

# 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.

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## Adirondack Park Agency

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

#### 9 NYCRR, Subtitle Q, Adirondack Park Agency

I.D. No. APA-27-13-00015-P

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

**Proposed Action:** This is a consensus rule making to amend Parts 570-575, 577-578, 580-583, 586-588, Appendicies Q-4, Q-6, Q-8; repeal sections 573.7(d)(i)(ix), 577.6(c)(2)(ii), 586.5(c), 588.8; and add sections 570.3(an), 572.11(a)(4) and 588.4 to Title 6 NYCRR.

**Statutory authority:** Executive Law, section 804(9); Environmental Conservation Law, sections 15-2709 and 24-0801

**Subject:** 9 NYCRR, Subtitle Q, Adirondack Park Agency.

**Purpose:** To make technical corrections, clarify language, update citations and repeal/replace obsolete language in existing rules.

**Substance of proposed rule (Full text is posted at the following State website: [www.apa.ny.gov](http://www.apa.ny.gov)):** The proposed rule would:

Amend 570.2(d) and (g) to add a reference to Part 576 in subdivision (d) and to update citations and make other technical corrections to subdivision (g);

Amend the definitions in 570.3 (b)[Bed and Breakfast], (d)(1)[Campground],(f)[Clearcutting], (g)(2)[Critical Environmental Area], (k)[Freshwater wetlands], (l)[Guest cottage], (m)[Hunting and fishing cabin], (t)(1)[Major public utility use], (v)[Material detrimental reliance], (x)[Multiple-family dwelling], (y)(1)[Open space recreation use], (ab)[Preexisting subdivision of land],(ac)(1),(3),(6) and (8)[Principal building], (ak)(1)[Structure], (al)(1),(2)(ii),(3) and (4) [Subdivision of land], and (am)[Undertake] to make technical corrections, update citations, clarify existing language and delete non-definitional language;

Add a new definition of Wastewater as 570.3(an), renumber existing 570.3(an) [Watershed management] as subdivision (ao), and renumber existing 570.3(ao)[Wetlands] as subdivision (ap) and make technical corrections to the subdivision and delete non-definitional language;

Amend 571.1 to make a technical correction;  
Amend 572.3(b)(2) to make technical corrections;  
Amend 572.3(c) to make technical corrections;  
Amend 572.4(a)(1) to update a citation;  
Amend 572.4(c)(4),(6) to make technical corrections;  
Amend 572.10(b) to update a citation and to make technical corrections;

Amend 572.11(a)(3) to delete obsolete reference to 572.15 for variance hearings;

Add a new 572.11(a)(4) to properly reference citation for variance hearings as 576.5;

Amend 572.22(e) to update a citation and clarify existing language;  
Amend 572.23(d),(g) to clarify existing language and to make technical corrections;

Amend 573.4(e)(2),(4),(f)(6),(h),(i)(1),(3) and (4) to make technical corrections and clarify existing language;

Amend 573.5(e) to make technical corrections;  
Amend 573.6(e),(f) to make technical corrections;

Amend 573.7(b)(1)(ii) to make technical corrections;  
Repeal and replace 573.7(d)(1)(ix) to update referenced guidance;

Amend 573.8(b) to make technical corrections;  
Amend 574.4 to make technical corrections and to clarify existing language;

Amend 574.8(a) to make technical corrections;  
Amend 575.1(e)(2),(3) to make technical corrections;

Amend 575.2 to make technical corrections and to clarify existing language;

Amend 575.4(c),(f) to update a citation; and to make a technical correction;

Amend 575.7(c),(d) to make technical corrections;  
Amend 577.2(s) to make technical corrections;

Repeal and replace 577.6(c)(2)(ii) to update referenced guidance;  
Amend 577.9(b) to make technical corrections;

Amend 577.10(b) to update a citation;  
Amend 578.1(c) to clarify existing language and make a technical correction;

Amend 578.2(a), (b) to clarify existing language and make a technical correction;

Amend 578.3(n)(1)(iv) to make technical corrections;  
Amend 578.3(c),(e),(f),(g),(i),(j),(p),(q) and (t) to make technical corrections and to update a citation;

Amend 578.3(n)(3)(ii)(d) to make technical corrections;  
Amend 578.5(c),(d),(k),(w), and (x) to make technical corrections and to clarify existing language;

Amend 578.8(g) to make technical corrections;  
Amend 578.11(a) to make technical corrections;

Amend 580.1(b),(c) to make technical corrections and to update a citation;

Amend 580.4(a)(8),(b)(6) to make technical corrections;  
Amend 580.5(b) to make technical corrections;

Amend 580.10(b) to make technical corrections;  
Amend 580.14(d)(3) to make technical corrections;

Amend 580.17(c) to update a citation and make technical corrections;  
Amend 581-1.2(i) to make technical corrections;

Amend 581-2.6(a) to make technical corrections;  
Amend 581-2.7(a) to make technical corrections;

Amend 581-2.8 to make technical corrections;  
Amend 581-3.1(c) to make technical corrections;

Amend 581-3.2(b) to make technical corrections;  
Amend 581-4.3(a)(3) to make technical corrections;

Amend 581-4.5(b) to make technical corrections;

Amend 581-4.9(e)(2) to make technical corrections;  
 Amend 581-4.16 to make technical corrections;  
 Amend 582.2(e)(1) to make technical corrections;  
 Amend 583.5(a)(4)(iii) to make technical corrections;  
 Amend 586.5(b)(1) to update citations;  
 Repeal 586.5(c) as obsolete;  
 Amend 586.7 to make technical corrections and to update citations;  
 Amend 586.8(a) to update citations;  
 Amend 586.9(a) to update citations;  
 Amend 586.10 to update citations;  
 Amend 586.11 to update citations;  
 Amend 586.12(a) to update citations;  
 Amend 586.13 to update citations;  
 Amend 586.14(b) to update citations and clarify existing language;  
 Amend 587.1(j)(5) to make technical corrections;  
 Add a new 588.4(d) as a rule of construction;  
 Repeal and replace 588.8 with simplified language;  
 Amend Appendix Q-4 to clarify existing language;  
 Amend Appendix Q-6 to make technical corrections; and  
 Amend Appendix Q-8 to make technical corrections.

**Text of proposed rule and any required statements and analyses may be obtained from:** Paul Van Cott, Associate Attorney, Adirondack Park Agency, PO Box 99, NYS Rt. 86, Ray Brook, NY 12977, (518) 891-4050, email: ptvancot@gw.dec.state.ny.us

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

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

#### **Consensus Rule Making Determination**

The Adirondack Park Agency has determined that the proposed rule is a consensus rule that no person is likely to object to because it will update citations, and make technical corrections to, and clarify, and repeal obsolete language in its existing rules set forth in 9 NYCRR, Subtitle Q.

#### **Job Impact Statement**

1. Nature of impact: None. The proposed rule is a consensus rule that will update citations, and make technical corrections to, and clarify, and repeal obsolete language in 9 NYCRR, Subtitle Q.
2. Categories and number affected: None.
3. Regions of adverse impact: None.
4. Minimizing adverse impact: None.

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## Department of Civil Service

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-27-13-00001-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Empire State Fellow (120).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

#### **Regulatory Impact Statement**

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

#### **Regulatory Flexibility Analysis**

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

#### **Rural Area Flexibility Analysis**

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

#### **Job Impact Statement**

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

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-27-13-00002-P

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

**Proposed Action:** Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class and add a subheading and classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Justice Center for the Protection of People with Special Needs," by adding thereto the positions of Assistant Chief Investigations (5), Chief Investigations, Counsel, Deputy Chief Investigator, Deputy Director (2), Executive Assistant, Executive Deputy Director, Special Assistant, Special Prosecutor and Inspector General; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by adding thereto the subheading "Justice Center for the Protection of People with Special Needs," and the positions of øDirector Vulnerable Persons Central Register (1), øInternal Investigator 1 (Justice Center) (92), øInternal Investigator 2 (Justice Center) (45) and øSupervising Investigator (Justice Center) (11).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

#### **Regulatory Impact Statement**

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

#### **Regulatory Flexibility Analysis**

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

#### **Rural Area Flexibility Analysis**

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

#### **Job Impact Statement**

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

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

**Jurisdictional Classification****I.D. No.** CVS-27-13-00003-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor, by adding thereto the position of Chief Demographer (1).**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification****I.D. No.** CVS-27-13-00004-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the non-competitive class.**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Inmate Disciplinary Hearing Officer from 11 to 17.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification****I.D. No.** CVS-27-13-00005-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Teachers' Retirement System, by adding thereto the position of Teachers Retirement System Investment Officer 2 (Quantitative Strategies/Risk Management Investment) (1).**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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

**Jurisdictional Classification**

I.D. No. CVS-27-13-00006-P

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

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

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of øDirector, Mental Health Regional Audit Office (1) and by adding thereto the position of øMental Health Program Manager 1 (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

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**State Commission of  
Correction**

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

**Agreements for Custody of Inmates from Other States**

I.D. No. CMC-27-13-00011-P

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

**Proposed Action:** Amendment of sections 7002.2 and 7205.2 of Title 9 NYCRR.

**Statutory authority:** Correction Law, sections 45(6), (15) and 500-o

**Subject:** Agreements for custody of inmates from other states.

**Purpose:** To reconcile a recent statutory amendment regarding foreign-state inmates in the Albany County Correctional Facility.

**Text of proposed rule:** Subdivision (a) of section 7002.2 of Title 9 is amended to read as follows:

(a) Prior to the admission of any prisoner, facility staff performing receiving and admissions functions shall examine the committing instrument or document which serves as the basis for the admission. Prisoners shall be admitted to a facility only when:

(1) an examination of available prisoner identification confirms that a prisoner's identity corresponds with any information accompanying such document;

(2) reasonable efforts have been made to confirm that the prisoner is of proper age for admission to a correctional facility in the State of New York. If the prisoner has not reached his or her 16th birthday, such prisoner shall not be admitted to the facility, except in accordance with section 304.1 of the Family Court Act or section 510.15 of the Criminal Procedure Law;

(3) reasonable efforts have been made to confirm that the commitment document bears the signature of a magistrate or other appropriate authority;

(4) it has been confirmed that the prisoner has been committed or otherwise authorized for admission to the receiving facility, and is not intended for commitment to another facility;

(5) it has been determined that the commitment document is not otherwise defective so as to render the admission of a prisoner unlawful; and

(6) an examination of the sentencing commitment, for eligible inmates of another state detained by agreement pursuant to Part 7205 of this Title, confirms that such inmate has been sentenced by a court of the other state to a term of imprisonment [in excess of ninety (90) days but no more than one (1) year] allowable pursuant to section 500-o of the Correction Law.

Subdivision (c) of section 7205.2 of Title 9 is amended to read as follows:

(c) Eligible inmate shall mean an inmate, sentenced by the court of another state, to a term of imprisonment [in excess of 90 days but no more than one (1) year] allowable pursuant to section 500-o of the Correction Law.

**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. Correction Law section 500-o provides that any agreement by a local correctional facility to provide custody of inmates from another state is subject to the approval of the Commission of Correction.

## 2.) Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to promulgate and maintain minimum standards which provide a mechanism and procedure by which a local correctional facility may submit and seek Commission approval of an agreement to provide custody of inmates of another state.

## 3.) Needs and benefits:

Effective September 23, 2011, a new Correction Law § 500-o was added to allow Sheriffs, Commissioners of Correction and other persons in charge of a local correctional facility to enter into an agreement with a correctional institution of another state to house inmates serving a sentence exceeding ninety (90) days but less than one year. L.2011, Ch. 573. Pursuant to the provisions of Correction Law § 500-o, any such agreement is subject to the approval of the Commission of Correction.

To provide a mechanism and procedure by which a local correctional facility may submit and seek Commission approval of such an agreement, and given the various and complicated issues surrounding such interstate agreements, including transportation, custody exchange and the provision of foreign state rights, the Commission promulgated applicable rules and regulations, effective July 3, 2012.

On August 17, 2012, Correction Law § 500-o was amended to allow the Albany County Correctional Facility to enter into such an agreement

with a correctional institution of another state to house inmates serving a sentence exceeding ninety (90) days but less than two (2) years. L.2012, Ch. 433. Consequently, the Commission finds it necessary to amend its regulations to allow for such an agreement.

4.) Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. By statute, a local correctional facility may, but is not required to, enter into an agreement with a correctional institution of another state to house inmates. The amendment will only reconcile a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period of up to two years.

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 local correctional facility.

5.) Local government mandates:

None.

6.) Paperwork:

A local correctional facility's decision to provide custody for inmates of another state is entirely voluntary, and thus this rule does not require any additional paperwork on regulated parties. The proposed rule seeks only to reconcile a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period up to two years.

7.) Duplication:

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

8.) Alternatives:

The alternative, maintaining no regulations regarding agreements for the custody of inmates of another state, was explored by the Commission. This alternative was rejected upon the Commission's finding that the current regulation conflicts with a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period of up to two years.

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 reconcile a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period of up to two years. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, 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 reconcile a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period of up to two years. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, 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 reconcile a recent statutory amendment which allows the Albany County Correctional Facility to provide custody of inmates of another state for a period of up to two years. As such, there will be no impact on jobs and employment opportunities.

## Department of Economic Development

### NOTICE OF ADOPTION

**Economic Transformation and Facility Redevelopment Program**

**I.D. No.** EDV-18-13-00003-A

**Filing No.** 669

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Addition of Parts 200-204 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 18

**Subject:** Economic Transformation and Facility Redevelopment Program.

**Purpose:** Allow Department to implement the Economic Transformation and Facility Redevelopment Program.

**Text or summary was published** in the May 1, 2013 issue of the Register, I.D. No. EDV-18-13-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

**Initial Review of Rule**

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Empire State Jobs Retention Program Tax Credit**

**I.D. No.** EDV-18-13-00004-A

**Filing No.** 668

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Addition of Parts 210-216 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 20

**Subject:** Empire State Jobs Retention Program tax credit.

**Purpose:** Allow Department to implement the Empire State Jobs Retention Program tax credit.

**Text or summary was published** in the May 1, 2013 issue of the Register, I.D. No. EDV-18-13-00004-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Thomas Regan, NYS Department of Economic Development, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

**Initial Review of Rule**

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

### EMERGENCY RULE MAKING

#### Interpretation & Translation for Prescription Drugs, Standardized Labeling & Patient-Centered Data Elements for Medications

I.D. No. EDU-12-13-00014-E

Filing No. 663

Filing Date: 2013-06-18

Effective Date: 2013-06-27

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

**Action taken:** Addition of sections 63.11 and 63.12 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6829(1), (6), (7) and 6830(1); and L. 2012, ch. 57, part V

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

**Specific reasons underlying the finding of necessity:** The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Section V of Chapter 57 of the Laws of 2012, which amended Education Law § § 6829 and 6830 to require pharmacies to provide certain interpretation and translation services, free of charge, to patients with Limited English Proficiency and to require the Commissioner of Education to establish standardized patient-centered data elements for prescription drug labels.

The proposed amendments were adopted as an emergency measure at the March 2013 meeting of the Board of Regents. Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 2013 Regents meeting. Furthermore, pursuant to SAPA, the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 3, 2013. Emergency action is necessary at the June 2013 Regents meeting for the preservation of the public health and general welfare in order to ensure that the rule that was adopted as an emergency action (in order to timely implement the provisions of the new law) remains continuously in effect until the proposed amendment can be adopted as a permanent rule.

**Subject:** Interpretation and translation for prescription drugs, standardized labeling and patient-centered data elements for medications.

**Purpose:** To implement part V of chapter 57 of the Laws of 2012.

**Text of emergency rule:** Pursuant to sections 207, 6504, 6507, 6829 and 6830 of the Education Law Sections 63.11 and 63.12 of the Regulations of the Commissioner of Education are added, effective June 27, 2013, to read as follows:

§ 63.11 Interpretation and translation requirements for prescription drugs.

(a) Definitions. As used in this section:

(1) Covered pharmacy shall mean any pharmacy that is part of a group of eight or more pharmacies, located within New York State and owned by the same corporate entity.

(2) Corporate entity shall include related subsidiaries, affiliates, successors, or assignees doing business as or operating under a common name or trading symbol of the covered pharmacy.

(3) Limited English proficient individual or LEP individual shall mean an individual who identifies as being, or is evidently, unable to speak, read or write English at a level that permits such individual to understand health-related and pharmaceutical information communicated in English.

(4) Translation shall mean the conversion of a written text from one language into an equivalent written text in another language by an individual competent to do so and utilizing all necessary pharmaceutical and health-related terminology. Such translation may occur, where appropriate, in a separate document provided to an LEP individual that accompanies his or her medication.

(5) Competent oral interpretation shall mean an oral communication in which a person acting as an interpreter comprehends a message and re-expresses that message accurately in another language, utilizing all

necessary pharmaceutical and health-related terminology, so as to enable an LEP individual to receive all necessary information in the LEP individual's preferred pharmacy primary language.

(6) Pharmacy primary languages shall mean those languages, up to a maximum of seven languages other than English, spoken by one percent or more of the population of the State, as determined by the U.S. Census. If more than seven languages other than English are spoken by one percent or more of the population, the pharmacy primary languages shall be limited to seven most spoken languages, as determined by the U.S. Census.

(b) Provision of competent oral interpretation services and translation services. Except as otherwise provided in subdivision (e) of this section:

(1) For purposes of counseling an individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, each covered pharmacy shall provide free, competent oral interpretation services and translation services in such individual's preferred pharmacy primary language to each LEP individual requesting such services or when filling a prescription that indicates that the individual is limited English proficient at such covered pharmacy, unless the LEP individual is offered and refuses such services.

(2) With respect to prescription medication labels, warning labels and other written materials, each covered pharmacy shall provide free, competent oral interpretation services and translation services to each LEP individual filling a prescription at such covered pharmacy in such individual's preferred pharmacy language, unless the LEP individual is offered and refuses such services or the medication labels, warning labels and other written materials have already been translated into the language spoken by the LEP individual.

(3) Translation and competent oral interpretation shall be provided in the preferred pharmacy primary language of each LEP individual, provided that no covered pharmacy shall be required to provide translation or competent oral interpretation of more than seven languages.

(4) The services required by this subdivision may be provided by a staff member of the pharmacy or a third-party contractor. Such services shall be provided on an immediate basis but need not be provided in-person or face-to-face.

(c) Notification relating to language assistance services. Except as otherwise provided in subdivision (e) of this section:

(1) In accordance with Education Law section 6829(3), each covered pharmacy shall conspicuously post a notice to inform LEP individuals of their rights to free, competent oral interpretation services and translation services. Such notice shall include the following statement in English and in each of the pharmacy primary languages: "Point to your language. Language assistance will be provided at no cost to you."

(2) The statement in each of the pharmacy primary languages shall be in 20 point bold face, Arial type in a color that sharply contrasts with the background color of the sign. Each such statement shall be enclosed in a box, and there shall be at least a 1/4 inch clear space between adjacent boxes.

(3) The statements in each of the pharmacy primary languages shall be printed on one sign that shall be conspicuously displayed at or adjacent to each counter where prescription drug orders are dropped off and where prescriptions are picked up, and near every cash register at which payment is received for prescription drugs. Such signs shall be positioned so that a consumer can easily point to the statement identifying the language in which such person is requesting assistance.

(d) Waivers. An application for a waiver of the provisions of subdivisions (b) and (c) of this section shall be made on a form prescribed by the department. The burden of substantiating the validity of a request for a waiver shall be on the applicant.

(1) Each application shall be specific to a registered covered pharmacy, regardless of common ownership.

(2) The applicant shall clearly document the financial or physical constraints, threat to other services provided, or other circumstances upon which the request is based.

(3) No waiver shall be granted in the absence of a showing that implementation of the provisions of subdivisions (b) and (c) of this section would be unnecessarily burdensome when compared to the need for the translation and competent oral interpretation services.

(4) The applicant shall identify alternative sources of competent oral interpretation services or translation services available for LEP individuals within a reasonable distance.

(5) In the event a request for waiver is approved, the pharmacy shall post a notice in the pharmacy primary languages informing LEP individuals of alternative sources.

(6) The duration of a waiver shall be one year and may be renewed upon approval of a new waiver application by the department.

(e) In accordance with Part V of Chapter 57 of the Laws of 2012, the provisions of this section shall preempt any contrary local law or ordinance; provided, however, that cities with a population of 100,000 or

more may retain or promulgate such local laws or ordinances imposing additional or stricter requirements relating to interpretation services or translation services in pharmacies. Nothing in this section shall diminish or impair any requirement that any pharmacy or pharmacist provide any language assistance, interpretation, or translation under any applicable federal or state law, local law or ordinance (unless preempted by this section), consent decree, or judicial settlement, judgment or order.

§ 63.12 Standardized patient-centered data elements to be used on all drug labels. In accordance with section 6830 of the Education Law, all prescription medicine dispensed to patients in this State must include standardized patient-centered data elements as prescribed by in this section

(a) Definitions. As used in this section:

(1) Critical elements shall consist of:

(i) patient name;

(ii) directions for use by the patient, which directions shall be structured in full sentences; and

(iii) drug name and strength.

(2) Important elements shall consist of:

(i) name, address and telephone number of the pharmacy;

(ii) patient's address;

(iii) name of prescriber;

(iv) the date of filling or refilling of the prescription; and

(v) the prescription number or other identifying number assigned to the prescription.

(b) All prescription drug labels shall contain all of the critical elements and all of the important elements.

(1) Critical elements of each prescription label shall be:

(i) emphasized by being highlighted in color, in bold type, or both; and

(ii) printed in a minimum of a 12-point font.

(2) Important elements of each prescription label and any other information contained on the label shall not be highlighted in color or in bold type, shall be legible and shall not be presented in a fashion that undermines the emphasis on the critical elements.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-12-13-00014-P, Issue of March 20, 2013. The emergency rule will expire August 16, 2013.

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner to promulgate regulations in administering the admission to the practice of the professions.

Subdivisions (1)(e), (6), and (7) of section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP) and requires that pharmacies provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Commissioner.

Subdivision (1) of section 6830 of the Education Law, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to promulgate regulations requiring standardized patient-centered data elements to be used on all prescription medicine dispensed in New York State.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendments implement Part V of Chapter 57 of the Laws of 2012, which requires all pharmacies that are within a which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services throughout the State in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also establish a process for covered pharmacies to seek a waiver of the interpretation and translation requirements.

The proposed regulations also fulfill the legislative direction to define the elements of patient-centered labels that will be required for all prescriptions filled in New York State.

##### 3. NEEDS AND BENEFITS:

The 2012 New York State budget legislation included amendments to the Education Law, which amendments are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This new law, which becomes effective March 30 2013, includes provisions to assist Limited English Proficient (LEP) individuals who need interpretation and translation services when filling prescriptions at pharmacies. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients.

Over the course of the months following passage of this legislation the Office of the Professions sought input from interested stakeholders. In addition to receiving written comments, there were three opportunities for oral presentations, one each in Buffalo, Albany and New York City. This input, and advice from the State Board of Pharmacy, assisted in the development of the proposed regulations.

Section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, includes the following provisions:

- The legislation applies to covered pharmacies, which the legislation defines as a pharmacy that is part of a group of eight or more pharmacies, located within New York State and owned by the same corporate entity.

- Covered pharmacies are required to provide interpretation and translation services to LEP individuals in their preferred pharmacy primary language, free of charge.

- The legislation defines the preferred pharmacy primary languages as those that are spoken by 1% or more of the population, as determined by the U.S. Census, for each region, as established by the Department, provided that no pharmacy need provide services in more than seven languages.

- Interpretation and translation services may be provided by pharmacy staff or third-party contractors.

- Pharmacies will not be liable for injuries resulting from the actions of a third party as long as the pharmacy entered into the contract reasonably and in good faith.

- Every covered pharmacy must conspicuously display a notice, in the pharmacy primary languages, notifying patients of the available interpretation and translation services.

- The legislation requires the Department to develop a process whereby a covered pharmacy may seek a waiver from these requirements if it can demonstrate that implementation is unnecessarily burdensome when compared to the need for services.

- The legislation also requires the Commissioner, in consultation with the Department of Health, to establish translation and interpretation requirements for mail-order pharmacies; such requirements will be effective March 30, 2014. The Department anticipates that it will come before the Regents with these regulations sometime early next year.

As noted above, the law delegated to the Department the responsibility of establishing the regions to be used in determining the languages in which translation and interpretation services must be provided. The Board of Pharmacy and Department staff considered a number of options, such as dividing the State into 6-8 regions, dividing the State into an upstate and a downstate region only, dividing the State on a county-by-county basis, and considering the State in its entirety as one region. After discussions with stakeholders representing both covered pharmacies and LEP individuals, it was determined that the last option was preferred because it provided services to a large portion of the LEP population in an efficient and cost-effective manner. Establishing the State as a single region will result in four pharmacy primary languages statewide – Chinese, Italian, Russian and Spanish. This approach will expedite the adoption of standardized interpretation and translation services by covered pharmacies and will provide for more languages to be covered in nearly all upstate communities than other options.

It should be noted that New York City has a local law regarding the provision of language assistance, interpretation, and translation services to LEP individuals. Both the enacting statute and the proposed regulations contain provisions that make it clear that neither the new law nor the regulations promulgated to implement it will diminish requirements existing pursuant to this New York City law.

Additionally, in the course of the development of the proposed regulations, the Civil Rights Bureau of the State Attorney General's Office provided information concerning settlement agreements it has with seven large retail pharmacy chains pursuant to which those chains have been providing language assistance, interpretation, and translation services in approximately 10 different languages to LEP individuals throughout the state. While all but one of those agreements will be expiring in 2013, there is nothing in the law or the proposed regulation that would prohibit any pharmacy from providing language assistance, interpretation, and translation services in additional languages.

Education Law § 6830, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to develop regulations requiring the use of standardized patient-centered data elements on all prescription medication labels. It also requires the Commissioner to obtain input from its Boards of Pharmacy and Medicine, consumer groups, advocates for special populations, pharmacists physicians, other health care professionals authorized to prescribe, and other interested parties, in the development of patient-centered prescription labels. Such labeling is intended to increase patient understanding and compliance with medication regimens.

Regarding patient-centered labeling, the Boards of Pharmacy and Medicine relied, in part, on previous studies conducted by the United States Pharmacopeia and by the National Association of Boards of Pharmacy. Based on these studies, the proposed amendment requires that prescription labels must have certain, critical elements, including patient name, the drug name and directions, that must be bolded and/or highlighted and be in at least 12-point font. The proposed regulation also requires that directions for patient use be written in full sentences. Other important information must also be included on the label, including among other things, the patient's address, the pharmacy address and the name of the prescriber, but the manner in which such information is included on the label must not detract from the critical elements.

#### 4. COSTS:

- (a) There are no additional costs to state under the statute.
- (b) There are no additional costs to local government.
- (c) Cost to private regulated parties. The proposed amendments do not impose any additional costs on regulated parties beyond those required under the statute.
- (d) There are no additional costs to the regulating agency.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any programs, service, duty, or responsibility upon local governments.

#### 6. PAPERWORK:

The proposed amendment does not impose any new paperwork or reporting requirements beyond those required by statute.

#### 7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements.

#### 8. ALTERNATIVES:

See Needs and Benefits section, above.

#### 9. FEDERAL STANDARDS:

Federal standards do not apply, nor does the proposal exceed federal standards.

#### 10. COMPLIANCE SCHEDULE:

The proposed amendment becomes effective on March 30, 2013, which is the effective date of the relevant portions of the new law. Covered pharmacies and registered pharmacists must comply with the proposed amendment on its stated effective date.

### *Regulatory Flexibility Analysis*

#### (a) Small Businesses:

1. **EFFECT OF THE RULE:** This rule will affect all pharmacies registered by the State Education Department. The State Education Department estimates that of the 5,044 registered pharmacies in New York State, approximately 2,506 are small businesses.

2. **COMPLIANCE REQUIREMENTS:** There are no compliance requirements beyond those imposed by Part V of Chapter 57 of the Laws of 2012.

The 2012 New York State budget legislation included amendments to the Education Law, which amendments are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This new law, which becomes effective March 30 2013, includes provisions to assist Limited English Proficient (LEP) individuals who need interpretation and translation services when filling prescriptions at pharmacies. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients.

Over the course of the months following passage of this legislation the Office of the Professions sought input from interested stakeholders. In addition to receiving written comments, there were three opportunities for oral presentations, one each in Buffalo, Albany and New York City. This input, and advice from the State Board of Pharmacy, assisted in the development of the proposed regulations.

Section 6829 of the Education Law, as added by section 3 of Part V of Chapter 57 of the Laws of 2012, includes the following provisions:

- The legislation applies to covered pharmacies, which the legislation defines as a pharmacy that is part of a group of eight or more pharmacies, located within New York State and owned by the same corporate entity.
- Covered pharmacies are required to provide interpretation and translation services to LEP individuals in their preferred pharmacy primary language, free of charge.

- The legislation defines the preferred pharmacy primary languages as those that are spoken by 1% or more of the population, as determined by the U.S. Census, for each region, as established by the Department, provided that no pharmacy need provide services in more than seven languages.

- Interpretation and translation services may be provided by pharmacy staff or third-party contractors.

- Pharmacies will not be liable for injuries resulting from the actions of a third party as long as the pharmacy entered into the contract reasonably and in good faith.

- Every covered pharmacy must conspicuously display a notice, in the pharmacy primary languages, notifying patients of the available interpretation and translation services.

- The legislation requires the Department to develop a process whereby a covered pharmacy may seek a waiver from these requirements if it can demonstrate that implementation is unnecessarily burdensome when compared to the need for services.

- The legislation also requires the Commissioner, in consultation with the Department of Health, to establish translation and interpretation requirements for mail-order pharmacies; such requirements will be effective March 30, 2014. The Department anticipates that it will come before the Regents with these regulations sometime early next year.

As noted above, the law delegated to the Department the responsibility of establishing the regions to be used in determining the languages in which translation and interpretation services must be provided. The Board of Pharmacy and Department staff considered a number of options, such as dividing the State into 6-8 regions, dividing the State into an upstate and a downstate region only, dividing the State on a county-by-county basis, and considering the State in its entirety as one region. After discussions with stakeholders representing both covered pharmacies and LEP individuals, it was determined that the last option was preferred because it provided services to a large portion of the LEP population in an efficient and cost-effective manner. Establishing the State as a single region will result in four pharmacy primary languages statewide – Chinese, Italian, Russian and Spanish. This approach will expedite the adoption of standardized interpretation and translation services by covered pharmacies and will provide for more languages to be covered in nearly all upstate communities than other options.

It should be noted that New York City has a local law regarding the provision of language assistance, interpretation, and translation services to LEP individuals. Both the enacting statute and the proposed regulations contain provisions that make it clear that neither the new law nor the regulations promulgated to implement it will diminish requirements existing pursuant to this New York City law.

Additionally, in the course of the development of the proposed regulations, the Civil Rights Bureau of the State Attorney General's Office provided information concerning settlement agreements it has with seven large retail pharmacy chains pursuant to which those chains have been providing language assistance, interpretation, and translation services in approximately 10 different languages to LEP individuals throughout the state. While all but one of those agreements will be expiring in 2013, there is nothing in the law or the proposed regulation that would prohibit any pharmacy from providing language assistance, interpretation, and translation services in additional languages.

Education Law § 6830, as added by section 4 of Part V of Chapter 57 of the Laws of 2012, requires the Commissioner to develop regulations requiring the use of standardized patient-centered data elements on all prescription medication labels. It also requires the Commissioner to obtain input from its Boards of Pharmacy and Medicine, consumer groups, advocates for special populations, pharmacists physicians, other health care professionals authorized to prescribe, and other interested parties, in the development of patient-centered prescription labels. Such labeling is intended to increase patient understanding and compliance with medication regimens.

Regarding patient-centered labeling, the Boards of Pharmacy and Medicine relied, in part, on previous studies conducted by the United States Pharmacopeia and by the National Association of Boards of Pharmacy. Based on these studies, the proposed amendment requires that prescription labels must have certain, critical elements, including patient name, the drug name and directions, that must be bolded and/or highlighted and be in at least 12-point font. The proposed regulation also requires that directions for patient use be written in full sentences. Other important information must also be included on the label, including among other things, the patient's address, the pharmacy address and the name of the prescriber, but the manner in which such information is included on the label must not detract from the critical elements.

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

4. **COMPLIANCE COSTS:** The proposed amendment will not impose

any additional costs on pharmacies beyond those imposed by Part V of Chapter 57 of the Laws of 2012.

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

6. **MINIMIZING ADVERSE IMPACT:** See Compliance section, above.

7. **SMALL BUSINESS PARTICIPATION:** Comments on the proposed regulations were solicited from the Department of Health, statewide organizations representing parties having an interest in providing services to persons of Limited English Proficiency and stakeholders in providing more clear direction to patients regarding their medication regimens. Included in this group were representatives of the State Boards of Pharmacy, Medicine, Nursing, Dentistry, Podiatry, and Midwifery, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists and the New York Chain Pharmacy Association. These groups have representation from small businesses.

(b) Local Governments:

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also define the elements of patient-centered labels that will be required for all prescriptions filled in New York State. Because it is evident from the nature of the proposed amendment that it does not effect local governments, no regulatory flexibility analysis for local governments has been prepared.

#### **Rural Area Flexibility Analysis**

1. **TYPES AND ESTIMATED NUMBER OF RURAL AREAS:**

The regulations will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 24,162 pharmacists registered by the State Education Department, 2,971 pharmacists report their permanent address of record is in a rural county. Likewise, of the 5,044 registered pharmacies in New York State, 782 are located in rural counties.

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

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which requires all covered pharmacies that are part of a group of eight or more pharmacies to provide competent oral interpretation and translation services to persons of Limited English Proficiency (LEP). Pharmacies must provide these services in those languages spoken by 1% or more of the population in a given region, as defined by the Education Department. The proposed regulations define the State as one region, thereby requiring LEP services in four languages other than English, those being Chinese, Italian, Russian and Spanish. The proposed regulations also define the elements of patient-centered labels that will be required for all prescriptions filled in New York State.

3. **COSTS:**

The proposed amendments do not impose any additional costs on regulated parties beyond those required under the statute.

4. **MINIMIZING ADVERSE IMPACT:**

In developing the proposed amendments, the Department obtained input from representatives of the professions of nursing, medicine, podiatry, midwifery and dentistry. In addition, it held public hearings in Buffalo, Albany, and New York City. More than 20 public advocacy groups and representatives of the retail pharmacy chains have commented on the proposals. Further discussions were then held with representatives of the advocacy groups and of the retail pharmacy chains. The concerns of those commenting on the proposals were taken into account in modifying the original proposal, and the proposal represented in the proposed regulations was acceptable to both the advocacy groups and the chain retail pharmacies. The proposals make no exception for individuals who live in rural areas, as the legislation did not permit such an exception.

5. **RURAL AREAS PARTICIPATION:**

Comments on the proposed regulations were solicited from the Department of Health, statewide organizations representing parties having an interest in providing services to persons of Limited English Proficiency and stakeholders in providing more clear direction to patients regarding their medication regimens. Included in this group were representatives of the State Boards of Pharmacy, Medicine, Nursing, Dentistry, Podiatry, and Midwifery, and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists and the New

York Chain Pharmacy Association. These groups have representation from rural areas.

#### **Job Impact Statement**

The proposed amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which becomes effective March 30 2013 and includes provisions requiring certain large pharmacy chains to provide competent oral interpretation and translation services to persons of Limited English Proficiency when filling prescriptions in such individual's preferred pharmacy language, as defined by the Commissioner in regulations. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients. The proposed amendment implements these provisions.

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

#### **Assessment of Public Comment**

A Notice of Proposed Rule Making was published in the State Register on March 20, 2013. Below is a list of the comments we received on the proposed amendment and the Department's responses.

**Comment:** One individual questioned if the requirement to provide patient information in another language obviates the need for an English-language label.

**Response:** The regulation requires written information in the limited English proficient patient's language in addition to an English Language label. Failure to provide an English language label would endanger the health of patients in that other providers, such as emergency medical personnel and emergency room staff, may be unable to determine the medications the patient is taking. Therefore, the Department will make this explicitly clear in a question and answer document under development that patient information must also be provided in English.

**Comment:** Several commenters indicated that they believe that oral and/or written translation and interpretation services should be provided in more than the four designated languages.

**Response:** Subdivisions (1)(c), (d) and (e) and (2) of section 6829 of the Education Law, as added by Part V of chapter 57 of the Laws of 2012 require covered pharmacies to provide translation services, both written and oral, in only those languages spoken by 1 percent or more of the population in a given region. Based on the Department's definition of New York State as one region, both written and oral services will be mandated in Chinese, Italian, Russian and Spanish only, though the Department's recommends that pharmacies provide additional transition services.

**Comment:** A coalition of organizations concurred with the definitions used in the regulation, except for section 63.11(a)(6) of the Regulations of the Commissioner of Education which defines pharmacy primary languages. The writers suggest the Department could use a different definition, based upon federal provisions, to require that translation services be provided in up to seven languages.

The coalition also suggests that the definition of oral translation services (8 NYCRR 63.11[b]) limits the number of the oral translation services required. It is suggested that this provision be eliminated, thereby requiring translation in a multitude of languages.

**Response:** The Department has reviewed and considered many suggested alternatives and determined that the regulation as drafted effectively implements the purpose and the provisions of the State statute. The suggestion that seven languages could be designated as pharmacy primary languages is inconsistent with the statutory definition of pharmacy primary language.

**Comment:** The coalition referenced above and another commenter sought the elimination of the waiver provision in the regulations and suggested that covered pharmacies be required to include notification of LEP services in advertisements and promotions.

**Response:** The Department notes that the statute explicitly requires a waiver process. The Department believes the provision is consistent with the law, and will result in limited, if any, waivers.

**Comment:** Two responders asked that covered pharmacies be required to establish training programs for staff, to incorporate internal tracking systems for compliance, and to report and monitor progress to the Department.

**Response:** The Department has reviewed and considered many of the suggested alternatives and determined that the regulation as drafted effectively implements the purpose and the provisions of the State statute, while leaving covered pharmacies sufficient flexibility to implement the new requirements in accordance with the circumstances presented. Covered pharmacies must comply with the provisions of the law and regulations, and the Department will investigate any complaint regarding non-compliance.

Comment: One commenter suggested that directions for use of medications on patient labels should incorporate full sentences and separate the dose itself from the timing of each dose; that numeric characters should be used instead of writing out numbers; and that Latin terms and medical jargon be specifically limited.

Response: Section 63.12 of the proposed amendment requires that directions be structured in full sentences. The Department considered requiring numeric characters but concluded that this should not be mandated in case a situation arose where it would be more appropriate to use numbers that are written out. The Department will, however, monitor this issue to determine whether a change should be made in the future.

## NOTICE OF ADOPTION

### New York State Career Development and Occupational Studies Commencement Credential

**I.D. No.** EDU-52-12-00012-A

**Filing No.** 665

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Amendment of sections 100.5, 100.6 and 200.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 305(1), (2), 4402(1-7) and 4403(3)

**Subject:** New York State Career Development and Occupational Studies Commencement Credential.

**Purpose:** Establish criteria for award of the Credential to students with disabilities.

**Text or summary was published** in the December 26, 2012 issue of the Register, I.D. No. EDU-52-12-00012-P.

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

**Revised rule making(s) were previously published in the State Register** on May 8, 2013.

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

#### Initial Review of Rule

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

#### Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on May 8, 2013, the State Education Department received the following additional substantive comments that were not addressed in the previously published Assessment of Public Comment (NYS Register, May 8, 2013; EDU-52-12-00012-ERP)

##### 1. COMMENT:

Credential will represent student mastery of 21st century skills and workplace preparedness. Both students and businesses will benefit. Students will be able to demonstrate mastery of the Career Development and Occupational Studies (CDOS) skills needed to enter employment, and future employers will be able to use this measure to identify qualified candidates. Linking the credential to nationally recognized work readiness credentials ensures the meaning and merit of the credential. Agree with change in title with associated requirement that the certificate reflect endorsement by the Regents. If districts award credential to more than 20 percent of its students with disabilities, something is not working. There needs to be this type of circuit breaker.

##### DEPARTMENT RESPONSE:

Comments are supportive; no response is necessary.

##### 2. COMMENT:

There should be more leeway given to schools to offer the credential to more than 20 percent of students with disabilities as their only exiting credential. It is difficult for many students with disabilities to earn a diploma even with the Safety Net. The 20 percent cap will financially hinder districts, especially small rural districts with a limited number of students with disabilities per cohort. A similar 20 percent cap using a cumulative, rolling average of 6 cohort years is recommended. Agree with intention of the 20 percent cap, however, the cap is arbitrary and problematic. Clarify the percentage of Individuals with Disabilities Education Act (IDEA) grant funds that will be reallocated.

##### DEPARTMENT RESPONSE:

The proposed rule does not set a cap on school districts to award this credential to more than 20 percent of its students with disabilities who are not also exiting with a regular high school diploma when it is appropriate to do so. When a school district provides all its students meaningful access to participate and progress in coursework leading to a diploma, the Department will not find it necessary to redirect a district's use of its IDEA funds. Before taking such action, the Department will conduct a review of the school districts practices, in consideration of other data such as a significant reduction in a school district's drop out rates for students with disabilities. Most students with disabilities should be able to earn a regular high school diploma and school districts should not 'track' students to only exit with the NYS CDOS Commencement Credential. The amount of IDEA funds to be redirected would be determined on a district by district basis, but would not exceed 50 percent.

##### 3. COMMENT:

Regulations allow only students with disabilities to pursue occupational paths. The CDOS learning standards are for all students and intended to be integrated into all curriculum. The credential gives the impression that these standards are only for special education students.

##### DEPARTMENT RESPONSE:

There is nothing in the proposed rule that would preclude a student with a disability from taking Career and Technical Education (CTE) coursework and engaging in work-based learning experiences, including those leading to a specific career path. SED agrees that the CDOS Learning Standards are intended for all students and are to be integrated into the curriculum, including, but not limited to, curriculum specific to career and technical education programs. While not specific to students with disabilities, the CDOS learning standards and associated skills are those necessary for successful transition to post-school employment. The Board of Regents is considering recommendations of the CTE Content Advisory Panel which include increased emphasis on career planning and readiness for all students and multiple pathways to a diploma. The limitation of this credential to only students with disabilities may be revisited after such time as the Regents finalize policy on multiple pathways to a diploma.

##### 4. COMMENT:

Appreciate flexibility provisions for students exiting prior to June 30, 2015, yet providing the credential to students not completing coursework and work-based learning experiences will undermine the value of the credential and destroy credibility with business. Nothing prevents a district from advising a student who has not aged out as of 6/30/13 to wait until 7/1/13 to receive the credential and thus by virtue of one day, be deemed work-ready. NYSED needs to offer meaningful criteria for this interim option. Principals should not have the final say in awarding the credential. Decisions should be a result of vote by relevant faculty or made by the Committee on Special Education (CSE). Define the term "relevant faculty".

##### DEPARTMENT RESPONSE:

The proposed rule provides discretion for the next two years to the school principal to determine if a student has engaged in sufficient learning and work based learning experience that otherwise demonstrate that the student has met the commencement level CDOS learning standards and is ready for entry-level employment. This provision is necessary for students graduating in the next two years who may not have the opportunity to earn the full 216 required hours, but have engaged in relevant instruction and work-based learning transition activities and can demonstrate achievement of the commencement level CDOS learning standards. We believe that school principals will act in accordance with their professional and ethical responsibility to ensure that only students who meet equivalent standards are awarded this credential. This discretion is similar to a principal's current discretion on transfer credits and credit by examination. Principals will make this recommendation in consultation with staff members who are personally knowledgeable about the student's skills and achievements (e.g., teacher, work experience coordinator, job coach, etc.), and may include members of the CSE. The Department will provide guidance on the factors to be considered by school principals.

##### 5. COMMENT:

Provide information regarding entry level job opportunities and where they exist.

##### DEPARTMENT RESPONSE:

CareerZone, a career exploration and management website for youth, provided at no cost to users by the NYS Department of Labor ([www.careerzone.ny.gov](http://www.careerzone.ny.gov)), includes links to job openings. CareerZone is linked directly to Job Central, a national job database.

##### 6. COMMENT:

Credential is only available to students taking the New York State Alternate Assessment (NYSAA).

##### DEPARTMENT RESPONSE:

Districts are required to offer this credential to all students with disabilities, excluding those who have taken NYSAA. Students taking NYSAA exit with the Skills and Achievement Commencement Credential.

7. COMMENT:

For many of these students, their mental health status will not allow them to participate in work-readiness activities.

DEPARTMENT RESPONSE:

We believe most students can participate in instructional and work-based learning experiences when provided with appropriate instruction, supports and services.

8. COMMENT:

Students participating in NYSAA should not be excluded from earning this credential. This exclusion creates a glass ceiling that may not allow the student to demonstrate employability and reach their full potential.

DEPARTMENT RESPONSE:

The Skills and Achievement Commencement Credential was specifically designed for students with severe disabilities who take the State's alternate assessment. These students, given the severity of their disability, would not likely be able to demonstrate achievement of the commencement level CDOS standards. All CSEs should ensure that only students with severe disabilities, as such term is defined in regulation, are taking the NYSAA so as not to preclude other students from the opportunity to earn the CDOS Commencement Credential.

9. COMMENT:

A Letter of Agreement should be developed between SED's P-12 Office and the Adult Career and Continuing Education Services Vocational Rehabilitation (ACCES-VR) Office that aligns activities and expectations of the CDOS credential with the Youth Employment Services Models. The Joint Agreement of Transition Services is a starting point for clarification and articulation. Clarify the role of ACCES-VR in partnering with districts and/or funding job coaching and related services.

DEPARTMENT RESPONSE:

ACCES-VR has been very involved in the development of this credential. Consistent with the Joint Agreement on Transition Services, the Office of Special Education and ACCES-VR will continue to work in collaboration with school districts and other State agencies to ensure a coordinated approach to the provision of transition services.

10. COMMENT:

Will creating a resume in an English Language Arts (ELA) class meet the coursework requirement?

DEPARTMENT RESPONSE:

No. Coursework requirements must be met through CTE course(s) completed after grade 8. These include specialized CTE courses or CTE courses that are integrated with academic courses, that are approved by the Department or that are approved by the local boards of education. However, the creation of a resume in ELA is a relevant instructional activity to ensure that a student has met one of the commencement level CDOS learning standards.

11. COMMENT:

Concern that this credential will identify students as having disabilities as it is only available to students with disabilities, which may violate civil rights protections. NYSED should align with Office of Civil Rights (OCR) requirements. Clarification is needed regarding what can be on a transcript. Documenting the credential in the Career Plan is recommended to prevent a student from being identified as a student with a disability on his/her transcript.

DEPARTMENT RESPONSE:

Many states offer certificates and/or diplomas specific to students with disabilities. Each student can decide whether to disclose to potential employers or others that he/she earned this credential. Students with disabilities deserve to be recognized with a credential that has potential to lead to post-school employment opportunities. Limiting this credential to only students with disabilities may be revisited by the Board of Regents in the future.

12. COMMENT:

It is easy for students who struggle academically to see themselves as having completed their education once they receive a "commencement" credential. Receipt of the credential is a disincentive for students to remain in school and continue to pursue a diploma. If students complete CTE coursework and work-based learning requirements in grades 9-12, why would a district continue programming after 12th grade?

DEPARTMENT RESPONSE:

A student may not exit from school with the NYS CDOS Commencement Credential, when it is not a supplement to a regular high school diploma, unless the student has completed at least 12 years of school, excluding Kindergarten. Students earning the credential when it is not a supplement to a regular diploma continue to be eligible for a free appropriate public education (FAPE) and are eligible to return to school until they have attained a regular high school diploma or reached the end of the school year in which they turn 21, whichever comes first. While the credential will signal that the student has met standards that demonstrate readiness for entry-level employment, the credential is not a high school diploma that would provide student access to other post-school activities

the student may wish to pursue such as continuing education and the military. Each district should present this credential option to students in such a way as to encourage them to remain in school.

13. COMMENT:

Prior notice of FAPE is insufficient. Students and families are entitled to know the credential's limitations so that they can make appropriate decisions.

DEPARTMENT RESPONSE:

SED will advise districts of necessary actions to ensure parents and students are provided information to understand the differences between a regular diploma and the credential.

14. COMMENT:

Few New York City non-CTE schools offer the required courses and experiences. It is a burden for every district to offer these courses and experiences.

DEPARTMENT RESPONSE:

It is the responsibility for all schools serving students with disabilities ages 15 and older to prepare them for meaningful post-school living, learning and working by providing them with meaningful transition activities, including relevant coursework, instruction, services and activities.

**NOTICE OF ADOPTION**

**Institutional Accreditation for Title IV Purposes**

**I.D. No.** EDU-07-13-00011-A

**Filing No.** 661

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Amendment of section 3.12 and Subpart 4-1 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1) and (2)

**Subject:** Institutional accreditation for Title IV purposes.

**Purpose:** To conform Regents rules to federal regulations relating to voluntary institutional accreditation for Title IV purposes.

**Text or summary was published in** the February 13, 2013 issue of the Register, I.D. No. EDU-07-13-00011-P.

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

**Revised rule making(s) were previously published in the State Register on** April 17, 2013.

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

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Doctor of Acupuncture and Oriental Medicine (D.A.O.M.) Degree**

**I.D. No.** EDU-12-13-00005-A

**Filing No.** 662

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Amendment of section 3.47(d)(2); and addition of section 3.50(b)(36) to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 210(not subdivided), 218(1), 224(4), 305(1) and (2)

**Subject:** Doctor of Acupuncture and Oriental Medicine (D.A.O.M.) Degree.

**Purpose:** To authorize the conferral in New York State of the degree of Doctor of Acupuncture and Oriental Medicine (D.A.O.M.).

**Text or summary was published** in the March 20, 2013 issue of the Register, I.D. No. EDU-12-13-00005-P.

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

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

#### Initial Review of Rule

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

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Interpretation & Translation for Prescription Drugs, Standardized Labeling & Patient-Centered Data Elements for Medications

**I.D. No.** EDU-12-13-00014-A

**Filing No.** 664

**Filing Date:** 2013-06-18

**Effective Date:** 2013-07-03

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

**Action taken:** Addition of sections 63.11 and 63.12 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6829(1), (6), (7) and 6830(1); and L. 2012, ch. 57, part V

**Subject:** Interpretation and translation for prescription drugs, standardized labeling and patient-centered data elements for medications.

**Purpose:** To implement part V of chapter 57 of the Laws of 2012.

**Text of final rule:** Pursuant to sections 207, 6504, 6507, 6829 and 6830 of the Education Law Sections 63.11 and 63.12 of the Regulations of the Commissioner of Education are added, effective July 3, 2013, to read as follows:

§ 63.11 Interpretation and translation requirements for prescription drugs.

(a) Definitions. As used in this section:

(1) Covered pharmacy shall mean any pharmacy that is part of a group of eight or more pharmacies, located within New York State and owned by the same corporate entity.

(2) Corporate entity shall include related subsidiaries, affiliates, successors, or assignees doing business as or operating under a common name or trading symbol of the covered pharmacy.

(3) Limited English proficient individual or LEP individual shall mean an individual who identifies as being, or is evidently, unable to speak, read or write English at a level that permits such individual to understand health-related and pharmaceutical information communicated in English.

(4) Translation shall mean the conversion of a written text from one language into an equivalent written text in another language by an individual competent to do so and utilizing all necessary pharmaceutical and health-related terminology. Such translation may occur, where appropriate, in a separate document provided to an LEP individual that accompanies his or her medication.

(5) Competent oral interpretation shall mean an oral communication in which a person acting as an interpreter comprehends a message and re-expresses that message accurately in another language, utilizing all necessary pharmaceutical and health-related terminology, so as to enable an LEP individual to receive all necessary information in the LEP individual's preferred pharmacy primary language.

(6) Pharmacy primary languages shall mean those languages, up to a maximum of seven languages other than English, spoken by one percent or more of the population of the State, as determined by the U.S. Census. If more than seven languages other than English are spoken by one percent or more of the population, the pharmacy primary languages shall be limited to seven most spoken languages, as determined by the U.S. Census.

(b) Provision of competent oral interpretation services and translation services. Except as otherwise provided in subdivision (e) of this section:

(1) For purposes of counseling an individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, each covered pharmacy shall provide free, competent oral interpretation services and translation services in such individual's preferred pharmacy primary language to each LEP individual requesting such services or when filling a prescription that indicates that the individual is limited English proficient at such covered pharmacy, unless the LEP individual is offered and refuses such services.

(2) With respect to prescription medication labels, warning labels and other written materials, each covered pharmacy shall provide free, competent oral interpretation services and translation services to each LEP individual filling a prescription at such covered pharmacy in such individual's preferred pharmacy language, unless the LEP individual is offered and refuses such services or the medication labels, warning labels and other written materials have already been translated into the language spoken by the LEP individual.

(3) Translation and competent oral interpretation shall be provided in the preferred pharmacy primary language of each LEP individual, provided that no covered pharmacy shall be required to provide translation or competent oral interpretation of more than seven languages.

(4) The services required by this subdivision may be provided by a staff member of the pharmacy or a third-party contractor. Such services shall be provided on an immediate basis but need not be provided in-person or face-to-face.

(c) Notification relating to language assistance services. Except as otherwise provided in subdivision (e) of this section:

(1) In accordance with Education Law section 6829(3), each covered pharmacy shall conspicuously post a notice to inform LEP individuals of their rights to free, competent oral interpretation services and translation services. Such notice shall include the following statement in English and in each of the pharmacy primary languages: "Point to your language. Language assistance will be provided at no cost to you."

(2) The statement in each of the pharmacy primary languages shall be in 20 point bold face, Arial type in a color that sharply contrasts with the background color of the sign. Each such statement shall be enclosed in a box, and there shall be at least a 1/4 inch clear space between adjacent boxes.

(3) The statements in each of the pharmacy primary languages shall be printed on one sign that shall be conspicuously displayed at or adjacent to each counter where prescription drug orders are dropped off and where prescriptions are picked up, and near every cash register at which payment is received for prescription drugs. Such signs shall be positioned so that a consumer can easily point to the statement identifying the language in which such person is requesting assistance.

(d) Waivers. An application for a waiver of the provisions of subdivisions (b) and (c) of this section shall be made on a form prescribed by the department. The burden of substantiating the validity of a request for a waiver shall be on the applicant.

(1) Each application shall be specific to a registered covered pharmacy, regardless of common ownership.

(2) The applicant shall clearly document the financial or physical constraints, threat to other services provided, or other circumstances upon which the request is based.

(3) No waiver shall be granted in the absence of a showing that implementation of the provisions of subdivisions (b) and (c) of this section would be unnecessarily burdensome when compared to the need for the translation and competent oral interpretation services.

(4) The applicant shall identify alternative sources of competent oral interpretation services or translation services available for LEP individuals within a reasonable distance.

(5) In the event a request for waiver is approved, the pharmacy shall post a notice in the pharmacy primary languages informing LEP individuals of alternative sources.

(6) The duration of a waiver shall be one year and may be renewed upon approval of a new waiver application by the department.

(e) In accordance with Part V of Chapter 57 of the Laws of 2012, the provisions of this section shall preempt any contrary local law or ordinance; provided, however, that cities with a population of 100,000 or more may retain or promulgate such local laws or ordinances imposing additional or stricter requirements relating to interpretation services or translation services in pharmacies. Nothing in this section shall diminish or impair any requirement that any pharmacy or pharmacist provide any language assistance, interpretation, or translation under any applicable federal or state law, local law or ordinance (unless preempted by this section), consent decree, or judicial settlement, judgment or order.

§ 63.12 Standardized patient-centered data elements to be used on all drug labels. In accordance with section 6830 of the Education Law, all

prescription medicine dispensed to patients in this State must include standardized patient-centered data elements as prescribed by in this section

(a) Definitions. As used in this section:

(1) Critical elements shall consist of:

- (i) patient name;
  - (ii) directions for use by the patient, which directions shall be structured in full sentences; and
  - (iii) drug name and strength.
- (2) Important elements shall consist of:
- (i) name, address and telephone number of the pharmacy;
  - (ii) patient's address;
  - (iii) name of prescriber;
  - (iv) the date of filling or refilling of the prescription; and
  - (v) the prescription number or other identifying number assigned to the prescription.

(b) All prescription drug labels shall contain all of the critical elements and all of the important elements.

(1) Critical elements of each prescription label shall be:

- (i) emphasized by being highlighted in color, in bold type, or both; and
- (ii) printed in a minimum of a 12-point font.

(2) Important elements of each prescription label and any other information contained on the label shall not be highlighted in color or in bold type, shall be legible and shall not be presented in a fashion that undermines the emphasis on the critical elements.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 63.12(a)(2).

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

#### Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 20, 2013, a nonsubstantial revision was made in subparagraph (i) of paragraph (2) of subdivision (a) of section 63.12 to correct a typographical error by replacing the misspelled term "name" with "name" so that the subparagraph now reads "(i) name, address and telephone number of the pharmacy;"

The above revision does not require any further changes to the previously published Regulatory Impact Statement.

#### Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 20, 2013, a nonsubstantial revision was made in the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revision does not require any further changes to the previously published Regulatory Flexibility Analysis.

#### Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on March 20, 2013, a nonsubstantial revision was made in the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above revision does not require any further changes to the previously published Rural Area Flexibility Analysis.

#### Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on March 20, 2013, a nonsubstantial revision was made in the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed revised amendment implements the provisions of Part V of Chapter 57 of the Laws of 2012, which becomes effective March 30 2013 and includes provisions requiring certain large pharmacy chains to provide competent oral interpretation and translation services to persons of Limited English Proficiency when filling prescriptions in such individual's preferred pharmacy language, as defined by the Commissioner in regulations. The law also requires the Commissioner of Education to develop rules and regulations to provide more patient-friendly prescription labels for all patients. The proposed revised amendment implements these provisions.

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

#### Initial Review of Rule

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

#### Assessment of Public Comment

A Notice of Proposed Rule Making was published in the State Register on March 20, 2013. Below is a list of the comments we received on the proposed amendment and the Department's responses.

**Comment:** One individual questioned if the requirement to provide patient information in another language obviates the need for an English-language label.

**Response:** The regulation requires written information in the limited English proficient patient's language in addition to an English Language label. Failure to provide an English language label would endanger the health of patients in that other providers, such as emergency medical personnel and emergency room staff, may be unable to determine the medications the patient is taking. Therefore, the Department will make this explicitly clear in a question and answer document under development that patient information must also be provided in English.

**Comment:** Several commenters indicated that they believe that oral and/or written translation and interpretation services should be provided in more than the four designated languages.

**Response:** Subdivisions (1)(c), (d) and (e) and (2) of section 6829 of the Education Law, as added by Part V of chapter 57 of the Laws of 2012 require covered pharmacies to provide translation services, both written and oral, in only those languages spoken by 1 percent or more of the population in a given region. Based on the Department's definition of New York State as one region, both written and oral services will be mandated in Chinese, Italian, Russian and Spanish only, though the Department's recommends that pharmacies provide additional transition services.

**Comment:** A coalition of organizations concurred with the definitions used in the regulation, except for section 63.11(a)(6) of the Regulations of the Commissioner of Education which defines pharmacy primary languages. The writers suggest the Department could use a different definition, based upon federal provisions, to require that translation services be provided in up to seven languages.

The coalition also suggests that the definition of oral translation services (8 NYCRR 63.11[b]) limits the number of the oral translation services required. It is suggested that this provision be eliminated, thereby requiring translation in a multitude of languages.

**Response:** The Department has reviewed and considered many suggested alternatives and determined that the regulation as drafted effectively implements the purpose and the provisions of the State statute. The suggestion that seven languages could be designated as pharmacy primary languages is inconsistent with the statutory definition of pharmacy primary language.

**Comment:** The coalition referenced above and another commenter sought the elimination of the waiver provision in the regulations and suggested that covered pharmacies be required to include notification of LEP services in advertisements and promotions.

**Response:** The Department notes that the statute explicitly requires a waiver process. The Department believes the provision is consistent with the law, and will result in limited, if any, waivers.

**Comment:** Two responders asked that covered pharmacies be required to establish training programs for staff, to incorporate internal tracking systems for compliance, and to report and monitor progress to the Department.

**Response:** The Department has reviewed and considered many of the suggested alternatives and determined that the regulation as drafted effectively implements the purpose and the provisions of the State statute, while leaving covered pharmacies sufficient flexibility to implement the new requirements in accordance with the circumstances presented. Covered pharmacies must comply with the provisions of the law and regulations, and the Department will investigate any complaint regarding non-compliance.

**Comment:** One commenter suggested that directions for use of medications on patient labels should incorporate full sentences and separate the dose itself from the timing of each dose; that numeric characters should be used instead of writing out numbers; and that Latin terms and medical jargon be specifically limited.

**Response:** Section 63.12 of the proposed amendment requires that directions be structured in full sentences. The Department considered requiring numeric characters but concluded that this should not be mandated in case a situation arose where it would be more appropriate to use numbers that are written out. The Department will, however, monitor this issue to determine whether a change should be made in the future.

## NOTICE OF ADOPTION

## Charter School Charter Renewals

I.D. No. EDU-13-13-00005-A

Filing No. 666

Filing Date: 2013-06-18

Effective Date: 2013-07-03

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

**Action taken:** Amendment of section 119.7 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 2851(4), 2852(1), (2), (3), (5), (5-a), (5-b), (6) and 2857(1)

**Subject:** Charter school charter renewals.

**Purpose:** To clarify standards for charter renewals of charter schools for which the Board of Regents is the authorizing entity.

**Text or summary was published** in the March 27, 2013 issue of the Register, I.D. No. EDU-13-13-00005-EP.

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

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

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Accessing Public or Private Benefits and Insurance to Pay for Special Education Programs and Services Under the IDEA

I.D. No. EDU-15-13-00020-A

Filing No. 667

Filing Date: 2013-06-18

Effective Date: 2013-07-03

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

**Action taken:** Amendment of section 200.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207(not subdivided), 4402(2) and 4403(3)

**Subject:** Accessing public or private benefits and insurance to pay for special education programs and services under the IDEA.

**Purpose:** Conforms Commissioner's Regulations to federal parental notice and consent requirements in 34 CFR 300.154.

**Text of final rule:** 1. Subparagraph (v) of paragraph (1) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education is repealed, effective July 3, 2013.

2. Paragraphs (8) and (9) of subdivision (b) of section 200.5 of the Regulations of the Commissioner of Education are added, effective July 3, 2013, as follows:

8. *Students with disabilities who are covered by public benefits or insurance.*

(i) *Consent. Prior to accessing a student's or parent's public benefits or insurance for the first time, after providing notification to the student's parents consistent with subparagraph (ii) of this paragraph, the school district must obtain the written consent of the parent, consistent with the confidentiality requirements of sections 99.30 and 300.622 of the Code of Federal Regulations (Code of Federal Regulations, 2012 edition, title 34, sections 99.30 and 300.622, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-0001; 2012 - available at the Office of Counsel, New York State Education Department, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student), the purpose of the disclosure (e.g., billing for special education services), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance*

*program, such as Medicaid or Supplemental Security Insurance); and specify that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this Part.*

(ii) *Notification. Prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide the student's parents with written notification, consistent with the requirements of subdivision (a)(4) of this section, that includes:*

(a) *a statement of the parental consent provisions in subparagraph (i) of this paragraph;*

(b) *a statement that the parents are not required to sign up for or enroll in public benefits or insurance programs in order for their child to receive a free appropriate public education under Part B of the Individuals with Disabilities Education Act;*

(c) *a statement that the parents are not required to incur an out-of-pocket expense, such as the payment of a deductible or co-pay amount, incurred in filing a claim for services pursuant to this Part;*

(d) *a statement that the school district may not use the student's benefits under a public benefits or insurance program if that use would:*

(1) *decrease available lifetime coverage or any other insured benefit;*

(2) *result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;*

(3) *increase premiums or lead to the discontinuation of benefits or insurance; or*

(4) *risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;*

(e) *a statement that the parents have the right, pursuant to Parts 99 and 300 of Title 34 of the Code of Federal Regulations, to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and*

(f) *a statement that the withdrawal of consent or refusal to provide consent under Parts 99 and 300 of Title 34 of the Code of Federal Regulations to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.*

(9) *Students with disabilities who are covered by private insurance. With regard to services required to provide a free appropriate public education to an eligible student under this Part, a school district may access the parents' private insurance proceeds only if the parents provide consent consistent with section 200.1(l) of this Part. Each time the school district proposes to access the parents' private insurance proceeds, the school district must obtain such parental consent, and inform the parents that their refusal to permit the school district to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 200.5(b)(8)(i).

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

**Revised Regulatory Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on April 10, 2013, a nonsubstantial revision was made to the proposed rule, as follows.

In subparagraph (i) of paragraph (8) of subdivision (b) of section 200.5, references to the "2013" edition of Title 34, sections 99.30 and 300.622, of the Code of Federal Regulations were changed to reference the "2012" edition, since the 2013 edition has not been published yet and therefore the 2012 edition is the most currently available edition.

The above changes do not require any further changes to the previously published Regulatory Impact Statement.

**Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on April 10, 2013, a nonsubstantial revision was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revision does not require any changes to the previously published Regulatory Flexibility Analysis.

**Revised Rural Area Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on April 10, 2013, a nonsubstantial revision was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revision does not require any changes to the previously published Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Since publication of a Notice of Proposed Rule Making in the State Register on April 10, 2013, a nonsubstantial revision was made to the proposed rule as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as revised, relates to prior written notice and parental consent for the use of public benefits or insurance to pay for special education services and related services required under the Individuals with Disabilities Act, and is necessary to conform the Commissioner's Regulations to the amendment of 34 CFR section 300.154(d), which became effective on March 18, 2013.

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

**Initial Review of Rule**

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

**Assessment of Public Comment**

Since publication of a Notice of Proposed Rule Making in the State Register on April 10, 2013, the State Education Department (SED) received the following comments on the proposed amendment.

1. COMMENT:

Clarify the provisions and protections that will be in place to ensure that the rights of the parents are protected.

DEPARTMENT RESPONSE:

Parents continue to be protected pursuant to the requirements 34 CFR section 99.30 and section 300.622 as the regulatory requirements provide for written parental consent to access public benefits and insurance. Parental consent to bill insurance must be informed parent consent. The regulations also provide for notification of parental rights prior to accessing public benefits for the first time and annually thereafter. In addition to the parental protections provided in the proposed regulations, the State Medicaid agency or other public benefits or insurance is already responsible for monitoring schools and local education agencies to ensure public benefits and insurance billing is consistent with the special education services provided to the student. The State Education Department monitors public agencies' implementation of the Individuals with Disabilities Education Act (IDEA) and Part B regulations and ensures timely correction of any identified noncompliance. We believe all of these protections help to ensure public agency accountability under IDEA.

2. COMMENT:

The timing of the proposed amendment may require a change to the consent forms and the process has already begun. Many districts will require some time to make the changes. The counties have concerns over how this will be implemented.

DEPARTMENT RESPONSE:

A public agency that has on file a parental consent that meets the requirements prior to the adoption of the new State and federal regulations will not be required to obtain a new parental consent following the publication of the final regulations, as long as the type or amount of services that the public agency will bill to the public insurance or the amount the public agency charges to the public benefits or insurance program does not change. The first time any of the previously stated services or charges change after the effective date of the new regulations the public agency will need to provide a written notification prior to the one time consent consistent with the specifications in the proposed regulation.

3. COMMENT:

The one time written consent will limit the opportunities for families to know when special education services are being billed, the cost of the services and the knowledge of when problems with billing arise.

DEPARTMENT RESPONSE:

The one time consent and annual notification thereafter, does not eliminate the parent's right to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

4. COMMENT:

During the next five years, NYS is implementing many changes within the system that Medicaid uses to fund services for individuals with developmental disabilities. Any details are not yet known. How do we know that allowing school districts to continually tap into the monies of

one set of Medicaid-funded services will not jeopardize another set of funded service?

DEPARTMENT RESPONSE:

Although future changes in the present Medicaid system cannot be predicted, the notification requirements clearly indicate that a school district may not use the student's public benefits if using them will decrease available lifetime coverage, result in the family paying for services that would otherwise be covered by the public benefit and are required for the student outside of the time the student is in school, increase premiums or lead to discontinuation of benefits, or risk eligibility for home and community-based waivers, based on aggregated health-related expenditures.

5. COMMENT:

Require that the school district inform parents, on a monthly basis, as to those special education services provided at school that were billed to Medicaid, paid for by Medicaid and listing the cost of each service; and inform parents within 48 hours of a known billing or administration issue, along with contact information of people who can provide more information and create an online tool parents can access to gain this information.

DEPARTMENT RESPONSE:

We believe that requiring that districts inform parents of the above information on a monthly basis would place an unnecessary and undue burden on the school district. The proposed regulations do not eliminate the parent's right to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.

6. COMMENT:

The NYC Department of Education (DOE) uses large volumes of resources each year to obtain a signed consent form, often from the same families year after year. By allowing for a signature to be obtained once will allow for a better and more timely use of DOE resources in regards to serving students. Families will still have the opportunity to opt out with no impact on the services for their children. Annual written notification will provide a family with the choice of continuing to allow consent for the DOE to access a family's public benefits with no additional action needed. If a family has changed their mind, they will be able to contact their child's school to change their consent status. The new regulation has no real de facto impact on Medicaid claiming requirements; consent is still needed, and notification will be provided to a parent prior to accessing benefits. Rather, this new regulation allows for more efficient guidelines in how the consents will be obtained, and eases the administrative burden of these efforts. For example, the DOE currently has over 108,000 signed consent forms; the DOE appreciates that not having to continue obtain this volume of consents annually will allow for more resources to be dedicated to supporting student achievement.

DEPARTMENT RESPONSE:

Comments are supportive and no response is necessary.

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## Department of Health

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### EMERGENCY RULE MAKING

**Medicaid Managed Care Programs**

**I.D. No.** HLT-27-13-00008-E

**Filing No.** 658

**Filing Date:** 2013-06-14

**Effective Date:** 2013-06-14

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

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

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

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

**Specific reasons underlying the finding of necessity:** Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment began to be phased in as of April 1, 2011.

Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

**Subject:** Medicaid Managed Care Programs.

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

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

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

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

#### 360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

#### 360-10.2 Scope

This section identifies the topics addressed by the Subpart.

#### 360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

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

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

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

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

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

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

#### 360-10.7 Good cause for changing primary care providers

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

#### 360-10.8 Fair Hearing Rights

This section identifies the circumstances in which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its management contractor about services. The section describes the notices that must be sent to advise the enrollee

of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

#### 360-10.9 Marketing/Outreach

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

#### 360-10.10 MCO unacceptable practices

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

#### 360-10.11 MCO sanctions and due process

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 11, 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 mandatory Medicaid managed care program. All counties also operate a FHP program.

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

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

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Economic and Technological Feasibility:**

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

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

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

**Minimizing Adverse Impact:**

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

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

**Small Business and Local Government Participation:**

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

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

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

**Compliance Requirements:**

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

**Professional Services:**

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

**Compliance Costs:**

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

**Minimizing Adverse Impact:**

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

**Feasibility Assessment:**

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

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

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

**Rural Area Participation:**

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

**Job Impact Statement**

**Nature of Impact:**

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized

by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:  
Not applicable.  
Regions of Adverse Impact:  
None.  
Minimizing Adverse Impact:  
Not applicable.  
Self-Employment Opportunities:  
Not applicable.

## Justice Center for the Protection of People with Special Needs

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

#### Incident Review Committee Requirement

**I.D. No.** JCP-27-13-00010-EP

**Filing No.** 660

**Filing Date:** 2013-06-18

**Effective Date:** 2013-06-30

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

**Proposed Action:** Addition of Part 704 to Title 14 NYCRR.

**Statutory authority:** Protection of People with Special Needs Act (L. 2012, ch. 501)

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

**Specific reasons underlying the finding of necessity:** In December 2012, Governor Cuomo signed the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws). The legislative objective includes creation of uniform safeguards implemented by the Justice Center for the Protection of People with Special Needs to protect vulnerable persons against abuse, neglect and other conduct that may jeopardize their health, safety and welfare. Incident Review Committees are one of the types of uniform safeguards created by the Act. Section 490 of the Social Services Law mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee, and permits authorization of an exemption from the incident review committee requirement when appropriate. 14 NYCRR 704 implements section 490 of the Social Services Law by providing methods for compliance with the statutory incident review committee requirement and delineating relevant factors that may be considered in granting an exemption to the incident review committee requirement. For the reasons stated above, emergency action is necessary for the preservation of public health, public safety and general welfare.

**Subject:** Incident Review Committee Requirement.

**Purpose:** To identify appropriate methods for compliance and factors warranting exemption from incident review committee requirement.

**Text of emergency/proposed rule:** A new Part 704 is added to Title 14, NYCRR, to read as follows:

#### Part 704 INCIDENT REVIEW COMMITTEE REQUIREMENT

##### § 704.1 Background and Intent

(a) *The Protection of People with Special Needs Act (the "Act"), enacted as Chapter 501 of the Laws of 2012, seeks to create durable, consistent safeguards for vulnerable persons to protect against abuse, neglect and other conduct that may jeopardize their health, safety and welfare.*

(b) *To accomplish this goal, the Act provides that each state oversight agency as defined in the Act establish procedures and requirements relating to incident management programs, including establishment of incident review committees, and authorizes the state oversight agency to grant an exemption from this requirement when appropriate, based on the size of the facility or provider agency or other relevant factors.*

(c) *This regulation identifies appropriate methods that may be used to attain compliance with the incident review committee requirement and further defines relevant factors to consider in determining whether it is appropriate to grant an exemption from the incident review committee requirement.*

##### § 704.2 Applicability

*This regulation applies to state oversight agencies as defined in subdivision (4-a) of section 488 of the Social Services Law, and facilities and provider agencies, as defined in subdivision (4) of section 488 of the Social Services Law.*

##### § 704.3 Legal Authority

(a) *Section 490 of the Social Services Law mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee, and permits authorization of an exemption from the incident review committee requirement when appropriate.*

##### § 704.4 Definitions

*Whenever used in this Part:*

(a) *"State oversight agency" shall have the same meaning as expressed in subdivision (4-a) of section 488 of the Social Services Law.*

(b) *"Facility" or "provider agency" shall have the same meaning as expressed in subdivision (4) of section 488 of the Social Services Law.*

(c) *"Vulnerable person" shall have the same meaning as expressed in subdivision (15) of section 488 of the Social Services Law.*

##### § 704.5 Appropriate Methods to Attain Compliance with Incident Review Committee Requirement

(a) *A state oversight agency may allow a facility or provider agency's incident review committee to be shared with another facility or provider agency or performed by another facility or provider agency on its behalf if a facility or provider agency is co-located within another organization or agency, or is part of a larger organization or agency, or has a larger "parent" or "umbrella" organization or agency. A state oversight agency may also allow compliance with the incident review committee requirement in circumstances where a facility or provider agency is able to combine with one of more others to form a shared committee, or where an appropriate sponsor is able to form an incident review committee for the facility or provider agency.*

(b) *A state oversight agency may allow additional time for a facility or provider agency to comply with the incident review committee requirement, if the facility or provider agency shows that good faith efforts have been made to fulfill the incident review committee membership requirement.*

##### § 704.6 Authorization to Establish Exemption from Incident Review Committee Requirement and Relevant Factors

(a) *Each state oversight agency is authorized to establish in its discretion an exemption from the incident review committee requirement and grant an exemption from the requirement pursuant to paragraph (f) of subdivision (1) of section 490 of the Social Services Law when appropriate.*

(b) *State oversight agencies that authorize an exemption to the incident review committee requirement may consider the following in determining whether to grant a facility or provider agency an exemption including, but not limited to:*

(1) *Size of the facility or provider agency, nature of the program, size of the program, and whether the program is a seasonal program or is operational year round; and, if the program is a seasonal program, the length of the season;*

(2) *Existence of a larger parent facility or agency, or a parent facility or agency with a year round presence that can form an incident review committee.*

(c) *In order to authorize an exemption from the incident review committee requirement, risk of harm to the vulnerable person must be considered, and a determination must be made that compliance with the requirement would result in undue hardship to the facility or provider agency.*

##### § 704.7 Procedure for Authorizing Exemption from Incident Review Committee Requirement and Renewal of Request

(a) *Each state oversight agency shall be authorized to establish an application procedure for a facility or provider agency to follow when seeking an exemption from the incident review committee requirement and if such procedure is established, the facility or provider agency shall be required to provide sufficient documentation and information to demonstrate that the exemption should be granted.*

(b) *Each state oversight agency shall be authorized to establish an internal procedure for granting an exemption to the incident review committee requirement without requiring an application, where the exemption is based upon a particular classification or type of facility or provider and the state oversight agency determines upon its own review that such an exemption is appropriate.*

(c) *If an exemption to the incident review committee requirement is*

established, the state oversight agency shall determine the length of time that an approved exemption shall remain in effect, the circumstances for revocation of approval, and the procedure for renewal, if required.

#### § 704.8 Alternative Requirements

(a) A state oversight agency authorizing an exemption from the incident review committee requirement shall establish a process to ensure appropriate review and evaluation of any reportable incidents that occur in the exempt facility or provider agency and responses to such incidents.

**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 September 15, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Adrienne Lawston, Justice Center for the Protection of People with Special Nee, 161 Delaware Ave., Delmar, New York, (518) 549-0243, email: Adrienne.Lawston@cqc.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:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws) provides authority for the proposed regulation. Section 490 of the Social Services Law mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee, and permits authorization of an exemption from the incident review committee requirement when appropriate.

##### 2. Legislative Objectives:

In December 2012, Governor Cuomo signed the Protection of People with Special Needs Act. The legislative objective includes creation of uniform safeguards implemented by the Justice Center for the Protection of People with Special Needs to protect vulnerable persons against abuse, neglect and other conduct that may jeopardize their health, safety and welfare. Incident Review Committees are one of the types of uniform safeguards created by the Act.

##### 3. Needs and Benefits:

Some of the state oversight agencies defined under the Act already require a type of incident review committee, and many of the private regulated parties, which include facilities and providers defined under the Act, already have some type of incident review committee. The Act requires that each state oversight agency promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee and the Act authorizes an exemption to the incident review committee requirement. Regulations or guidelines issued by the Justice Center delineating appropriate methods to attain compliance with the incident review committee requirement do not currently exist. In addition, while the Act permits the state oversight agency to grant an exemption from this requirement when appropriate based on the size of the facility or provider agency or other relevant factors, regulations or guidelines currently do not exist further specifying relevant factors to be considered in granting an exemption to the incident review committee requirement. In delineating methods to attain compliance with the incident review committee requirement, the proposed regulation takes into consideration that some facility or provider agencies may not be able to form an incident review committee on their own without the help of another facility, provider agency or organization, and authorizes incident review committees to be shared or performed by another facility or provider agency or organization on its behalf in certain circumstances, and further authorizes an appropriate sponsor to form an incident review committee for the facility or provider agency. In addition, the proposed regulation recognizes that not all facility or provider agencies will be able to establish incident review committees and that requiring such may be an undue hardship, and authorizes the state oversight agencies, in their discretion, to allow an exemption to the incident review committee requirement in certain circumstances.

##### 4. Costs:

Some of the state oversight agencies defined under the Act already require a type of incident review committee, and many of the private regulated parties, which include facilities and providers defined under the Act, already have some type of incident review committee. Regarding delineation of methods for complying with the incident review committee requirement and authorizing state oversight agencies in their discretion to establish an exemption to the incident review committee requirement in the proposed regulation, it is noted that the Act requires establishment of the incident review committees and permits exemptions in certain

circumstances. As to the cost to state oversight agencies as well as facilities and providers, it is believed that in some circumstances facilities and providers may experience a decrease in costs, but that in other circumstances, the cost of complying with the proposed regulation will be minimal and that any minimal cost of complying is justified as ensuring consistent application of the incident review committee requirement and exemption.

##### 5. Local Government Mandates:

Any facility or provider under the jurisdiction of the Justice Center that is operated by a county, city, town, village, school district or other special district is subject to the terms of the Act and will have to comply with the regulatory requirements, although there are no specific local government mandates. Although the regulation does not impose record keeping requirements, additional records will necessarily be maintained as a result of the formation of incident review committees and/or applications for exemption. It is believed that any additional costs, however, will be minimal.

##### 6. Costs to the Justice Center:

The Protection of People with Special Needs Act mandates that each state oversight agency as defined in the Act promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the Justice Center, relating to incident management programs, including establishment of an incident review committee, and permits authorization of an exemption from the incident review committee requirement when appropriate. The proposed regulation does not result in cost to the Justice Center.

##### 7. Paperwork:

As to the state oversight agencies that currently require the establishment of incident review committees, it is not believed that the proposed regulation will result in significant additional paperwork. As to compliance where incident review committees are not currently required, it is believed that the cost of paperwork will also not be significant. Regarding authorization of the state oversight agencies to establish an exemption from the incident review committee requirement, it is noted that this authorization is within the agency's discretion. If the agency establishes an exemption, although it is expected that some paperwork associated with this process will be generated, to the extent feasible, electronic applications may be used to avoid unnecessary paperwork costs. It is further asserted that the cost is warranted in order to create uniform safeguards consistent with legislative intent.

##### 8. Duplication:

There are no known relevant State regulations which duplicate, overlap or conflict with the proposed regulations. The proposed regulation only applies to the incident review committee provision within the framework of the Protection of People with Special Needs Act.

##### 9. Alternatives:

The alternative to the proposed regulation would be to allow the state oversight agencies to adopt their own provisions for methods of compliance with the incident review committee requirement and exemption without the guidance required by the Act, and such would not be consistent with the requirements and intent of the Act.

##### 10. Federal Standards:

The proposed regulations do not conflict with any Federal government standards.

##### 11. Compliance Schedule:

The emergency adoption of this regulation is effective June 30, 2013.

#### Regulatory Flexibility Analysis

##### 1. Effect on small business and local governments:

The proposed incident review committee regulation has been reviewed in consideration of impact on service providers of all sizes and local governments. A determination has been made that some provider agencies which employ fewer than 100 employees overall provide services to "vulnerable persons" under the Act and meet the requirements of small businesses as defined in SAPA § 102(8). The impact of the incident review committee requirement and exemption upon small businesses as well as local governments is discussed below.

##### 2. Reporting, recordkeeping and compliance requirements and professional services:

The proposed incident review committee regulation does not impose adverse economic impact or reporting, record keeping or other compliance requirements, or professional service requirements on the small businesses described above or on local governments. The Act, not the proposed regulation, requires that each state oversight agency as defined in the Act establish procedures and requirements relating to incident management programs, including establishment of incident review committees, and authorizes the state oversight agency to grant an exemption from this requirement when appropriate, based on the size of the facility or provider agency or other relevant factors. The proposed regulation delineates methods of compliance with the incident review committee requirement such as shared or sponsored committees, and also authorizes state

oversight agencies to grant exemptions in certain circumstances, which include the size of the facility or provider agency. It is asserted that these provisions benefit the small business.

### 3. Costs:

It is believed that the cost to small business and local government of compliance with the proposed regulation will be minimal in some cases and result in cost-savings in other cases. Regarding the cost to small business, the ability to share committees or have a sponsor form a committee may enable the small business to continue to operate where the small business would be unable to form an incident review committee on its own. In addition, the exemption provision of the proposed regulation is designed to provide an alternative where requiring an incident review committee would be prejudicial, and the size of the facility or provider agency is a relevant factor in determining the appropriateness of the exemption. To the extent that the proposed regulation will result in maintenance of additional records, it is believed that the cost of the additional record keeping performed by the regulated parties will be minimal.

### 4. Minimizing adverse impact:

A review and consideration of the approaches for minimizing adverse economic impact as suggested in the State Administrative Procedure Act has been conducted. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center. It is believed that implementation of a uniform set of standards will benefit the regulated parties, including small business and local government. It is noted that the proposed regulation will minimize adverse economic impact by authorizing methods of compliance with the incident review committee requirement which include sharing and formation by a sponsor, and also authorizing exemptions in certain circumstances. In addition, whenever possible, electronic communications and documents should be acceptable.

### 5. Participation by small business:

We are seeking comments during the public comment period regarding the effect of this rule on small businesses. In addition, the Justice Center has conducted outreach programs, including presentations and opportunities for input, questions and answers at more than a dozen trade association conferences and service provider meetings, and representatives of small business interests were among the participants. It is also noted that representatives of small businesses participated in formulating the legislation under which this rule is being promulgated by virtue of their input into "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Protection of People with Special Needs Act. See <http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf>.

### Rural Area Flexibility Analysis

#### 1. Types and estimated numbers of rural areas:

Every county in New York has facilities or providers under the jurisdiction of the Justice Center.

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

Impact on service providers in rural areas has been considered regarding the incident review committee regulation and it has been determined that the regulation does not impose an adverse economic impact or reporting, record keeping or other compliance requirements, or professional service requirements on public or private entities in rural areas. The Act, not the proposed regulation, requires that each state oversight agency as defined in the Act establish procedures and requirements relating to incident management programs, including establishment of incident review committees, and authorizes the state oversight agency to grant an exemption from this requirement when appropriate, based on the size of the facility or provider agency or other relevant factors. The proposed regulation delineates methods of compliance with the incident review requirement such as shared or sponsored committees, and also authorizes state oversight agencies to grant exemptions in certain circumstances, which include the size of the facility or provider agency. It is asserted that these provisions benefit the service providers in rural areas.

### 3. Costs:

It is believed that the cost to rural providers of compliance with the proposed regulation will be minimal in some cases and result in cost-savings in other cases. It is noted that the ability to share committees or have a sponsor form a committee may enable the rural provider to continue to operate where the rural provider would be unable to form an incident review committee on its own. In addition, the exemption provision of the proposed regulation is designed to provide an alternative where requiring an incident review committee would be prejudicial, and some rural providers may benefit from application of the exemption where appropriate. To the extent that the proposed regulation will result in maintenance of ad-

ditional records, it is believed that the cost of the additional record keeping performed by the regulated parties will be minimal.

### 4. Minimizing adverse impact:

A review and consideration of the approaches for minimizing adverse economic impact as suggested in the State Administrative Procedure Act has been conducted. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center. It is believed that implementation of a uniform set of standards will benefit the regulated parties, including those in rural areas. It is noted that the proposed regulation will minimize adverse economic impact by authorizing methods of compliance with the incident review committee requirement which include sharing and formation by a sponsor, and also authorizing exemptions in certain circumstances. In addition, whenever possible, electronic communications and documents should be acceptable.

### 5. Participation by providers in rural areas:

We are seeking comments during the public comment period regarding the effect of this rule on rural areas. In addition, the Justice Center has conducted outreach programs, including presentations and opportunities for input, questions and answers at more than a dozen trade association conferences and service provider meetings, and representatives of rural area interests were among the participants. It is also noted that rural areas participated in formulating the legislation under which this rule is being promulgated by virtue of their input into "The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities against Abuse and Neglect" report prepared by Clarence J. Sundram, the Governor's Special Advisor on Vulnerable Persons, which addressed the problem of abuse and neglect of vulnerable people in programs operated or supported by agencies of the state of New York and resulted in the enactment of the Protection of People with Special Needs Act. See <http://www.governor.ny.gov/assets/documents/justice4specialneeds.pdf>.

### Job Impact Statement

The proposed regulation is not expected to have a negative impact on jobs or employment opportunities in either public or private sector. A full job impact statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulation will have any adverse impact on jobs or employment opportunities. This proposal establishes methods for compliance with the incident review committee requirement and a process by which a state oversight agency may authorize and grant an exemption to the incident review committee requirement. This proposed regulation takes into consideration that not all providers will be able to establish incident review committees without sharing, or a sponsor forming the committee, and that there are circumstances where an exemption may be required based upon undue hardship.

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## Public Service Commission

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

#### Approval of an Easement to Allow the U.S. Navy to Construct a Water Treatment Facility at NYAW's Seaford Property

**I.D. No.** PSC-27-13-00007-EP

**Filing Date:** 2013-06-13

**Effective Date:** 2013-06-13

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

**Proposed Action:** The Public Service Commission adopted an order approving, on an emergency basis, the petition on behalf of New York American Water Company, Inc. requesting approval of transfer of a property easement to the United States Department of the Navy.

**Statutory authority:** Public Service Law, section 89-h

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

**Specific reasons underlying the finding of necessity:** This action is taken on an emergency basis, under Public Service Law § 89-h, for an easement from New York American Water, Inc. (NYAW) to the United States Navy (Navy) for the company's property on Seaman's Neck Road in Seaford, NY. The easement will provide the Navy with sufficient interest in the

property to construct a permanent treatment facility for the removal of the pollutant trichloroethene (TCE), which originated from a nearby Navy industrial site, from the groundwater.

NYAW states that construction must begin before the expiration of the 45 day comment period to ensure the permanent treatment facility is completed before the advent of cold weather for the following reasons: construction during the winter will increase the cost of the project; delay in construction will jeopardize availability of funds budgeted for the project; and temporary facilities in place are not winterized, which will potentially result in ratepayers being exposed to untreated water in the winter months. Emergency adoption is therefore justified because it will protect the public health and general welfare.

**Subject:** The approval of an easement to allow the U.S. Navy to construct a water treatment facility at NYAW's Seaford property.

**Purpose:** To approve an easement to allow the U.S. Navy to construct a water treatment facility at NYAW's property.

**Substance of emergency/proposed rule:** The Public Service Commission adopted an Order approving, on an emergency basis, a petition filed by New York American Water, Inc. (NYAW) for authorization under Public Service Law § 89-h to grant an easement for part of its Seamans Neck Road property in Seaford, NY, to the United States Navy (Navy) for the construction of a water treatment facility.

The Navy has taken responsibility for a toxic groundwater plume originating a Bethpage facility operated on the behalf of the Navy since the 1930s. The pollutant trichloroethene (TCE), below the Department of Health's minimum level, has been detected in the water at NYAW's Seaford facility since 2006. The Navy has installed a temporary remediation facility but federal law requires the Navy to possess a property interest in the land before it can construct a permanent facility.

NYAW has petitioned the Commission to approve the granting of an easement to the Navy for no cost, so that a permanent treatment facility can be constructed. The proposed easement would last for 50 years or until regulatory agencies determine the facility is no longer required.

**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 September 10, 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.

(13-W-0194EP2)

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

#### National Fuel Gas Distribution Corporation's Rates for Gas Service

**I.D. No.** PSC-27-13-00009-EP

**Filing Date:** 2013-06-14

**Effective Date:** 2013-06-14

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

**Proposed Action:** Amendment of Natural Gas Rate Tariffs.

**Statutory authority:** Public Service Law, sections 66, 72 and 114

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

**Specific reasons underlying the finding of necessity:** The customers of National Fuel Gas Distribution Corporation, who are located in an area of the State that has been severely adversely affected by the recent economic downturn, may be paying rates that exceed just and reasonable levels by hundreds of thousands of dollars every month. Under these circumstances, immediate action to protect ratepayer interests is warranted. Temporary rates hold ratepayers harmless against the possibility of overearnings. That possibility exists in this case and there is no reason why the

Company's ratepayers should be denied a provisional remedy while permanent rates are set. Full compliance with the advance notice and comment requirements of SAPA § 202(1) would frustrate that purpose and would be contrary to the public interest. Customers would be required to continue to pay potentially unjust and unreasonable rates without any legal means of avoiding or obtaining a refund of charges ultimately found to be excessive. Therefore, immediate issuance of this Order pursuant to SAPA § 202(6) is necessary for the preservation of the general welfare and is in the public interest.

**Subject:** National Fuel Gas Distribution Corporation's rates for gas service.

**Purpose:** To make National Fuel Gas Corporation's rates for gas service temporary, subject to refund.

**Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov):** The Commission, on June 13, 2013, adopted an order, on an emergency basis, setting temporary rates for National Fuel Gas Distribution Corporation, subject to the terms and conditions set forth in the order.

The evidence of overearning by National Fuel Gas Distribution Corporation warrants making the utility's current rates temporary, subject to refund. The appropriate disposition of any temporary rates collected that are determined to have been in excess of just and reasonable levels will be addressed in the permanent rates phase of this proceeding.

**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 September 11, 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.

(13-G-0136EP1)

### NOTICE OF ADOPTION

#### Approval of the Town of Monroe as the Temporary Water System Operator of Orchard Hill W. Co., Inc.

**I.D. No.** PSC-28-11-00005-A

**Filing Date:** 2013-06-17

**Effective Date:** 2013-06-17

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

**Action taken:** On 6/13/13, the PSC adopted an order approving a petition filed by the Town of Monroe, Orange County for appointment as the temporary system operator of the Orchard Hill W. Co., Inc., under certain conditions.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(f), 25, 89-b(1), 89-c(b), (4), 89(j) and 112-a

**Subject:** Approval of the Town of Monroe as the temporary water system operator of Orchard Hill W. Co., Inc.

**Purpose:** To approve the Town of Monroe as the temporary water system operator of Orchard Hill W. Co., Inc.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the appointment of the Town of Monroe in Orange County, as the temporary operator of the Orchard Hill W. Co., Inc, water system, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(10-W-0594SA1)

## NOTICE OF ADOPTION

**Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00008-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in New York State Electric and Gas Corporation's service territory under PSL 66-j and 66-l.

**Statutory authority:** Public Service Law Sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in New York State Electric and Gas Corporation's service territory pursuant to Public Service Law § 66-j and § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0486SA1)

## NOTICE OF ADOPTION

**Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00010-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in Orange and Rockland Utilities, Inc.'s service territory under PSL 66-j and 66-l.

**Statutory authority:** Public Service Law, sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in Orange and Rockland Utilities, Inc.'s service territory pursuant to Public Service Law § 66-j and § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0488SA1)

## NOTICE OF ADOPTION

**Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00011-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in Consolidated Edison Company of NY, Inc.'s service territory under PSL 66-j and 66-l.

**Statutory authority:** Public Service Law, sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in Consolidated Edison Company of New York, Inc.'s service territory pursuant to Public Service Law § 66-j and § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0485SA1)

## NOTICE OF ADOPTION

**Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00012-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in Rochester Gas and Electric Corporation's service territory under PSL 66-j and 66-l.

**Statutory authority:** Public Service Law, sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in Rochester Gas and Electric Corporation's service territory pursuant to Public Service Law § 66-j and § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0489SA1)

**NOTICE OF ADOPTION****Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00013-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in Niagara Mohawk Power Corporation's service territory under PSL 66-j and 66-l.

**Statutory authority:** Public Service Law, sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in Niagara Mohawk Power Corporation's service territory pursuant to Public Service Law § 66-j and § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0487SA1)

**NOTICE OF ADOPTION****Approval of Increase of Installed Capacity Limits for Net Metered Electrical Generating Systems****I.D. No.** PSC-46-12-00014-A**Filing Date:** 2013-06-13**Effective Date:** 2013-06-13

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the increase of the installed capacity limits for net metered generating systems in Central Hudson Gas & Electric Corporation's service territory under PSL 66-l.

**Statutory authority:** Public Service Law, sections 66-j and 66-l

**Subject:** Approval of increase of installed capacity limits for net metered electrical generating systems.

**Purpose:** To approve the increase of installed capacity limits for net metered electrical generating systems.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the increase of the capacity limits for net metered electric generating systems in Central Hudson Gas & Electric Corporation's service territory pursuant to Public Service Law § 66-l, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0490SA1)

**NOTICE OF ADOPTION****Schedule and Conditions for Considering Revisions to the TAF and Rates for Intrastate Telephone Switched Access Services****I.D. No.** PSC-50-12-00004-A**Filing Date:** 2013-06-14**Effective Date:** 2013-06-14

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

**Action taken:** On 6/13/13, the PSC adopted an order regarding further consideration of originating access charges and the Targeted Accessibility Fund.

**Statutory authority:** Public Service Law, sections 4, 5, 90, 91, 92, 94, 96 and 97

**Subject:** Schedule and conditions for considering revisions to the TAF and rates for intrastate telephone switched access services.

**Purpose:** Timing for reforms to the TAF or access charges to ensure availability of telco services at just and reasonable rates.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order in which it 1) rejected the terms of a Joint Proposal presented to it in Phase III of this case; 2) determined to take further action to establish originating access charge reform to commence on or shortly after July 1, 2014, except that no changes in intrastate switched access rates in New York, other than actions taken to implement the FCC's Transformation Order and subsequent orders clarifying or reconsidering provisions of that order, shall be implemented until the FCC issues an order addressing the switched access issues identified in its November 18, 2011 Further Notice of Proposed Rulemaking in WC Docket 10-90 et al. or until July 1, 2014, whichever occurs first; and 3) determined that no change would be made to the Targeted Accessibility Fund at this time, but rather that a review of the structure, purpose, and necessity of the TAF will be conducted as part of the Commission's review of the State Universal Service Fund in 2016; all as subject to the terms and conditions set forth in the order.

**Final rule as compared with last published rule:** Substantial revisions were made in all parts.

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

**Revised Regulatory Impact Statement**

A revised regulatory impact statement 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.

**Revised Regulatory Flexibility Analysis**

A revised regulatory flexibility analysis 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.

**Revised Rural Area Flexibility Analysis**

A revised rural area flexibility analysis 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.

**Revised Job Impact Statement**

A revised job impact statement 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.

**Assessment of Public Comment**

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

(09-M-0527SA6)

## NOTICE OF ADOPTION

**Approval of the Transfer of Certain Gathering Facilities from NFGDC to Empire****I.D. No.** PSC-02-13-00015-A**Filing Date:** 2013-06-17**Effective Date:** 2013-06-17

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

**Action taken:** On 6/13/13, the PSC adopted an order approving a petition filed by National Gas Distribution Corporation (NFGDC) and Empire Energy E&P, LLC (Empire) to transfer certain natural gas gathering facilities from NFGDC to Empire.

**Statutory authority:** Public Service Law, section 70

**Subject:** Approval of the transfer of certain gathering facilities from NFGDC to Empire.

**Purpose:** To approve the transfer of certain gathering facilities from NFGDC to Empire.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving a petition for the transfer of certain natural gas gathering facilities from National Fuel Gas Distribution Corporation to Empire Energy E&P, LLC, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-G-0557SA1)

## NOTICE OF ADOPTION

**Approval of Disposition of Property Tax Benefits****I.D. No.** PSC-06-13-00009-A**Filing Date:** 2013-06-14**Effective Date:** 2013-06-14

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

**Action taken:** On 6/13/13, the PSC adopted the terms of a joint proposal and approved the disposition of property tax refunds received by Consolidated Edison Company of New York, Inc.

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

**Subject:** Approval of disposition of property tax benefits.

**Purpose:** To approve the disposition of property tax benefits.

**Substance of final rule:** The Commission, on June 13, 2013, adopted the terms of a joint proposal, with modifications, for the disposition of property tax benefits between Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto: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-0506SA1)

## NOTICE OF ADOPTION

**Approval of the Transfer of Ownership of Laser and DMP from Indirect Ownership by Williams to Direct Ownership****I.D. No.** PSC-12-13-00009-A**Filing Date:** 2013-06-18**Effective Date:** 2013-06-18

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

**Action taken:** On 6/13/13, the PSC adopted an order approving a petition filed by Laser Northeast Gathering Company, LLC (Laser) and DMP New York, Inc. (DMP) to transfer indirect to direct ownership of Williams Field Services Company, LLC (Williams).

**Statutory authority:** Public Service Law, section 70

**Subject:** Approval of the transfer of ownership of Laser and DMP from indirect ownership by Williams to direct ownership.

**Purpose:** To approve the transfer of ownership of Laser and DMP from indirect ownership by Williams to direct ownership.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving a petition for the transfer of ownership of Laser Northeast Gathering Company, LLC, DMP New York, Inc. from indirect ownership to direct ownership of Williams Field Services Company, LLC, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-G-0050SA1)

## NOTICE OF ADOPTION

**Adopting the Terms of a Joint Proposal****I.D. No.** PSC-14-13-00007-A**Filing Date:** 2013-06-14**Effective Date:** 2013-06-14

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

**Action taken:** On 6/13/13, the PSC adopted an order approving the terms of a joint proposal submitted by The Brooklyn Union Gas Company d/b/a National Grid NY, DPS Staff and Queens Gas Customers.

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

**Subject:** Adopting the terms of a joint proposal.

**Purpose:** To adopt the terms of a joint proposal.

**Substance of final rule:** The Commission, on June 13, 2013, adopted an order approving the terms of a joint proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY), DPS Staff and Queens Gas Consumers to extend to extend KEDNY's current rate plan with modifications, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-G-0544SA1)

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

**Approval of the Transfer, from RG&E to AENY, of Ownership Interests in Two Gas-fired Generation Facilities**

**I.D. No.** PSC-27-13-00012-P

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

**Proposed Action:** The Commission is considering the approval of the transfer, from Rochester Gas and Electric Corporation (RG&E) and affiliates to Alliance Energy, New York LLC (AENY) and affiliates, of ownership interests in two gas-fired generation facilities.

**Statutory authority:** Public Service Law, sections 2(2-a), (13), 5(1)(b), 64 - 69, 69-a, 70, 71, 72, 72-a, 105 - 114, 114-a, 115, 117, 118, 119-b and 119-c

**Subject:** Approval of the transfer, from RG&E to AENY, of ownership interests in two gas-fired generation facilities.

**Purpose:** To consider the approval of the transfer, from RG&E to AENY, of ownership interests in two gas-fired generation facilities.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on June 11, 2013 by Rochester Gas and Electric Corporation (RG&E) and its affiliates and Alliance Energy, New York LLC (AENY) and its affiliates, requesting approval of the transfer, from RG&E and affiliates to AENY and affiliates, of ownership interests in two gas-fired generation facilities; RG&E's 62 MW gas-fired combined-cycle Allegany Generation Station located in the Town of Hume, NY and the fuel oil and gas-fired combined-cycle 63 MW Carthage Station owned directly by Carthage Energy LLC, located in Carthage, NY. RG&E and AENY also request that the Allegany Generation Station and the Carthage Station be regulated lightly after the transfer, unless it is determined that the Carthage facility is instead a cogeneration facility exempt from Commission regulation; that RG&E be authorized to recover in rates all costs incurred in connection with the transfer; and, that RG&E be granted the ratemaking treatment it proposes for the recovery of its net book loss on the sale of the Allegany Generating Station. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: [deborahswatling@dps.ny.gov](mailto:deborahswatling@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) 474-6530, email: [secretary@dps.ny.gov](mailto: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.

(07-M-0906SP9)

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

**Development of Reliability Contingency Plans to Address the Potential Retirement of Indian Point Energy Center**

**I.D. No.** PSC-27-13-00013-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, proposed projects for inclusion in the Indian Point Energy Center reliability contingency plans.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

**Subject:** The development of reliability contingency plans to address the potential retirement of Indian Point Energy Center.

**Purpose:** To identify the proposed projects for inclusion in the Indian Point Energy Center reliability contingency plans.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, proposed projects for inclusion in reliability contingency plan(s) to address the potential retirement of the Indian Point Energy Center, and may address related matters. The Commission is considering various proposed projects filed in Case 12-E-0503 between February 1, 2013, and June 13, 2013, by Consolidated Edison Company of New York, Inc., New York Power Authority and New York State Electric and Gas Corporation, Poseidon Transmission LLC, West Point Partners, LLC, Iberdrola USA Management Corporation, Boundless Energy N.E., LLC, CPV Valley, LLC, Cricket Valley Energy Center LLC, GE Energy Financial Services, NRG Energy, Inc., US Power Generating Company, NYC Energy, LLC, Entergy Nuclear Power Marketing (on behalf of Entergy Nuclear Indian Point 2 LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations Inc), CCI Roseton LLC, Selkirk Cogen Partners, L.P., and AES Energy Storage, LLC.

**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](mailto: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) 474-6530, email: [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov)

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

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

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

(12-E-0503SP3)

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

**Columbia Gas Transmission Corporation Cost Refund**

**I.D. No.** PSC-27-13-00014-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 New York State Electric & Gas Corporation requesting permission for temporary waiver of tariff provisions regarding gas cost refunds.

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

**Subject:** Columbia Gas Transmission Corporation Cost Refund.

**Purpose:** For approval for temporary waiver of tariff provisions regarding its Columbia Gas Transmission Corporation cost refund.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by New York State Electric & Gas Corporation (NYSEG) for a temporary waiver of tariff provisions regarding a gas cost refund by the Columbia Gas Transmission Corporation (Columbia). NYSEG's tariff schedule, P.S.C. No. 90 - Gas, currently states that supplier refunds are passed back to retail sales customers only, through the Gas Supply Charge. NYSEG proposes that the Columbia refund be returned to non-daily metered (aggregation) gas customers as well as retail sales customers. The Commission may grant, deny or modify the petition or take other action related to it, and may apply its decision here to other utilities.

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

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

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

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

(13-G-0227SP1)