of MLS registrations.

The requirement to comply with the emergency regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. Many of the larger entities engaged in the mortgage loan servicing business are already subject to oversight by the Department of Financial Services (formerly the Banking Department) and exempt from the new registration requirement. Additionally, the regulations give the Superintendent the authority to reduce, waive or modify the financial responsibility requirements for entities that do a de minimis amount of servicing.

The registration process itself should not have an adverse effect on employment. The regulations require the use of the internet-based National Mortgage Licensing System and Registry, developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for servicer registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to the nature and purpose of the statutory registration requirement rather than the provisions of the emergency regulations.

Department of Health

EMERGENCY RULE MAKING

Authority to Collect Pharmacy Acquisition Cost

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

Filing No. 1248

Filing Date: 2012-12-18

Effective Date: 2012-12-18

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

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

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

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The change to SSL section 367-a, which incorporates the use of Average Acquisition Cost (AAC) in the drug reimbursement methodology takes effect April 1, 2011. Without actual acquisition cost data, the Department is unable to move forward with development of AAC. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file this regulation on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions.

Subject: Authority to Collect Pharmacy Acquisition Cost.

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

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by sections 201(1)(v) and 206 of the Public Health Law, sections 363-a(2) and 367-a(9)(b) of the Social Services Law and section 111(t) of Part H of Chapter 59 of the Laws of 2011, section 505.3 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows, to be effective upon filing with the Department of State:

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-40-12-00003-P, Issue of October 3, 2012. The emergency rule will expire February 15, 2013.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

On April 1, 2011, the Legislature and Medicaid Redesign Team adopted

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

Needs and Benefits:

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

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

COSTS:

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

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

Costs to State and Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

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

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

Compliance Requirements:

Small businesses will be required to identify the acquisition cost of drugs and report that cost to the Department in a manner to be specified by

the Department. This amendment does not impose any new reporting, recordkeeping or other compliance requirements on local governments.

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Pre-Payment Audits of Nursing Home Case Mix Data

I.D. No. HLT-01-13-00011-E

Filing No. 1245

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: Amendment of section 86-2.40(m) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(2-c)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure the accuracy and integrity of case mix data used for rate setting purposes, including quality adjustments by:

Requiring the facility's operator or officer responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate, and

Pending a prepayment audit, limiting the impact of an increase in Medicaid rate adjustments to no more than five percent in instances where a facility's case mix index increases by more than five percent. The authorization to conduct pre-payment audits does not restrict OMIG's ability to conduct post payment audits of the case mix data.

The proposed rule will allow for the partial payment of case mix adjustments to providers with significant changes in their case mix index while pre-payment audits are conducted by the OMIG. Pre-payment audits of case mix data will:

Ensure the accuracy and integrity of Medicaid rates that are adjusted for case mix data;

Reduce the risk that providers will be subject to large audit recoupments that could adversely impact their cash flow; and

Avoid the unanticipated and adverse impact on the cash flow of the State's Financial Plan, including the Medicaid Global Spending Cap, from making upfront payments to providers that may be based on inaccurate data and that will be required to be subsequently recouped over many months or years.

Proceeding with the proposed regulations on an emergency basis is in accordance with the provisions of Public Health Law section 2808 (2-c) which provides the Commissioner of Health the explicit authority to issue these emergency regulations.

Subject: Pre-Payment Audits of Nursing Home Case Mix Data.

Purpose: To promote the accuracy and integrity of case mix data used for rate setting purposes.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2808(2-c) of the Public Health Law, subdivision (m) of section 86-2.40 of subpart 86-2 of 10 NYCRR is amended effective December 17, 2012, to add new paragraphs (9) and (10), to read as follows:

(9) *The operator of a proprietary facility, an officer of a voluntary facility, or the public official responsible for the operation of a public facility shall annually submit to the Department a written certification, in a form as determined by the Department, attesting that all of the "minimum data set" ("MDS") data reported by the facility is complete and accurate.*

(10) *In the event the MDS data reported by a facility results in a percentage change in the facility's case mix index of more than five percent, then the impact of the payment of the Medicaid rate adjustment attributable to such a change in the reported case mix may be limited to reflect no more than a five percent change in such reported data, pending a prepayment audit of such reported MDS data, provided, however, that nothing in this paragraph shall prevent or restrict post-payment audits of such data as otherwise provided for in this subdivision.*

This notice is intended to serve only as a notice of emergency adoption.

This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 16, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in PHL section 2808(2-c), which authorizes the Commissioner to promulgate emergency regulations with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2.40 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Current law and regulation require the Medicaid rates established under the nursing home pricing methodology be updated semi-annually to reflect the impact of changes in patient acuity (i.e., case mix), and requires the Office of Medicaid Inspector General (OMIG) to audit the case mix data used to make such rate adjustments. This regulation will ensure the accuracy of case mix data and avoid unanticipated disruptions in cash flow to both nursing home providers and the State's Financial Plan, including the Medicaid Global Spending Cap.

Needs and Benefits:

The proposed rule will facilitate the prior audit and audit of case mix data used to measure patient acuity and adjust nursing home rates as required by subpart 86-2.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York and the nursing home pricing methodology established by section 2808(2-c) of the PHL.

This proposed rule will promote the accuracy and integrity of case mix data used for rate setting purposes, including quality adjustments by:

Requiring the facility's operator or officer responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate, and

Pending a prepayment audit, limiting the impact of an increase in Medicaid rate adjustments to no more than five percent in instances where a facility's case mix index increases by more than five percent. The authorization to conduct pre-payment audits does not restrict OMIG's ability to conduct post payment audits of the case mix data.

The proposed rule will allow for the partial payment of case mix adjustments to providers with significant changes in their case mix index while pre-payment audits are conducted by the OMIG. Pre-payment audits of case mix data will:

Ensure the accuracy and integrity of Medicaid rates that are adjusted for case mix data;

Reduce the risk that providers will be subject to large audit recoupments that could adversely impact their cash flow; and

Avoid the unanticipated and adverse impact on the cash flow of the State's Financial Plan, including the Medicaid Global Spending Cap, from making upfront payments to providers that may be based on inaccurate data and that will be required to be subsequently recouped over many months or years.

The Department and OMIG have been working to develop and communicate the audit protocols and procedures for the case mix data to all nursing homes. As part of this effort, the Department and OMIG will continue to provide the Nursing Home Industry the opportunity to provide input. This overall effort will help ensure the protocols are transparent and nursing homes can avoid unanticipated audit recoveries.

Costs to Private Regulated Parties:

No additional costs are anticipated as a result of this rule. The rule will require all nursing homes, including proprietary nursing homes to certify to the Department the accuracy and completeness of their MDS data.

Costs to State Government:

No additional costs are anticipated as a result of this rule. The prepayment audits will be conducted by the Office of Medicaid Inspector General (OMIG) using existing OMIG staff and resources.

Costs to Local Government:

No additional costs are anticipated as a result of this rule. In addition, the local districts' share of Medicaid costs is statutorily capped. The rule will require all nursing homes, including publicly operated nursing homes, to certify to the Department the accuracy and completeness of their MDS data.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation. The prepayment audits will be conducted by the Office of Medicaid Inspector General (OMIG) using existing OMIG staff and resources.

Local Government Mandates:

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

Paperwork:

The proposed regulation does not create new or additional paperwork for nursing home providers.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The Department is required by the Public Health Law to make case mix adjustments. Without this regulation, the Department would be required to make adjustments to Medicaid payment rates that may be based upon inaccurate, unaudited case mix data. Authorizing prepayment audits will avoid adverse cash flow impact on nursing home providers and the State.

Federal Standards:

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

Compliance Schedule:

The proposed rule will require the facility's operator or officer responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from residential health care facility cost reports, approximately 60 residential health care facilities were identified as employing fewer than 100 employees.

This proposed rule will promote the accuracy and integrity of case mix data used for rate setting purposes, including quality adjustments by:

Requiring the facility's operator or officer responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate, and

Pending a prepayment audit, limiting the impact of an increase in Medicaid rate adjustments to no more than five percent in instances where a facility's case mix index increases by more than five percent. The authorization to conduct pre-payment audits does not restrict OMIG's ability to conduct post payment audits of the case mix data.

The proposed rule will allow for the partial payment of case mix adjustments to providers with significant changes in their case mix index while pre-payment audits are conducted by the OMIG. Pre-payment audits of case mix data will:

Ensure the accuracy and integrity of Medicaid rates that are adjusted for case mix data;

Reduce the risk that providers will be subject to large audit recoupments that could adversely impact their cash flow; and

Avoid the unanticipated and adverse impact on the cash flow of the State's Financial Plan, including the Medicaid Global Spending Cap, from making upfront payments to providers that may be based on inaccurate data and that will be required to be subsequently recouped over many months or years.

This rule will have no direct effect on local governments.

Compliance Requirements:

The proposed rule will require the facility's operator or officer, including the small business nursing homes identified above, responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate.

The Department and OMIG have been working to develop and communicate the audit protocols and procedures for the case mix data to all nursing homes. As part of this effort, the Department and OMIG will continue to provide the Nursing Home Industry the opportunity to provide input. This overall effort will help ensure the protocols are transparent and nursing homes can avoid unanticipated audit recoveries.

Professional Services:

No new or additional professional services are required to implement this regulation. The prepayment audits will be conducted by the Office of Medicaid Inspector General (OMIG) using existing OMIG staff and resources.

Compliance Costs:

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

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

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

help ensure that adjustments made to the Medicaid rates for changes in case mix do not result in overpayments from relying upon unaudited, inaccurate case mix data. The prepayment audit of case mix data will help reduce the adverse impact on the cash flow of providers from unanticipated audit results.

Small Business and Local Government Participation:

The Department and OMIG have been working to develop and communicate the audit protocols and procedures for the case mix data to all nursing homes. As part of this effort, the Department and OMIG will continue to provide the Nursing Home Industry, including small business nursing homes, the opportunity to provide input. This overall effort will help ensure the protocols are transparent and nursing homes can avoid unanticipated audit recoveries.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The proposed rule will require the facility's operator or officer responsible for the operation of the facility to annually submit a written certification to the Department attesting that the case mix reported by the facility is complete and accurate.

The Department and OMIG have been working to develop and communicate the audit protocols and procedures for the case mix data to all nursing homes. As part of this effort, the Department and OMIG will continue to provide the Nursing Home Industry the opportunity to provide input. This overall effort will help ensure the protocols are transparent and nursing homes can avoid unanticipated audit recoveries.

Professional Services:

No new or additional professional services are required to implement this regulation. The prepayment audits will be conducted by the Office of Medicaid Inspector General (OMIG) using existing OMIG staff and resources.

Compliance Costs:

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

Minimizing Adverse Impact:

No additional costs are anticipated as a result of this rule. The rule will help ensure that adjustments made to the Medicaid rates for changes in case mix do not result in overpayments from relying upon unaudited, inaccurate case mix data. The prepayment audit of case mix data will help reduce the adverse impact on the cash flow of providers from unanticipated audit results.

Rural Area Participation:

The Department and OMIG have been working to develop and communicate the audit protocols and procedures for the case mix data to all nursing homes. As part of this effort, the Department and OMIG will continue to provide the Nursing Home Industry, including rural nursing

homes, the opportunity to provide input. This overall effort will help ensure the protocols are transparent and nursing homes can avoid unanticipated audit recoveries.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to facilitate the prepayment audits of case mix data (i.e., MDS resource group patient classifications) used to adjust the Medicaid rates for nursing homes for changes in patient acuity will have a material impact on jobs or employment opportunities across the nursing home industry.

EMERGENCY RULE MAKING

Medicaid Managed Care Programs

I.D. No. HLT-01-13-00014-E

Filing No. 1246

Filing Date: 2012-12-18

Effective Date: 2012-12-18

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

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

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

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

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

Subject: Medicaid Managed Care Programs.

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

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

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

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

360-10.1 Introduction

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

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

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

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

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

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

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

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

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

360-10.7 Good cause for changing primary care providers

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

360-10.8 Fair Hearing Rights

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

360-10.9 Marketing/Outreach

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

360-10.10 MCO unacceptable practices

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

360-10.11 MCO sanctions and due process

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 17, 2013.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

obtain necessary medical services in the most effective and efficient manner.

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

Needs and Benefits:

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

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

Costs:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternative Approaches:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997, the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to receive services through managed care organizations (MCOs). Counties with a choice of MCOs were eligible to run a mandatory Medicaid managed care program, while counties with only one MCO ran a voluntary program until such time as at least one additional MCO began operating in the county. As of November 2012, all sixty-two counties operate a manda-

tory Medicaid managed care program. All counties also operate a FHP program.

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

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

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

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

Minimizing Adverse Impact:

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

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by

local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in 2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

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

Feasibility Assessment:

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

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

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

Rural Area Participation:

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

Job Impact Statement

Nature of Impact:

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

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

NOTICE OF ADOPTION

Nursing Home Sprinklers

I.D. No. HLT-36-12-00005-A

Filing No. 1247

Filing Date: 2012-12-18

Effective Date: 2013-01-02

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

Action taken: Addition of section 86-2.41 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

Subject: Nursing Home Sprinklers.

Purpose: To assist eligible nursing homes with accessing credit markets to finance the costs of installing automatic sprinkler systems.

Text or summary was published in the September 5, 2012 issue of the Register, I.D. No. HLT-36-12-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Synthetic Phenethylamines and Synthetic Cannabinoids (SP & SC) Prohibited

I.D. No. HLT-39-12-00009-A

Filing No. 1249

Filing Date: 2012-12-18

Effective Date: 2013-01-02

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

Action taken: Addition of Part 9 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Synthetic Phenethylamines and Synthetic Cannabinoids (SP & SC) Prohibited.

Purpose: To prohibit possession, manufacture, distribution, sale or offer of sale of some substances and products containing SP & SC.

Text or summary was published in the September 26, 2012 issue of the Register, I.D. No. HLT-39-12-00009-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York Higher Education Loan Program (NYHELPS)

I.D. No. ESC-01-13-00005-P

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

Proposed Action: Amendment of Part 2213 of Title 8 NYCRR.

Statutory authority: Education Law, sections 691(10) and 655(4)

Subject: New York Higher Education Loan Program (NYHELPS).

Purpose: Amend several provisions of the regulation.

Text of proposed rule: Section 2213.1(m) and (af) are amended to read as follows:

(m) "Eligible cosigner" shall mean a parent, legal guardian or other individual [over twenty-one years of age] who satisfies applicable credit criteria approved by the corporation and is a citizen and a New York State resident. A cosigner shall be eligible to cosign for no more than three separate borrowers for each academic year unless there exists a parental relationship for each additional borrower. To the extent permitted by statute, this definition shall not apply to a second cosigner as more fully described in the program's underwriting.

(af) "Sponsor" shall mean an individual wh[om], is over 21 years of age and] meets applicable credit criteria, is applying for an [E]ducation loan as the borrower for the benefit of an eligible student, and is not a parent or legal guardian of the student.

Section 2213.2(f) is amended to read as follows:

(f) Renewed eligibility. *To the extent permitted by statute, and with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, subject to approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions: (1) Title IV funds. A borrower or cosigner in default of a loan made under title IV of the Higher Education Act of 1965, as amended, shall be ineligible for a program loan. Notwithstanding, if a borrower or cosigner establishes renewed eligibility for title IV loans in accordance with Federal regulations then such borrower or cosigner shall be eligible for a program loan. Such*

renewed eligibility shall only be granted once. The borrower or cosigner must provide satisfactory documentation evidencing his or her renewed eligibility for title IV loans in order to be granted renewed eligibility for a program loan. Upon establishing renewed eligibility, a borrower must re-apply for a program loan unless otherwise directed by the corporation.

(2) *State funds.* A borrower or cosigner in default on a program loan, [any other educational loan,] or who has failed upon demand to make a refund of an overpayment of a State [or Federal] grant or award, or otherwise failed to meet the requirements of a State [or Federal] award, shall be ineligible for a program loan. In addition, a borrower or cosigner who is in default on an education loan made under this program shall be ineligible for any other State student aid while in default on a program loan. Notwithstanding, a borrower or cosigner who has made satisfactory repayment arrangements consistent with 8 NYCRR section 2008.1 of this Title may be granted renewed eligibility by the [C]orporation for a program loan, except such renewed eligibility shall only be granted once. Upon establishing renewed eligibility, a borrower must re-apply for a program loan unless otherwise directed by the corporation.

Section 2213.5(f) is amended to read as follows:

(f) Application of payments. (1) Payments made by, or on behalf of, a borrower on a program loan shall first be applied to any outstanding fees, then to any interest, and then to principal.

(2) Payments made in excess of outstanding fees and interest shall be applied to the principal balance, unless application to subsequent monthly payments has been requested by the payor prior to the reduction of the principal balance.

(3) Borrowers may prepay on their program loan balance without penalty.

Section 2213.18(b) is amended to read as follows:

Section 2213.18 Reporting [R]requirements for [P]articipating [Schools]colleges.

(a) Whenever a school determines a student has dropped to less than half-time attendance, the school must report such information to the National Student Loan Clearinghouse. A school that does not use the Clearinghouse shall report in a manner that has been approved by the Corporation.

(b) Whenever a [school] college receives information which would make the borrower or co[-]signer ineligible to receive [P]rogram loans due to a default or failure as described in section [2200-a.2(f)] 2213.2(f), the [school] college must report such information to the [C]orporation.

The opening text and subdivision (3) of 2213.20(a) are amended to read as follows:

(a) Repayment. For any program loan made, the repayment period shall begin 60 days after the date the last disbursement is made on the program loan or within one monthly billing cycle thereafter. Interest shall begin to accrue starting the day of disbursement by the lender to the corporation. Repayment options shall be determined by the corporation and set forth in the program's underwriting manual as well as published on the corporation's web site. With respect to program loans that are otherwise eligible for purchase by a public benefit corporation, such determinations shall be subject to approval by such public benefit corporation, on at least an annual basis with respect to program loans to be made for the applicable academic year, or portion thereof, after taking into account applicable financial market conditions.

(3) Return to college. (i) Student borrowers who have entered repayment after their grace period and who subsequently return to college at least half time at a title IV eligible college may have, on previously disbursed program loans, their program loan principal payments suspended, as determined by the corporation and, with respect to program loans that are otherwise eligible for purchase by a public benefit corporation, such public benefit corporation. Such student borrowers may also be eligible for the deferral of interest payments for all or a portion of the period in which the student is in attendance at least half time at a title IV eligible college, subject to the approval of the corporation and the public benefit corporation. Interest shall continue to accrue during the suspension of principal and interest payments. Principal and interest payments on such previously disbursed program loans shall resume upon graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college. The suspension of payments shall not extend the repayment requirements of the previously disbursed program loans.

(ii) Student borrowers who subsequently return to college at least half time at a title IV eligible college during their grace period and have suspended their program loan principal, or principal and interest, payments in accordance with subparagraph (i) of this paragraph shall be eligible for a new grace period following graduation, withdrawal, less than half time enrollment, or transfer to a non-title IV eligible college.

Section 2213.28 is amended to read as follows:

Section 2213.28 Incorporation by reference.

For purposes of this Part, the following manuals referred to throughout are hereby incorporated by reference: (i) from and including October 20,

2009, until superseded, the program's default avoidance and claim manual version number 1, dated October 20, 2009 and the program's underwriting manual version number 1, dated October 20, 2009; and (ii) from and including August 25, 2010, until superseded, the program's default avoidance and claim manual version number 2, dated August 25, 2010, and the program's underwriting manual version number 2, dated August 25, 2010; and (iii) from and including January 26, 2011, until superseded, the program's default avoidance and claim manual version number 3, dated January 26, 2011, and the program's underwriting manual version number 3, dated January 26, 2011; and (iv) from and including February 27, 2013, until superseded, the program's default avoidance and claim manual version number 4, dated February 27, 2013, and the program's underwriting manual version number 4, dated February 27, 2013[.]; and (v) from and including March 6, 2013, until superseded, the program's default avoidance and claim manual version number 5, dated March 6, 2013, and the program's underwriting manual version number 5, dated March 6, 2013.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1315, Albany, NY 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Education Law § 691(10) provides that the New York State Higher Education Services Corporation (Corporation) shall have the power and duty to adopt rules and regulations to implement the New York State Higher Education Loan Program (Program or NYHELPS).

Education Law § 652(2) includes in the Corporation's statutory purposes the improvement of the post-secondary educational opportunities of eligible students through the centralized administration and coordination of New York State's financial aid programs and those of other levels of government.

Education Law § 653(9) further empowers the Corporation's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the Corporation, including the promulgation of regulations.

Education Law § 655(4) authorizes the President of the Corporation (President) to propose regulations, subject to approval by the Board of Trustees, governing the application for, and the granting and administration of, student aid and loan programs, the repayment of loans or the guarantee of loans made by the Corporation, and administrative functions in support of New York State student aid programs. Under Education Law § 655(9), the Corporation's President is also authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out the President's powers, duties and functions. Finally, Education Law § 655(12) provides the President with the authority to perform such other acts as may be necessary or appropriate to effectively carry out the general objects and purposes of the Corporation.

2. Legislative objectives:

The Program, as enacted by Part J of Chapter 57 of the Laws of 2009, authorizes the Corporation to serve as the Program's administrator and empowers the Corporation to adopt rules and regulations to implement the Program.

3. Needs and benefits:

NYHELPS was enacted on April 7, 2009 to offer New York State students and families the option of a fixed-rate private education loan to fill the gap between college costs and currently available State and federal student aid. The regulations implementing the Program were effective on November 4, 2009, which led to the sale of private activity bonds to underwrite the Program in mid-December, and the processing of the first applications on December 21, 2009.

As a new Program with no prior history, NYHELPS was structured to maximize the number of constituents served while offering the most favorable interest rate, and utilizing a relatively small pool of funds. As the Program developed over its first year, the Corporation identified several sections of the regulation that required clarification or revision, which were adopted on June 2, 2010 (as a consensus rule), August 25, 2010, and January 26, 2011.

As the Program grows, the Corporation continues to work with Program participants (especially colleges, students, and families) to enhance and streamline the Program and its processes. Additionally, the Corporation continues to review actual Program data to ascertain whether its constituency is being served as intended. As a result of these efforts, the Corporation identified several provisions of Program regulations, as well as policy manuals incorporated therein by reference, that require clarification or revision:

(i) Conformance with federal law:

- The age requirement for cosigners and sponsors was eliminated.
- (ii) Clarification of, or changes to, application, repayment and collection requirements:
 - After a review of the Program's application requirements, it was decided to clarify that an extended repayment term must be requested at the time of application. It was also decided to clarify the requirements for renewed eligibility for a Program loan following default.
 - After a review of the Program's repayment requirements, it was decided to clarify how payments are applied, the first payment due date, and new grace period requirements for students who return to college during their initial grace period.
 - Text addressing Program collection activity was restructured so that the consequences of default would be clear to the borrower. It was also decided to clarify the date of purchase by HESC upon default.
- (iii) Program flexibility:
 - After consultation with SONYMA, it was decided to authorize the Corporation to waive collection costs consistent with its settlement and compromise procedures.
- (iv) Clarification of language with no substantive change:
 - The methodology for determining the borrower default fee was specified.
 - The due date for a borrower's first payment was clarified.
- (v) Technical clean up:
 - A regulatory cross-reference was corrected.

4. Costs:

There is no anticipated cost to the Corporation, other state agencies, or local governments for the implementation of, or continuing compliance with, this rule. In fact, the proposed amendments to this rule will result in consistency, increased efficiency and reduced complexity, which will avoid costs and could reduce costs.

5. Paperwork:

This rule will not result in any additional paperwork on Program participants.

6. Local government mandates:

No program, service, duty, or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

7. Duplication:

This rule clarifies provisions, without duplication, and streamlines processes.

8. Alternatives:

The 'no action' alternative would perpetuate inconsistencies, misinterpretation, and inefficient servicing, and the alternatives considered were deemed to be less effective than the proposed amendments. For example:

- In connection with the current application and repayment requirements, other alternatives were considered, but ultimately the Corporation concluded that the proposed amendments would best serve the Program's constituency.

- In connection with the current collection requirements, other alternatives were considered, but ultimately the Corporation concluded that the proposed amendments would best serve the Program's constituency, maximize recoveries, and streamline the process.

9. Federal standards:

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

10. Compliance schedule:

The Corporation, students, colleges and any other parties impacted by this proposal will be able to comply with this rule immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. The Corporation finds that this rule will not impose reporting, record keeping or compliance requirements on small businesses or local governments. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) conformance with federal law; (ii) clarification of, or changes to, application, repayment and collection requirements; (iii) program flexibility; (iv) clarification of language with no substantive change; and (v) technical clean up.

The Corporation has determined that this rule will not impose an adverse economic impact or impose reporting or other compliance require-

ments on either small businesses or local governments; therefore, a full Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. The Corporation finds that this rule will not impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) conformance with federal law; (ii) clarification of, or changes to, application, repayment and collection requirements; (iii) program flexibility; (iv) clarification of language with no substantive change; and (v) technical clean up.

The Corporation has determined that this rule will not impose an adverse economic impact on public or private entities in rural areas and therefore a full Rural Area Flexibility Analysis is not required.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's (Corporation) Notice of Proposed Rulemaking seeking to amend part 2213 of Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. The regulation implements the New York Higher Education Loan Program (NYHELPS), which will help fill the gap between college costs and available financial aid in order to assist eligible students and their families in the financing of their college costs. The proposal provides for: (i) conformance with federal law; (ii) clarification of, or changes to, application, repayment and collection requirements; (iii) program flexibility; (iv) clarification of language with no substantive change; and (v) technical clean up.

The Corporation has determined that this rule will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not necessary.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal of Outdated Forms and Conforming Amendments

I.D. No. OMH-01-13-00001-P

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

Proposed Action: Repeal of Appendix 1; and amendment of section 15.1(c) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 29.01 and 31.04

Subject: Repeal of outdated forms and conforming amendments.

Purpose: To eliminate antiquated forms.

Text of proposed rule: 1. Subdivision (c) of Section 15.1 of Title 14 NYCRR is amended to read as follows:

(c) Except as otherwise provided, patients and residents may be admitted to facilities only on the forms and in accordance with the procedures prescribed by the Commissioner. [All forms prescribed for use in admission of patients are included in Appendix 1 of this Title, *infra*.] Detailed admission procedures are included in the following manuals issued and periodically revised for particular groups of facilities by the department.

Note: Paragraphs (1)-(7) of this subdivision remain unchanged.

2. Appendix 1 of Volume A of Title 14 NYCRR is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, New York State Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 29.01 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority to adopt regulations governing admissions to hospitals and to prescribe and furnish forms for use in procedures for admission.

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The proposed amendments will further the legislative objectives embodied in Sections 7.09, 29.01 and 31.04 of the Mental Hygiene Law by the deletion of outdated, antiquated regulations.

3. Needs and benefits: 14 NYCRR Part 15, Admission and Transfer of Patients, and Appendix 1 of Volume A, were promulgated in the 1970s by the Department of Mental Hygiene. When these Parts were promulgated, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People With Developmental Disabilities, or "OPWDD"), and the Office of Alcoholism and Substance Abuse Services (now known as the Office of Alcoholism and Substance Abuse Services, or "OASAS"), were all a part of the Department of Mental Hygiene, and none had its own rule making authority. In 1977, the New York State Mental Hygiene Law was recodified, and the Department of Mental Hygiene was divided into three autonomous agencies, all of which have independent rule making authority.

Appendix 1 of Volume A of Title 14 NYCRR is substantively obsolete. The forms listed in Appendix 1 pertain to services delivered at OMH psychiatric centers, OPWDD developmental centers, and services delivered at specified facilities in the OASAS system. These forms are outdated and do not reflect current service environments. With the elimination of the requirements to use the specific forms, OMH, OPWDD and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of the individuals receiving services. In addition, state agencies will have the ability to update forms in the future as needs change. Conforming amendments are also included in this proposed rule making to repeal language which specifically refers to the deleted forms. OPWDD and OASAS are filing concurrent proposed amendments to delete Appendix 1 and make the conforming change in Part 15. OPWDD is seeking to amend language in Part 17 which refers to the deleted forms; however, Part 17 no longer applies to OMH as the agency has superseded Part 17 with provisions found at 14 NYCRR Part 517 and the provision is not applicable in the OASAS system of voluntary admissions.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: These regulatory amendments should not increase the paperwork requirements of providers. Replacement forms will be less confusing and better reflective of current terminology and situations of individuals receiving services.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The Office of Mental Health considered repealing only those forms which pertain to OMH and not filing proposed regulations concurrently with OPWDD and OASAS. However, since all three agencies agree the forms are outdated and Appendix 1 should be repealed, it was decided that it would be more efficient to repeal all of the forms together.

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

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the Office of Mental Health has determined the amended rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small business and local governments. The finding is based on

the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the Office of Mental Health has determined the amended rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Job Impact Statement

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms found in Appendix 1 of Volume A of Title 14 NYCRR. With the deletion of the requirement to use specific forms, the Office of Mental Health, the Office for People With Developmental Disabilities and the Office of Alcoholism and Substance Abuse Services will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Vision Testing

I.D. No. MTV-01-13-00015-P

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

Proposed Action: Amendment of section 5.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(4), (6) and 508(4)

Subject: Vision testing.

Purpose: Provides for electronic validation of a vision test by certain providers.

Text of proposed rule: Subdivision (a) of Section 5.4 of Part 5 is amended to read as follows:

5.4 Procedures. The following procedures shall apply to vision tests:

(a) (1) The vision test may be administered by the Department of Motor Vehicles or another state's Department of Motor Vehicles or by staff of an organization deputized by the Commissioner to conduct such tests, in accordance with training and standards established by the Commissioner, or by a licensed physician, physician assistant, optometrist, ophthalmologist, optician, pharmacist, nurse practitioner, [or] registered nurse, or their supervised staff. However, the Department of Motor Vehicles, [or] another state's Department of Motor Vehicles, an organization deputized by the Commissioner or a pharmacist or a pharmacist's supervised staff shall only test for a minimum visual acuity of 20/40 (Snellen) in either or both eyes. [In order for]

(2) Except as provided in paragraph (3) of this subdivision, a statement from a licensed physician, physician assistant, optometrist, ophthalmologist, optician, nurse practitioner or registered nurse [to be acceptable, it] must be on a letterhead or prescription blank imprinted with the name, address and title of the authorized person making the certification, or on a form furnished by the Commissioner [of Motor Vehicles], and

such statement [must contain the patient's full name, signature, address, date of birth, sex,] *shall identify the patient, indicate* whether test results were obtained with or without corrective lenses, *and include the date of test, signature and license number of person authorized to certify the statement and [also affirmation] affirm* that the individual has met the minimum visual acuity of 20/40 (Snellen) in either or both eyes. No statement will be acceptable if the date of the examination is more than six months or more than one year, as determined by the health care professional defined herein, prior to the date of submission of the statement to the [commissioner] *Commissioner*.

(3) *Staff of an organization deputized by the Department of Motor Vehicles pursuant to paragraph (1) of this subdivision, or a pharmacist or a pharmacist's supervised staff must report results of vision tests through an electronic registry established by the Department of Motor Vehicles. Any other party authorized to conduct a test pursuant to paragraph (1) of this subdivision may, but is not required to, use such registry for the reporting of results in lieu of filing a paper report as specified in such paragraph.*

(4) *The Commissioner may immediately withdraw the deputization of an organization authorized to conduct a test pursuant to paragraph (1) of this subdivision upon a finding that there are reasonable grounds to believe that such organization, or staff of such organization, are conducting such tests in a manner inconsistent with the training and standards established by the Commissioner for the administration of such tests.*

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

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

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law (VTL) authorizes the Commissioner to enact and amend regulations. Section 508(4) of the VTL authorizes the Commissioner to promulgate regulations with respect to the administration of Article 19, Licensing of Drivers. Section 502(4) of the Vehicle and Traffic Law provides that an applicant for an original driver's license shall pass a vision test. Section 502(6) of the Vehicle and Traffic Law provides that the Commissioner of Motor Vehicles shall require each person renewing a license to submit to a vision examination.

2. Legislative objectives: Section 502 of the Vehicle and Traffic Law requires vision testing by the Commissioner of Motor Vehicles to ensure that licensed drivers have sufficient vision to drive safely. The amendment would add pharmacists, pharmacy staff supervised by a pharmacist and nurse practitioners, as well as staff of organizations deputized by the Commissioner to the list of vision test providers who may conduct such vision tests, and would provide for the electronic reporting of the test results to the Department of Motor Vehicles ("DMV" or the "Department"). This amendment makes vision tests more accessible and license renewal easier, without compromising the current vision standards, and is therefore consistent with the legislative intent.

3. Needs and benefits: The proposed rule is necessary to promote highway safety and enhance customer service.

Currently, when a person applies for an original or renewal license, he or she must take the vision test in a DMV office or go to an authorized practitioner who certifies, on the Eye Test Report form (MV-619), that the person meets the Commissioner's vision standards. This amendment would make it easier for drivers to comply with the Department's vision test requirements by broadening the field of competent providers who may conduct the vision test. In addition, under this rule, providers could file the eye test results electronically with DMV. By reporting results into this electronic registry, providers will enable the Department to easily verify if a certified provider has conducted the eye test. This will encourage use of the internet for license renewals, and will reduce lines at DMV offices. Further, the electronic filing will be more reliable than the current paper forms, which are readily subject to tampering.

4. Costs to regulated parties: There are no significant increased costs anticipated for this voluntary program, as most providers already have internet access, which is all that is required.

Cost to the State: The Department anticipates that there is no cost to the State. The Department's IT staff, in the normal course of its duties and accommodating for workload requirements, is developing and will maintain the electronic registry. Because the Department's IT staff is currently responsible for developing and maintaining systems for the Department, there is no anticipated additional cost to the Department or to the State for the development of the electronic registry.

5. Local government mandates: None.

6. Paperwork: This proposal reduces paperwork requirements by eliminating the need for providers to submit the Eye Test Report form by mail if they file the results electronically.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The Department consulted with the New York State Ophthalmological Society, AARP, AAA of New York, the New York State Optometric Association, the Medical Society of New York State, the New York State Society of Opticians, the Pharmacists Society of the State of New York, and the Chain Pharmacy Association of the State of New York. Based upon the input from these organizations, the Department concluded that the proposed rule reflects the best course for vision testing in the State. A no action alternative was not considered.

9. Federal standards: This proposal does not duplicate a federal rule.

10. Compliance schedule: Compliance will be effective upon adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because this rule will not have a disproportionate impact on small businesses or local governments, nor will it impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Repeal of Outdated Forms and Conforming Amendments

I.D. No. PDD-01-13-00002-P

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

Proposed Action: Amendment of Parts 15 and 17; and repeal of Appendix 1 of Title 14 NYCRR.

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

Subject: Repeal of outdated forms and conforming amendments.

Purpose: To eliminate antiquated forms.

Text of proposed rule: Subdivision 15.1(c) is amended as follows:

(c) Except as otherwise provided, patients and residents may be admitted to facilities only on the forms and in accordance with the procedures prescribed by the commissioner. [All forms prescribed for use in admission of patients are included in Appendix 1 of this Title, *infra*.] Detailed admission procedures are included in the following manuals issued and periodically revised for particular groups of facilities by the department.

Note: Paragraphs (1)-(7) of this subdivision remain unchanged.

Subdivision 17.3(a) is amended as follows:

(a) If the commissioner or his designee is satisfied of the need for the transfer, he shall issue an order to the *sending* facility [in which the patient is on Form 19 DMH "Order of Transfer"]. Volume A Appendix 1 is repealed.

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

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has

determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

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

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

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

2. Legislative objectives: The proposed amendments will further the legislative objectives embodied in Sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law by the deletion of outdated, antiquated regulations.

3. Needs and benefits: The forms in 14 NYCRR Appendix 1 pertain to services delivered at Developmental Centers in the OPWDD system, services delivered at Psychiatric Centers in the Office of Mental Health (OMH) system and services delivered at specified facilities in the Office of Alcoholism and Substance Abuse Services (OASAS) system. These forms are outdated and do not reflect current service environments. For example, the forms contain the antiquated reference to "Schools for the Mentally Retarded" instead of referencing Developmental Centers.

With the deletion of the requirement to use the specific forms, OPWDD, OMH and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of the individuals receiving services. In addition, the state agencies will have the ability to update forms in the future as needs change.

In addition, OPWDD, OMH and OASAS are making conforming amendments to Part 15 to delete language which specifically refers to the deleted forms.

OPWDD is also proposing to amend language in Part 17 which refers to the deleted forms. OMH and OASAS are not including the amendment to Part 17 in their rulemaking, since Part 17 no longer applies to OMH as the agency has superseded Part 17 with provisions found at 14 NYCRR Part 517, and the provision is not applicable in the OASAS system of voluntary admissions.

4. Costs: The amendments will have no fiscal effects on the agency, the state or local governments. The amendments will have no fiscal effect on private regulated parties.

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

6. Paperwork: The amendment may actually decrease paperwork because there will be no mandate to use the outdated forms in Appendix 1. When replacement forms are developed, the time to complete forms may be reduced as the forms would be less confusing and better reflect current terminology and situations of individuals receiving services. Forms may also be adapted to solicit information necessary to satisfy other systemic needs.

7. Duplication: The proposed amendment does not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD considered repealing only those forms which pertain to Developmental Centers and not filing proposed regulations concurrently with OMH and OASAS. However, since all three agencies agree that Appendix 1 should be repealed, and that forms are either unnecessary or need updating, it is more efficient to repeal all of the forms together.

9. Federal standards: The amendment of Parts 15 and 17 and the repeal of Appendix 1 will not exceed any minimum standard set by the federal government.

10. Compliance schedule: OPWDD, OMH and OASAS expect to adopt the amendments concurrently as soon as possible within the time frames established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for the proposed amendment has not been submitted. OPWDD has determined this amendment will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms in 14 NYCRR Appendix 1. With the deletion of the requirement to use the specific forms, OPWDD, OMH and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of the individuals receiving

services. In addition, the state agencies will have the ability to update forms in the future as needs change.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the proposed amendments is not being submitted because the amendments will not impose any adverse economic impact on rural areas or on reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms in Appendix 1. With the deletion of the requirement to use specific forms, OPWDD, OMH and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Job Impact Statement

A Job Impact Statement for the proposed amendments is not submitted because it is apparent from the nature and purpose of the amendments that there will be no impact on jobs and/or employment opportunities. The finding is based on the fact that the proposed regulation will delete outdated, antiquated forms. The proposed amendment will eliminate the requirement for state agencies to use the outdated forms in Appendix 1. With the deletion of the requirement to use specific forms, OPWDD, OMH and OASAS will have the ability to update forms which are still in use to better meet their needs and the needs of individuals receiving services.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Further Waiver and Suspension of Electric and Gas Tariff Provisions Requiring the Imposition of Certain Late Payment Charges

I.D. No. PSC-01-13-00006-EP

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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

Proposed Action: Further waiver of certain late payment charges.

Statutory authority: Public Service Law, sections 30, 51, 65, 66, 78, 79 and 80

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

Specific reasons underlying the finding of necessity: As explained in the November 2, 2012 Order (Initial LPC Order) waiving and suspending the imposition of late payment charges until December 15, 2012, as a result of Super storm Sandy (Sandy), over a million utility customers lost electric, gas or steam service, and many more lost postal service, telephone or internet service, banking service, or payment services that are otherwise available to them. As explained in the Initial LPC Order, many New Yorkers have been impacted by Sandy. Some have damaged or destroyed homes. Many residential customers have experienced other economic impacts, such as permanent or temporary loss of work or income. Even those not actually out of service have had to adjust to major disruptions in their ability to complete the ordinary transactions of everyday life. Similarly, for payment troubled residential customers, conditions after the storm has passed may make it unlikely that these customers will access the support programs which, under normal circumstances, might be available to assist in maintaining utility service. It appears likely that, under these conditions, some residential customers may be unable to timely pay their electric and/or natural gas utility bill and could be subject to late payment charges. Since such charges would be inappropriate under current circumstances, this Order authorizes a further waiver and suspension of such charges continuing through January 31, 2013.

Compliance with the State Administrative Procedure Act is not possible because to do so could be detrimental to the health, safety and general welfare of the people of the State of New York, and the further waiver of the applicable tariff provisions requiring the imposition of late payment charges will provide important benefits for customers who have suffered

the hardships associated with Sandy and the loss of critical utility services. Delaying this action would be harmful to the public interest.

Subject: Further waiver and suspension of electric and gas tariff provisions requiring the imposition of certain late payment charges.

Purpose: Further waiver and suspension of electric and gas tariff provisions requiring the imposition of certain late payment charges.

Substance of emergency/proposed rule: On November 2, 2012, the Public Service Commission issued an Order (Initial LPC Order), on an emergency basis, directing a further waiver and suspension of electric and gas tariff provisions that require the imposition on residential customers of a late payment charge on bills not paid in a timely manner. As a result of Super storm Sandy (Sandy), over a million utility customers lost electric, gas and/or steam service, as well as postal service, telephone or internet service, banking service, or payment services that are otherwise available to them.

As explained in the Initial LPC Order, many New Yorkers have been impacted by Sandy. Some have damaged or destroyed homes. Many residential customers have experienced other economic impacts, such as permanent or temporary loss of work or income. Even those not actually out of service have had to adjust to major disruptions in their ability to complete the ordinary transactions of everyday life. Similarly, for payment troubled residential customers, conditions after the storm has passed may make it unlikely that these customers will access the support programs which, under normal circumstances, might be available to assist in maintaining utility service. It appears likely that, under these conditions, some residential customers may be unable to timely pay their electric and/or natural gas utility bill and could be subject to late payment charges. Since such charges would be inappropriate under current circumstances, the Commission adopted an order on December 13, 2012 that authorizes a further waiver and suspension of such charges continuing through January 31, 2013.

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 March 13, 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 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.

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

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

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

(12-M-0501EP2)

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

Waiver of Certain Tariff Charges

I.D. No. PSC-01-13-00007-EP

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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 approving on an emergency basis waivers of certain tariff charges by Brooklyn Union Gas Company d/b/a National Grid NY, Keyspan Gas East Corporation d/b/a National Grid. The waivers enable the companies to provide one-time credits on the bills of certain customers that were affected by Super-storm 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 approve the waivers of certain tariff charges requested by Brooklyn Union Gas Company d/b/a National Grid NY,

Keyspan Gas East Corporation d/b/a National Grid would result in a delay in providing one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Delay could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate authorization to approve the waivers is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain tariff charges.

Purpose: To consider petition for waiver of certain tariff charges.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission adopted an Order approving on an emergency basis waivers of certain tariff charges by Brooklyn Union Gas Company d/b/a National Grid NY, Keyspan Gas East Corporation d/b/a National Grid. The waivers enable the companies to provide one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Failure to promptly approve the waivers could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm.

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 March 13, 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 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-G-0555EP1)

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

Waiver of Certain Tariff Charges

I.D. No. PSC-01-13-00008-EP

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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 approving on an emergency basis waivers of certain tariff charges by Con Edison Company of New York, Inc. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm 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 approve the waivers of certain tariff charges requested by Con Edison Company of New York, Inc. would result in a delay in providing one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Delay could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate authorization to approve the waivers is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain tariff charges.

Purpose: To consider petition for waiver of certain tariff charges.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission adopted an Order approving on an emergency basis waivers of certain

tariff charges by Con Edison Company of New York, Inc. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Failure to promptly approve the waivers could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm.

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 March 13, 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 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0533EP1)

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

Waiver of Certain Tariff Charges

I.D. No. PSC-01-13-00009-EP

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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 approving on an emergency basis waivers of certain tariff charges by Orange and Rockland Utilities, Inc. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm 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 approve the waivers of certain tariff charges requested by Orange and Rockland Utilities, Inc would result in a delay in providing one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Delay could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate authorization to approve the waivers is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain tariff charges.

Purpose: To consider petition for waiver of certain tariff charges.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission adopted an Order approving on an emergency basis waivers of certain tariff charges by Orange and Rockland Utilities, Inc. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Failure to promptly approve the waivers could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm.

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 March 13, 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 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0545EP1)

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

Waiver of Certain Tariff Charges

I.D. No. PSC-01-13-00010-EP

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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 approving on an emergency basis waivers of certain tariff charges by New York State Electric and Gas Corporation. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm 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 approve the waivers of certain tariff charges requested by New York State Electric and Gas Corporation would result in a delay in providing one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Delay could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and the immediate authorization to approve the waivers is necessary for the preservation of the public health, safety and general welfare.

Subject: Waiver of certain tariff charges.

Purpose: To consider petition for waiver of certain tariff charges.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov): The Public Service Commission adopted an Order approving on an emergency basis waivers of certain tariff charges by New York State Electric and Gas Corporation. The waivers enable the company to provide one-time credits on the bills of certain customers that were affected by Super-storm Sandy. Failure to promptly approve the waivers could adversely impact customers affected by Super-storm Sandy because as a storm related bill credit, it is important for customers to receive its benefit closely in time after the storm.

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 March 13, 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 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0554EP1)

NOTICE OF ADOPTION

Revised Residential Electric Submetering Regulations

I.D. No. PSC-06-12-00007-A

Filing No. 1278

Filing Date: 2012-12-18

Effective Date: 2012-12-18

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

Action taken: Amendment of Part 96 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections (4)1, 30-53, 65 and 66

Subject: Revised Residential Electric Submetering Regulations.

Purpose: Electric submetering regulations for multi-unit residential premises.

Substance of final rule: The Commission, on December 13, 2012 adopted the final rules pertaining to Residential Electric Submetering Regulations and amending 16 NYCRR, Part 96, 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, NY 12223, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(11-M-0710SA2)

NOTICE OF ADOPTION

Modification of Uncommitted Funds for Combined Heat and Power Performance (CHP) Program

I.D. No. PSC-19-12-00010-A

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order approving, with modifications, uncommitted funds of the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) for Combined Heat and Power Performance (CHP) program.

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

Subject: Modification of uncommitted funds for Combined Heat and Power Performance (CHP) program.

Purpose: To approve modifications of uncommitted funds for Combined Heat and Power Performance (CHP) program.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, with modifications, uncommitted funds of the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to use uncommitted funds for Combined Heat and Power Performance (CHP) program, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 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.

(07-M-0548SA55)

NOTICE OF ADOPTION

Modification for EEPS Electric Program Budgets and Targets Administered by NYSERDA

I.D. No. PSC-19-12-00011-A

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to modify EEPS electric programs and targets.

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

Subject: Modification for EEPS electric program budgets and targets administered by NYSERDA.

Purpose: To approve modifications to NYSERDA's EEPS electric program budgets and targets.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to modify its Energy Efficiency Portfolio Standard (EEPS) electric program budgets and energy savings targets, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 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.

(07-M-0548SA57)

NOTICE OF ADOPTION

Modification of EEPS Gas Program Budgets and Targets

I.D. No. PSC-19-12-00012-A

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to modify EEPS gas program budgets and targets.

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

Subject: Modification of EEPS gas program budgets and targets.

Purpose: To approve modifications of EEPS gas program budgets and targets.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to modify gas program budgets and targets, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 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.

(07-M-0548SA56)

NOTICE OF ADOPTION

Workforce Development Initiatives

I.D. No. PSC-19-12-00015-A

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to use uncommitted funds for Workforce Development Initiatives.

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

Subject: Workforce Development Initiatives.

Purpose: To approve the use of uncommitted funds for Workforce Development Initiatives.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to use uncommitted funds for Workforce Development Initiatives, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 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.

(07-M-0548SA54)

NOTICE OF ADOPTION

Modification of Uncommitted EEPS Gas and Electric Funds to the CHP and Empower Programs Administered by NYSEDA

I.D. No. PSC-19-12-00024-A

Filing Date: 2012-12-17

Effective Date: 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to allocate uncommitted EEPS funds to the CHP and Empower Programs.

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

Subject: Modification of uncommitted EEPS gas and electric funds to the CHP and Empower programs administered by NYSEDA.

Purpose: To approve modifications of uncommitted funds for NYSEDA's EEPS gas and electric programs to fund the CHP and Empower programs.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, with modifications, the March 30, 2012 petition of New York State Energy Research and Development Authority (NYSERDA) to allocate uncommitted funds for its Energy Efficiency Portfolio Standard (EEPS) electric program gas and electric programs budget to fund the Combined Heat and Power (CHP) and Empower programs, subject to terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-M-0457SA4)

NOTICE OF ADOPTION

Amendments to PSC No. 3 — Water, Eff. 1/1/13, to Increase the Existing Escrow Account from \$10,000 to \$25,000

I.D. No. PSC-30-12-00012-A

Filing Date: 2012-12-18

Effective Date: 2012-12-18

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

Action taken: On 12/13/12, the PSC adopted an order approving Arbor Hills Waterworks Company, Inc.'s amendment to PSC No. 3 — Water, effective date January 1, 2013 to increase the existing escrow account from \$10,000 to \$25,000 for unexpected/extraordinary expenses.

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

Subject: Amendments to PSC No. 3 — Water, eff. 1/1/13, to increase the existing escrow account from \$10,000 to \$25,000.

Purpose: To approve the amendments to PSC No. 3 — Water, eff. 1/1/13, to increase the existing escrow account from \$10,000 to \$25,000.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving Arbor Hills Waterworks Company, Inc. to increase the replenishment amount in its existing Escrow Account for Unexpected/Extraordinary Expenses from a maximum balance from \$10,000 to \$25,000, 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, NY 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-0300SA1)

NOTICE OF ADOPTION

To Approve an Increase to the Company's Existing Escrow Account

I.D. No. PSC-30-12-00013-A

Filing Date: 2012-12-13

Effective Date: 2012-12-13

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

Action taken: On 12/13/12, the PSC adopted an order approving Knolls Water Co., Inc. to increase its existing escrow account for unexpected/extraordinary expenses.

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

Subject: To approve an increase to the Company's existing escrow account.

Purpose: Approval of an increase to the Company's existing escrow account.

Text or summary was published The Commission, on December 13, 2012 adopted an order, approving Knolls Water Co., Inc. to increase its existing escrow account set for unexpected/extraordinary expenses from \$4,500 to a maximum of \$10,000 and cap the surcharge per quarter at \$50.00, 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-0299SA1)

NOTICE OF ADOPTION

To Deny the Request to Implement a Quarterly Customer Surcharge**I.D. No.** PSC-32-12-00015-A**Filing Date:** 2012-12-18**Effective Date:** 2012-12-18

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

Action taken: On 12/13/12, the PSC adopted an order denying Arbor Hills Waterworks Company, Inc.'s request to implement a quarterly customer surcharge of \$59.70 to cover the cost of radiological tests required by the Department of Health.

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

Subject: To deny the request to implement a quarterly customer surcharge.

Purpose: To deny the implementation of a quarterly customer surcharge.

Substance of final rule: The Commission, on December 13, 2012 adopted an order denying Arbor Hills Waterworks Company, Inc.'s request to implement a quarterly customer surcharge of \$59.70 to cover the cost of radiological tests required by the Department of Health, 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, NY 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-0313SA1)

NOTICE OF ADOPTION

To Develop a Detailed Schedule, for the Needed System Reinforcements to Address the Reliability Needs Regarding Mothballing**I.D. No.** PSC-39-12-00008-A**Filing Date:** 2012-12-17**Effective Date:** 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order deciding reliability issues and addressing cost allocation and recovery regarding the mothballing of generation facility units located in Lansing, NY.

Statutory authority: Public Service Law, sections 5(1)(b), (2), 65(1), (2) and (3), 66(1), (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (12-a), (12-b), (16) and (20)

Subject: To develop a detailed schedule, for the needed system reinforcements to address the reliability needs regarding mothballing.

Purpose: To develop a detailed schedule, for the needed system reinforcements to address the reliability needs regarding mothballing.

Substance of final rule: The Commission, on December 13, 2012, adopted an order deciding reliability issues and addressing cost allocation and recovery regarding the mothballing of Units 1 and 2 at the Cayuga Generating Facility in Lansing, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-E-0400SA1)

NOTICE OF ADOPTION

To Approve a Waiver of Tariff Provisions of 16 NYCRR Parts 501 and 502**I.D. No.** PSC-40-12-00008-A**Filing Date:** 2012-12-13**Effective Date:** 2012-12-13

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

Action taken: On 12/13/12, the PSC adopted an order approving, the amended petition of Saratoga Water Services, Inc. and Malta Crossings, LLC, for a waiver of the company's tariff and approval of the terms of a service agreement.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

Subject: To approve a waiver of tariff provisions of 16 NYCRR Parts 501 and 502.

Purpose: Approval of the waiver for the provision of water service.

Text or summary was published The Commission, on December 13, 2012 adopted an order, approving the amended petition of Saratoga Water Services, Inc. (Saratoga) and Malta Crossings, LLC, for waiver of tariff provisions of 16 NYCRR Parts 501 and 502 regarding main extensions, 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.

(07-W-0076SA1)

NOTICE OF ADOPTION

Issuance of Securities**I.D. No.** PSC-40-12-00010-A**Filing Date:** 2012-12-17**Effective Date:** 2012-12-17

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

Action taken: On 12/13/12, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc.'s (Con Edison) to issue and sell up to \$3.5 billion of unsecured debt in one or more transactions, not later than December 31, 2016.

Statutory authority: Public Service Law, section 69

Subject: Issuance of securities.

Purpose: To authorize the issuance of securities.

Substance of final rule: The Commission, on December 13, 2012, adopted an order authorizing Consolidated Edison Company of New York, Inc.'s (Con Edison) to issue and sell up to \$3.5 billion of unsecured debt in one or more transactions, not later than December 31, 2016, 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, NY 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-0401SA1)

NOTICE OF ADOPTION

To Approve, Upon Conditions, Acquisition of GenOn Energy, Inc. by NRG Energy, Inc. Through a Merger

I.D. No. PSC-40-12-00011-A

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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

Action taken: On 12/13/12, the PSC adopted an order approving, upon conditions, the merger and acquisition of NRG Energy, Inc. by GenOn Energy, Inc.

Statutory authority: Public Service Law, section 70

Subject: To approve, upon conditions, acquisition of GenOn Energy, Inc. by NRG Energy, Inc. through a merger.

Purpose: To approve, upon conditions, acquisition of GenOn Energy, Inc. by NRG Energy, Inc. through a merger.

Substance of final rule: The Commission, on December 13, 2012 adopted an order approving, upon conditions, the acquisition of GenOn Energy, Inc. (GenOn) by NRG Energy, Inc. (NRG) through a merger transaction, 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-E-0359SA1)

NOTICE OF ADOPTION

To Increase Funding for Emergency Economic Development Program

I.D. No. PSC-43-12-00005-A

Filing Date: 2012-12-14

Effective Date: 2012-12-14

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

Action taken: On 12/13/12, the PSC adopted an order approving New York State Electric & Gas Corporation request to use an additional \$1 million of its economic development rate allowance for its Emergency Economic Development Program.

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

Subject: To increase funding for Emergency Economic Development Program.

Purpose: To approve an increase in Emergency Economic Development Program.

Substance of final rule: The Commission, on December 13, 2012, adopted an order approving New York State Electric & Gas Corporation request to use an additional \$1 million of its economic development rate allowance for its Emergency Economic Development Program for customers affected by Hurricane Irene and Tropical Storm Lee, 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.

(11-E-0559SA2)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****To Issue Long-Term Indebtedness, Preferred Stock and Hybrid Securities and to Enter into Derivative Instruments**

I.D. No. PSC-01-13-00016-P

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

Proposed Action: The Public Service Commission is considering a petition of Rochester Gas and Electric Corporation authorizing the issuance of approximately \$518 million of long-term securities and to enter into derivative instruments.

Statutory authority: Public Service Law, section 69

Subject: To issue long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

Purpose: To allow or disallow Rochester Gas and Electric Corporation to finance transactions for purposes authorized under PSL Section 69.

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a petition filed by Rochester Gas and Electric Corporation authorizing the issuance of approximately \$518 million of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

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 C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 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-0561SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****New York State Renewable Portfolio Standard Eligibility Requirements**

I.D. No. PSC-01-13-00017-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 by the New York State Energy Development Authority requesting changes to the Renewable Portfolio Standard in order to limit eligibility to projects located in New York State.

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

Subject: New York State Renewable Portfolio Standard eligibility requirements.

Purpose: To modify the rules of the Renewable Portfolio Standard to limit eligibility to projects located in New York State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, a request by the New York State Energy Research and Development Authority (NYSERDA) to change the rules of the New York Renewable Portfolio Standard (RPS). In the "Petition for Modification of RPS Main Tier Program," filed on December 14, 2012, NYSERDA requests that eligibility for the RPS Main Tier Program be limited to projects within New York State in order to maximize the achievement of the program's objectives.

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.

(03-E-0188SP36)

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing 18 CFR Part 806

Review and Approval of Projects

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include special requirements for withdrawals from surface water and groundwater sources which, from the point of taking or point of impact respectively, have a drainage area of equal to or less than ten square miles (headwater area); and to modify provisions relating to the issuance of emergency certificates by the Executive Director.

DATES: Comments on these proposed rules may be submitted to the Commission on or before February 25, 2013. The Commission has scheduled a public hearing on the proposed rulemaking, to be held February 14, 2013, in Harrisburg, Pennsylvania. The location of the public hearing is listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by email to rcairo@srbc.net.

The public hearing will be held on February 14, 2013, at 3:00 p.m., at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, Pa. 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: rcairo@srbc.net. Also, for further information on the proposed rulemaking, visit the Commission's web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission's project review regulations relating to surface and groundwater withdrawal limitations in headwater areas, and also relating to the issuance of emergency certificates by the Executive Director.

The Commission adopted a Low Flow Protection Policy (LFPP) on December 14, 2012. The purpose of the LFPP is to provide implementation guidance to the Commission staff, project sponsors and the public on the criteria, methodology, and process used to evaluate withdrawal applications to ensure that any flow alteration related to such withdrawals does not cause significant adverse impacts to the water resources of the basin.

When first released in draft form for public review in March 2012, the LFPP included certain restrictions on water withdrawals in headwater areas. Those provisions were removed from the policy upon final adoption, and instead are being proposed for inclusion in the Commission's project review regulations, given that they would establish a binding norm more appropriately contained in regulation.

The addition of a new section, 18 CFR § 806.6 - Project limitations, provides that projects proposing to withdraw water in drainage areas equal to or less than ten square miles shall not be approved unless, in the case of a surface water withdrawal, the use associated with the project would occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or would be used to provide source water to a public water supply system. Likewise, a

groundwater withdrawal that impacts a surface water source which, from the point of impact is in a headwater area, would not be approved unless the water use associated with the project would occur on the tract of land from which the water is withdrawn, or would be used to provide source water to a public water supply system. Language is also included that provides that withdrawals by public water supply systems shall be limited for use within the system's service area, and not for bulk sale outside such area.

It is generally recognized that the smaller the drainage area, the less the amount of water that can be removed from it sustainably. On the whole, headwater areas of ten square miles or less have very limited yields, resulting in very limited water availability. The Commission believes it is appropriate, as a matter of sound public policy, to prioritize how that limited resource should be utilized by restricting its withdrawal for only uses within those areas or otherwise for public water supply.

So as not to prejudice administratively complete applications currently undergoing review as of the date of this Notice of Proposed Rulemaking, the Commission intends to exempt such applications from the scope of this new rule if and when finally adopted.

In addition, the Commission finds it desirable to clarify the provisions of 18 CFR § 806.34 relating to the issuance of emergency certificates by the Executive Director. Amending language is proposed in paragraph (a) of § 806.34 providing further criteria to apply in the exercise of this authority; namely, that consideration should be given to actions deemed necessary to sustain human life, health and safety, the life, health or safety of livestock, or the maintenance of electric system reliability, along with such other priorities established by the Commission relating to drought emergencies.

Language is also proposed to 18 CFR § 806.34(b) and (b)(2)(iii) clarifying that the authority is applicable to both unapproved projects and those operating under an existing Commission approval.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Part 806 as follows:

PART 806-REVIEW AND APPROVAL OF PROJECTS

Subpart A - General Provisions

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In Part 806, revise Table of Contents to read as follows:

Subpart A - General Provisions

Sec.

806.1 Scope.

806.2 Purposes.

806.3 Definitions.

806.4 Projects requiring review and approval.

806.5 Projects that may require review and approval.

806.6 Project limitations.

806.7 Transfer of approvals.

806.8 Concurrent project review by member jurisdictions.

806.9 Waiver/modification.

* * * * *

3. In § 806.4, revise paragraph (a) to read as follows:

§ 806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation or those authorized under § 806.34, and subject to the limitations set forth in § 806.6, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

* * * * *

3. In § 806.6, insert a new section (Project limitations) and renumber existing §§ 806.6-806.8 as follows:

§ 806.6 Project limitations.

Except for existing projects undergoing approval, modification or renewal, any project requiring review and approval under this section and involving a withdrawal from a surface water source which, from the point of taking, has a drainage area of equal to or less than ten square miles, or any groundwater withdrawal that may impact a surface water source which, from the point of impact, has a drainage area of equal to or less than ten square miles, shall not be approved unless:

(a) In the case of a surface water withdrawal, the water use associated with the project will occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or will be

used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

(b) In the case of a groundwater withdrawal, the water use associated with the project will occur on the tract of land from which the water is withdrawn, or will be used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

§ 806.7 Transfer of approvals.

§ 806.8 Concurrent project review by member jurisdictions.

§ 806.9 Waiver/modification.

Subpart D - Terms and Conditions of Approval

3. In § 806.34, revise paragraphs (a), (b), and (b)(2)(iii) to read as follows:

§ 806.34 Emergencies

(a) Emergency certificates. The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part. In the exercise of such authority, consideration should be given to actions deemed necessary to sustain human life, health and safety, or that of livestock, or the maintenance of electric system reliability to serve such needs, or any other such priorities that the Commission may establish from time to time utilizing its authority under Section 11.4 of the Compact related to drought emergencies.

(b) Notification and application. A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. In the case of a project operating under an existing Commission approval seeking emergency approval to modify, waive or partially waive one or more conditions of such approval, notice shall be provided to the Commission prior to initiating the operational changes associated with the request. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, electronic mail or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

(2) At a minimum, the application shall contain:

(iii) Location map and schematic of proposed project, or in the case of a project operating under an existing Commission approval, the project approval reference and a description of the operational changes requested.

Dated: December 17, 2012.

Thomas W. Beauduy,

Deputy Executive Director.

Department of Taxation and Finance

NOTICE OF ADOPTION

Combined Reports

I.D. No. TAF-37-12-00005-A

Filing No. 1244

Filing Date: 2012-12-17

Effective Date: 2013-01-02

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

Action taken: Amendment of Parts 3, 6 and 21; and addition of Part 33 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 1096(a), 1468 and 1519

Subject: Combined Reports.

Purpose: To update rules and codify Department interpretation regarding combined reports.

Substance of final rule: This rule amends the Business Corporation Franchise Tax Regulations, as published in Subchapter A of Chapter I of Title 20 NYCRR, the Franchise Tax on Banking Corporations Regulations, as published in Subchapter B of Chapter I of such Title, and the Franchise Taxes on Insurance Corporations Regulations, as published in Subchapter C of Chapter I of such Title, relating to combined reports.

Section 1 amends section 3-2.2 of the regulations to eliminate language contained in such section relating to Foreign Sales Corporations (FSCs) because the corresponding IRC provisions relating to FSCs have been repealed.

Sections 2 and 3 amend sections 3-11.1 and 3-12.1 of the regulations relating to Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs), respectively, to refer taxpayers to section 211.4 of the Tax Law for rules relating to the inclusion of such entities in a combined report.

Sections 4 and 5 amend sections 3-13.2 and 3-13.5 of the regulations, respectively, to correct cross-references to section 6-2.2(b) relating to the definition of unitary business that was moved to section 6-2.3(e) by section 12 of this proposal.

Section 6 makes technical amendments to the index of Subpart 6-2 of the regulations.

Sections 7 and 8 amend section 6-2.1 of the regulations to eliminate the discretionary language relating to when a combined report is permitted or required. This language has been replaced with rules as to when a combined report is required or permitted due to the presence or absence of substantial intercorporate transactions among related corporations.

Section 9 amends section 6-2.2 of the regulations to delete the language relating to the unitary business requirement. The unitary business language has been moved to section 6-2.3 relating to the substantial intercorporate transactions requirement as it is more appropriately suited there. Technical and clarifying amendments have also been made to the language relating to the capital stock requirement. Language has also been added to the capital stock requirement to provide that for purposes of measuring the 80 percent stock ownership/control requirement, such ownership will be determined based on the total voting power rather than the total number of shares of the stock owned. In addition, it provides a definition of the term "related corporations".

Sections 10, 11, and 12 rename section 6-2.3 of the regulations and make numerous other amendments to the section. Many of the amendments are derived from technical memorandum TSB-M-08(2)C. The existing discretionary language relating to when a combined report is permitted or required and the language and examples relating to the presumption of distortion have been eliminated. This language has been replaced with language that requires a combined report where there are substantial intercorporate transactions. The new language provides a list of activities and transactions that are considered in determining whether substantial intercorporate transactions exist. It further provides rules as to how the requirement may be met applying certain percentage tests. It also provides a series of steps for taxpayers to follow in determining whether a combined report is required, and if so, which corporations are included in the report. In addition, language has been added to provide that a combined report may be required or permitted where substantial intercorporate transactions

are absent, but such a report is necessary in order to properly reflect the tax liability under Article 9-A. Lastly, it adds language previously contained in section 6-2.2 of the regulations relating to the determination of whether a corporation is part of a unitary business.

Section 13 renames section 6-2.4 of the regulations and makes various technical and clarifying amendments to the section.

Section 14 amends section 6-2.5 of the regulations to delete language which provides that a foreign corporation not subject to tax will not be required to be included in a combined report unless inclusion is necessary to properly reflect the tax liability of one or more taxpayers in the group because of substantial intercorporate transactions or some agreement, understanding, arrangement or transaction whereby the activity, business, income or capital of any taxpayer is improperly or inaccurately reflected. It also makes it clear that corporations organized under the laws of a country other than the United States may not be included in a combined report. It eliminates language that requires a FSC to be included in a combined report because the IRC provisions relating to FSCs have been repealed. Examples that illustrate when a FSC is required to file a combined report have also been eliminated. It also makes it clear that a corporation subject to or that would be subject to, if subject to tax, another New York State Franchise tax may not be included in a combined report under Article 9-A. In addition, it adds language to conform to the statute, that aviation corporations and railroad and trucking corporations that allocate pursuant to Tax Law sections 210.3(a)(7)(A) and 210.3(a)(8), respectively, may not be included in a combined report with any other corporation unless such corporation allocates in the same manner. Various technical and clarifying amendments have also been made.

Section 15 renames section 6-2.6 of the regulations and adds language to refer REITs and RICs to section 211.4 of the Tax Law for information relating to the inclusion of such entities in a combined report.

Section 16 renumbers section 6-2.7 of the regulations to 6-2.8 and adds a new section 6-2.7 that provides examples illustrating where a combined report is required or permitted.

Section 17 makes technical and clarifying amendments to section 6-2.8 of the regulations, as renumbered by section 16.

Section 18 amends section 6-3.2 of the regulations to delete language requiring that all corporations in the combined group use the same accounting period. New language has been added providing that where a corporation's taxable year differs from that of the taxpayer parent, that the applicable taxable year to be included in the combined report is the taxable year that ends within the taxable year of the taxpayer parent. Technical and clarifying amendments have also been made.

Sections 19 and 20 make amendments to sections 21-2.1 and 21-3.2 of the Article 32 regulations to correspond with the Article 9-A amendments described in section 18 of this summary.

Section 21 adds a new Part 33 to the Article 33 regulations to provide that the provisions of Subpart 6-2 of Article 9-A regulations are applicable to combined returns filed under section 1515(f) of the Tax Law except where otherwise provided by the Tax Law or Part 33. Specific language is provided to codify certain exceptions.

Section 22 provides that the rule will be effective on the date the Notice of Adoption is published in the State Register and apply to taxable years beginning on or after January 1, 2013.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 6-2.3.

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

Revised Regulatory Impact Statement

1. Statutory authority: Tax Law, sections 171, subdivision First; 1096(a), 1468 and 1519. Section 171, subdivision First, provides for the Commissioner to make reasonable rules and regulations, which are consistent with the law, that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 1096(a) of Article 27 authorizes the Commissioner to make such rules and regulations as are necessary to enforce the New York State Franchise Tax on Business Corporations imposed by Article 9-A of the Tax Law. Section 1468 of Article 32 cites the provisions of Article 27 as being applicable and having the same force and effect on the Franchise Tax on Banking Corporations imposed by Article 32 of the Tax Law. Section 1519 of Article 33 cites the provisions of Article 27 as being applicable and having the same force and effect on the Franchise Taxes on Insurance Corporations.

2. Legislative objectives: The rule is being proposed pursuant to such authority and in accordance with the legislative objectives that the Commissioner administer the provisions of the Tax Law by providing guidance with respect to legislative amendments made by Chapter 60 of the Laws of

2007 to section 211.4 of the Tax Law. The amendments changed the circumstances under which a taxpayer corporation is required or permitted to file a combined report with other related corporations. The rule also reflects technical corrections to the Chapter 60 amendments made by Chapter 57 of the Laws of 2008, relating to the filing of combined reports by Real Estate Investment Trusts (REITs) and Regulated Investment Companies (RICs).

3. Needs and benefits: The rule makes amendments to Subpart 6-2 of the regulations titled, Combined Reports. A taxpayer is now required to file a combined report with its related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price of such intercorporate transactions. Related corporations are corporations that meet the existing ownership and control requirements of section 211.4 of the Tax Law and section 6-2.2 of the regulations (generally an 80 percent direct or indirect stock ownership test). In addition, a combined report may be required or permitted where substantial intercorporate transactions are absent if a combined report is necessary in order to properly reflect the tax liability under Article 9-A of the Tax Law. Under prior law and regulations, a group of related corporations could only, in the discretion of the Commissioner, be permitted or required to file a combined report if reporting on a separate basis distorted the activities, business, income, or capital in New York State of the related corporations. The activities, business, income, or capital were presumed to be distorted if there were substantial intercorporate transactions among the corporations. The Department issued a technical memorandum (TSB-M-08(2)C) that outlined and interpreted the provisions and provided guidance with respect to determining what corporations are required to be included in a combined report. The rule largely codifies the information contained in the TSB-M. The codification will benefit taxpayers and practitioners by providing guidance as to when a combined report is required or permitted and, if so, what corporations are to be included in the report.

A draft of the rule was circulated to outside organizations for comment. Comments were received from the Tax Section of the New York State Bar Association (Bar) and the Business Council of New York State (Business Council). Both the Bar and the Business Council were concerned with the removal of the unitary business principle as a prerequisite for combination. In response, language was added to acknowledge that the unitary business principle continues to apply. Both organizations also provided comments regarding the asset transfer test for substantial intercorporate transactions, some of which warranted revising the rule. As a result, language was added to make it clear that the test applies to assets transferred after January 1, 2007. Language was also added to provide that gross income directly derived from an asset includes partnership interests and that where the asset transferred is an interest in a partnership or an entity treated as a partnership, the income distributed to the transferee by such entity is gross income directly derived from the transferred asset. The Bar also suggested that the rule regarding the multi-year test for substantial intercorporate transactions be explicit that the test be used not only to satisfy the substantial intercorporate transactions test, but to prove that the test is not satisfied. A clarifying revision was made in response. Several other minor clarifying revisions were made as a result of the comments received.

As a result of internal discussions regarding the comments, several changes were made to the rule that represent a departure from interpretations set forth in the TSB-M. These changes relate to the substantial intercorporate transactions determination. Specifically, the rule changes the treatment of interest paid and received on loans between related corporations where the loan constitutes subsidiary capital. Under the TSB-M, these loans were not considered in the determination. It also provides that, generally, only assets transferred in exchange for stock or paid in capital are considered for purposes of the asset transfer test. Under the rule, transfers of assets other than for stock or paid in capital, including through a nonmonetary property dividend, would not be considered unless the principal purpose of the transfer is the avoidance or evasion of tax. Previously, only assets transferred in exchange for stock or paid in capital would be considered. In addition, the rule expands the treatment of income from the sale of items produced from transferred production equipment. It now provides that income from the sale of items produced from transferred assets, by itself, would not constitute gross income derived directly from the transferred assets, but a transfer of assets constituting substantially all of the production process, including associated intangibles, such as might occur in the transfer of an operating division, would constitute gross income derived directly from the transferred assets. Several technical and clarifying changes were also made. The rule will benefit taxpayers and practitioners by providing guidance and clarification with respect to these changes in interpretation.

4. Costs:

(a) Costs to regulated persons: The rule does not impose any new reporting, recordkeeping or other compliance costs on regulated persons. The rule benefits regulated persons by providing guidance needed to determine

when a combined report is required or permitted and as to which corporations are included. Since the rule largely codifies legislative amendments and the interpretations set forth in TSB-M-08(2)C, the impact on the regulated persons is estimated to be none or minimal. The changes that depart from the interpretations set forth in the TSB-M (see Needs and Benefits) may have an impact on the tax liability of some taxpayers. The impact of these changes on a particular taxpayer, which could be positive or negative, will depend on the specific circumstances of the taxpayer. We estimate that these changes will have minimal revenue impact on taxpayers as a whole.

(b) Costs to the agency and to the State and local governments for the implementation and continuation of this rule: It is estimated that the implementation and continued administration of this rule will not impose any costs upon this agency, New York State, or its local governments.

(c) Information and methodology: These conclusions are based upon an analysis of the rule from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau. The rule largely codifies legislative amendments that require corporations with substantial intercorporate transactions to file a combined report. The combined report more properly reflects the tax on related corporations.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes no reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: Since the legislative amendments made by Chapter 60 of the Laws of 2007 and by Chapter 57 of the Laws of 2008 significantly changed the circumstances under which a taxpayer corporation will be required or permitted to file a combined report with other related corporations, updating the existing rules relating to combined reports was the only viable alternative.

In developing the rule, the Department solicited feedback from various industry groups and associations (see Section 7 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments). Several alternatives that were considered resulted from comments received from the Tax Section of the New York State Bar Association (Bar) and the Business Council of New York State (Business Council).

Both the Bar and the Business Council were concerned about the removal of the unitary business requirement as a prerequisite for combination. While the legislative amendments did not specifically express that the related corporations be engaged in a unitary business for combination to be permitted or required, such principle is embedded in federal case law. The Department decided that the concern was valid and included language in the rule to acknowledge the unitary principle.

Another alternative considered arose from a concern expressed by the Bar in the determination of substantial intercorporate transactions. The legislative amendments provide that one of the transactions/activities considered in determining whether substantial intercorporate transactions exist is "incurring expenses that benefit, directly or indirectly, one or more related corporations". Specifically, the Bar suggested that the Department offer more guidance with respect to what types of activities and transactions are considered and how the determination of expenses directly versus expenses indirectly be made. The Department views these determinations as factual and based on the facts and circumstances for each taxpayer. Therefore, it was decided that offering further guidance in this area was not an alternative.

Another suggestion was made by the Bar regarding the multi-year test for substantial intercorporate transactions. The rule provides that in any year where intercorporate receipts or expenditures are between 45% and 55%, that the substantial intercorporate transactions test will be satisfied if, during that taxable year and prior two years, the intercorporate transactions are in aggregate, 50% or more of the total receipts or expenditures for that period. It was suggested that the rule make it explicit that the multi-year test should be used not only to satisfy the substantial intercorporate transactions test, but to prove that the test is not satisfied. The Department considered providing clarity in this area to be a valid alternative. A clarifying revision was made.

Lastly, both the Bar and the Business Council provided comments concerning the asset transfer test for substantial intercorporate transactions. The Department felt some of these comments warranted revising the rule. As a result, language was added to make it clear that the test applies to assets transferred on or after January 1, 2007. Language was also added to provide that gross income directly derived from an asset includes partnerships interests and that where the asset transferred is an interest in a

partnership or an entity treated as a partnership, the income distributed to the transferee by such entity is gross income directly derived from the transferred asset.

It should be noted that the main focus of the comments received from the Business Council were basically the same as those submitted regarding technical memorandum TSB-M-08(2)C. The Business Council felt that the methodology used in determining which corporations are included in the group would be difficult for large multinational corporations to follow. They also felt that the methodology exceeded the scope of the authority the legislature granted with respect to which corporations are required to be included in the combined return. The Department continues to disagree and believes that the interpretations contained in the technical memorandum and the draft rule are the proper reflection of the legislative intent of the statutory amendments.

9. Federal standards: The rule does not exceed any minimum standards of the Federal government for the same or similar subject area.

10. Compliance schedule: The amendments will take effect on the date the Notice of Adoption is published in the State Register and apply to taxable years beginning on or after January 1, 2013. No additional time is needed in order for the regulated parties to comply with this rule.

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

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

Under section 211.4 of the Tax Law, as amended by Chapter 60 of the Laws of 2007, a taxpayer is required to file a combined report with its related corporations if there are substantial intercorporate transactions among the related corporations, regardless of the transfer price of the intercorporate transactions. Related corporations are corporations that meet the ownership and control requirements of Tax Law section 211.4 and section 6-2.2 of the regulations (generally an 80 percent direct or indirect stock ownership test). In addition, a combined report may be required or permitted in the absence of substantial intercorporate transactions if a combined report is necessary in order to properly reflect the tax liability. The amendments conform the combined reports regulations to the current law and largely codify interpretations contained in a technical memorandum, TSB-M-08(2)(C), concerning the Department's interpretation of the combined reporting statutory provisions.

As a result of public comments received, several changes have been made to the proposed rule. Language has been added to sections 6-2.3(b)(2) and 6-2.3(b)(3) of the proposed rule to clarify that intercorporate cost allocations of expenditures that benefit related corporations are not considered receipts or expenditures in determining if there are substantial intercorporate transactions. It was also clarified that expenditures for service functions, such as payroll processing and personnel services, are not considered expenditures that benefit related corporations. Additionally, it is provided that the amendments will take effect on the date the Notice of Adoption is published in the State Register and apply to taxable years beginning on or after January 1, 2013.

There are no modifications to the Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis, and the Job Impact Exemption necessary as a result of these changes.

Assessment of Public Comment

Written comments were received regarding proposal TAF-37-12-00005-P from the Securities Industry and Financial Markets Association (SIFMA) and from the law firm, McDermott Will & Emery.

SIFMA noted that it generally endorses the approach of the rule and offers general suggestions to clarify the treatment of the issues.

SIFMA's first comment concerns situations where substantial intercorporate transactions are absent. SIFMA states that section 211.4 of the Tax Law indicates that the general purpose of filing combined reports is to accurately reflect the New York income and capital of groups of related corporations. SIFMA suggests that the rule should include specific language affirming this principle and indicating the rules are the same regardless of whether taxpayers are seeking permission to file combined reports or the Commissioner is seeking to compel them to file combined reports. Under Section 211.4(a)(4) of the Tax Law, in the absence of substantial intercorporate transactions, no combined report will be required unless the Commissioner determines it is necessary to properly reflect the tax. Sections 6-2.1(b) and 6-2.3(d) of the rule indicate that combined reports may also be permitted in these circumstances. The Department feels no further statements are necessary.

SIFMA notes that the rule's reference to voting power rather than simply to the number of the shares in the stock ownership test in section 6-2.2(a)(3) of the rule is "a welcome change". SIFMA suggests, however, that the rule should provide that voting power has reference to the ability

to elect the corporation's board of directors, noting that it is common for corporations to provide that certain classes of stock can vote only on particular issues, but not in elections of directors. It was also suggested that the rule should provide that voting power is determined by reference to the ability to elect directors as of a specific time such as the close of the corporation's taxable year. The Department agrees that voting power for the election of the board of directors is generally determinative of control for the purpose of the capital stock requirement and will be considered for the test. The Department recognizes, however, that it is possible that there could be other arrangements whereby the voting power for the election of the board of directors is not so determinative. The Department does not feel any further clarification is necessary.

With respect to the substantial intercorporate transactions test, SIFMA questions the relationship between the provision indicating that the activity of "incurring expenses that benefit, directly or indirectly, one or more related corporations" is considered and the statement that "[i]ntercorporate cost allocations are not considered." SIFMA requests that this relationship be clarified. The Department agrees and has made changes to sections 6-2.3(b)(2) and 6-2.3(b)(3) of the rule to clarify that intercorporate cost allocations of expenditures that benefit related corporations are not considered receipts or expenditures in determining if there are substantial intercorporate transactions. It is also clarified that expenditures for service functions, such as payroll processing and personnel services, are not considered expenditures that benefit related corporations.

SIFMA states that it would be helpful if the rule clarified the meaning of "regardless of the transfer price for such intercorporate transactions" in the determination of substantial intercorporate transactions. It was asked whether the phrase meant that the actual price used for intercorporate transactions would be the determining factor in analyzing whether the intercorporate transactions are substantial. It was suggested that it would be helpful if the regulations provided that the amount of the intercorporate transaction will be based on the actual price charged and cannot be increased or decreased by transfer pricing analysis except in egregious and abusive cases. The Department does not disagree with SIFMA, but does not feel a clarification is necessary or warranted. The test measures receipts and expenditures on a taxpayer's books. If adjustments for transfer pricing affecting receipts and expenditures occur at the federal level, the test would need to be readministered accordingly.

SIFMA suggests that it would be helpful if the rule provided that combined or separate filing status established on audit will continue for future taxable years unless there is a change in circumstances and that the burden of proof should be on the party (whether the Department or taxpayer) seeking to show a change in circumstances. The Department does not believe this would be appropriate. The inclusion or exclusion of a corporation in a combined report is based on the facts and circumstances in each taxable year and is subject to revision or disallowance on audit. This is expressed in section 6-2.4(b) and 6-2.4(c) of the existing regulations.

SIFMA proposes the inclusion of an express statement that ineligible corporations in a combined report (e.g. alien corporations) are taken into account in determining the existence of substantial intercorporate transactions in the ten-step process in section 6-2.3(c) of the proposed rule. The Department believes it is clear the test is performed on all corporations in the tentative combined group prior to the removal of any ineligible corporations in step ten. No clarification is necessary.

SIFMA indicates that it would be helpful if the rule specifically referred to the treatment of stapled corporations (certain alien corporations filing as domestic corporations for federal income tax purposes) and indicated whether these corporations are treated as alien or domestic corporations for combined reporting purposes. The Department points out that Tax Law section 211.4(a)(5) provides that a corporation organized under the laws of a country other than the United States is not required or permitted to make a combined report. No changes were made to the proposed rule.

SIFMA recommends that the rule provide some guidance as to when the Commissioner would permit or require a corporation included in a combined reporting group to change its taxable year. Section 6-3.2(b) of the rule provides that where a corporation has a different taxable year from that of the taxpayer designated as parent, the applicable taxable year of such corporation to be included in the combined group is the taxable year that ends within the taxable year of the designated parent. The intent of this provision is to not preclude a related corporation from making a combined report merely because it has a different accounting period. The Commissioner may allow a corporation to conform to the accounting period of the group regardless of its federal accounting period. The Department believes these are isolated instances and no clarification is necessary.

SIFMA proposes it would be helpful if the Department also applied a limited period for applying the asset transfer test for assets not required to be depreciated or amortized for Federal income tax purposes. The Department points out that the proposed rule provides that in the case of an asset not required to be depreciated or amortized for Federal income tax

purposes, the test is applied for each year the asset is reflected on the books and records of the transferee under generally accepted accounting principles. The Department did consider further limiting the period for applying the test, but felt that the asset could generate gross income for as long as it was on the transferee's books and records. Therefore, the Department feels no limitation is warranted.

SIFMA states that the regulations should be generally effective as of January 1, 2007 as the amendments made by Chapter 60 of the Laws of 2007 apply to taxable years beginning on or after that date. However, SIFMA states it would be helpful if the rule were to expressly allow taxpayers to rely on the Department's prior guidance provided in a technical memorandum, TSB-M-08(2)C, until the publication of the rule or a designated effective date. Since some of the amendments in the rule represent a departure from the interpretations taken in the TSB-M, the Department has, based upon this comment, provided that the amendments would apply to taxable years beginning on or after January 1, 2013.

McDermott Will & Emery questions whether federal mark-to-market adjustments included in the computation of entire net income are properly included in the substantial intercorporate transactions test. McDermott Will & Emery suggests that these are not the types of transactions that the test is attempting to measure and therefore should not be included. The Department agrees that these transactions should not be included in the substantial intercorporate transactions test. Mark-to-market adjustments under the Internal Revenue Code result in a gain or loss adjustment accounted for in the computation of federal taxable income. These adjustments are not considered a receipt or expenditure. Since the substantial intercorporate transactions test is based upon a corporation's receipts or expenditures, the Department feels it is clear that the existing language sufficiently addresses the concern. No changes were made to the amendments as a result of this comment.

McDermott Will & Emery questions whether an alien corporation (e.g., an alien banking corporation subject to the Franchise Tax on Banking Corporations imposed by Article 32 of the Tax Law) in a tentative combined group under the Business Corporation Franchise Tax imposed by Article 9-A of the Tax Law should apply the substantial intercorporate transactions test using receipts and expenses from its effectively connected income or its worldwide income. The Department has consistently interpreted the substantial intercorporate transactions test as an Article 9-A test. There is nothing in these amendments that changes that interpretation. The test is based upon entire net income computed on a worldwide basis regardless of a related corporation's NYS franchise tax filing status (e.g. Article 9, Article 32, or Article 33). The Department feels that the existing regulations are clear and no changes to the proposed rule are necessary.

McDermott Will & Emery raised several questions regarding example 7 in section 6-2.7 of the rule regarding a common pool of employees. Example 7 in the rule is derived from example 7 in Section 6-2.3(f) of the existing regulations. It is also included in technical memorandum, TSB-M-08(2)C. The conclusion of the example in the technical memorandum was slightly modified to illustrate the application of the updated substantial intercorporate transactions test. The example in the rule is identical to the example in the technical memorandum. The Department's position is that this example is only meant to illustrate how the test works for a certain set of facts and is not intended to be all inclusive. The Department feels it is not feasible to try and address a multitude of hypothetical questions and fact patterns by regulations. No changes were made to the rule as a result of this comment.