

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-12-00008-A
Filing No. 433
Filing Date: 2013-04-24
Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text or summary was published in the August 29, 2012 issue of the Register, I.D. No. CVS-35-12-00008-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-12-00009-A
Filing No. 436
Filing Date: 2013-04-24
Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the August 29, 2012 issue of the Register, I.D. No. CVS-35-12-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-12-00010-A
Filing No. 432
Filing Date: 2013-04-24
Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 29, 2012 issue of the Register, I.D. No. CVS-35-12-00010-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-12-00011-A

Filing No. 431

Filing Date: 2013-04-24

Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text or summary was published in the August 29, 2012 issue of the Register, I.D. No. CVS-35-12-00011-P.

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

Text of 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-35-12-00012-A

Filing No. 434

Filing Date: 2013-04-24

Effective Date: 2013-05-15

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

Action taken: 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 or summary was published in the August 29, 2012 issue of the Register, I.D. No. CVS-35-12-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-12-00004-A

Filing No. 438

Filing Date: 2013-04-24

Effective Date: 2013-05-15

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

Action taken: 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 or summary was published in the October 10, 2012 issue of the Register, I.D. No. CVS-41-12-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-12-00005-A

Filing No. 437

Filing Date: 2013-04-24

Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2012 issue of the Register, I.D. No. CVS-41-12-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-41-12-00006-A

Filing No. 435

Filing Date: 2013-04-24

Effective Date: 2013-05-15

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the October 10, 2012 issue of the Register, I.D. No. CVS-41-12-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest Regulations for Summer Flounder (Fluke), Scup (Porgy) and Black Sea Bass

I.D. No. ENV-20-13-00006-EP

Filing No. 449

Filing Date: 2013-04-29

Effective Date: 2013-04-29

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-f

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

Specific reasons underlying the finding of necessity: These regulations are necessary for New York to optimize recreational fishing opportunities available to recreational anglers while limiting harvest to remain in compliance with the Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. These regulations are needed to properly manage the State's recreational fisheries and prevent the State from exceeding the State's recreational harvest limit, as assigned by the FMP. The regulations proposed for summer flounder and scup for 2013 are a relaxation of the 2012 regulations; there is little risk of exceeding the State's recreational harvest limit under current regulations and provides the recreational fishing industry and private anglers an opportunity to take advantage of an abundant natural resource, potentially resulting in significant economic activity. Black sea bass harvest must be reduced according to the ASMFC, and so the regulations proposed for 2013 are significantly more restrictive than those in place in 2012. These regulations are likely to reduce economic activity related to the recreational harvest of black sea bass.

The promulgation of this regulation as an emergency rule making is necessary because the normal rule making process would not promulgate these regulations in the time frame necessary for the commencement of the traditional summer flounder, scup, and black sea bass season. New York could not act until the ASMFC had voted on Addendum XXIV to the Summer Flounder Fishery Management Plan on April 17, 2013. The Addendum allows New York to utilize fish under-harvested by other ASMFC member states to liberalize its regulations. The New York State Department of Environmental Conservation had already consulted with NY's Marine Resource Advisory Council (MRAC) regarding changes to marine recreational fishing regulation at both its January 15 and March 12 meetings.

If this rule making were to be promulgated by the normal rule making process, it would not be effective until several months after the traditional start of the fishing seasons. New York State anglers, party and charter boat concerns and bait and tackle shops are dependent on the season opening on time with the proper size and possession limits in place. It is in the best interests of New York State's recreational fishing participants and industry not to delay the implementation of these new marine recreational fishing management measures and to promulgate the proposed regulations through the emergency rule making process.

Subject: Recreational harvest regulations for summer flounder (fluke), scup (porgy) and black sea bass.

Purpose: To maximize recreational angler opportunities for popular finfish species while staying in compliance with the ASMFC and MAFMC.

Text of emergency/proposed rule: Existing subdivision 40.1 (f) of 6 NYCRR is amended to read as follows: Species Striped bass through Atlantic cod remain the same. Species Summer flounder is amended to read as follows:

40.1 (f) Table A – Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	May 1 – Sept [30]29	[19.5]19" TL	4

Species Yellowtail flounder through Winter flounder remain the same. Species Scup (porgy) licensed party/charter boat anglers through Black sea bass are amended to read as follows:

Species	Open Season	Minimum Length	Possession Limit
Scup (porgy)	May 1 – Aug. 3	[11]10" TL	[20]30
licensed party/ charter boat anglers****	Sept. 1 – Oct. 31 Nov. 1 – Dec. 31	[11]10" TL [11]10" TL	[40]45 [20]30
Scup (porgy) all other anglers	May 1 – Dec. 31	[10.5]10" TL	[20]30
Black sea bass	[June 15] July 10 – Dec. 31	13" TL	[15]8

Species American shad through Oyster toadfish remain the same.

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 July 27, 2013.

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0435, email: swheins@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.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-f authorize the Department of Environmental Conservation (DEC or the department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder, scup and black sea bass.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any necessary regulations that implement the provisions of the FMPs to remain in compliance with the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

For both summer flounder and scup, the allotment of fish that New York recreational anglers can fish on is sufficient to allow a relaxation of the 2012 regulations. The minimum size limit for both species will decrease and the possession limit of scup will increase. One day in September will be lost from the end of the summer flounder fishing season. This should lead to increased interest in fishing for these species, resulting in economic benefits to related industries. Black sea bass rules will be more restrictive and may have negative impacts upon business. However, the proposed rule must be in place so that New York remains in compliance with the ASMFC and reduces harvest.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

There may be negative impacts to private regulated parties due to the more restrictive black sea bass recreational harvest rules; however these may hopefully be offset by increased angler interest in summer flounder and scup.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The measures proposed in this rule making are one of a suite of different combinations of season length, minimum size, and possession limit that would change New York's recreational fisheries regulations while fulfilling the State's obligations to ASMFC and the Mid-Atlantic Fisheries Management Council (MAFMC) to control harvest. The proposed regulations for black sea bass and scup are part of multi-state management programs that seek to make recreational fishing regulations more contiguous among neighboring states. Prior to meeting with other states, the concerns of various New York recreational fishing interests were assessed. Once multi-state measures were developed, these were presented to New York's Marine Resource Advisory Council. The black sea bass reduction options were given a great deal of consideration and after Councilors reached out to the public, a majority decided to support the regulations proposed here as the lesser evil.

The "unharvested" summer flounder that Addendum XXIV made available for New York's use was intended to be used to decrease the disparity of recreational summer flounder minimum size among ASMFC member states. Further expansion of New York's season and/or possession limit would not help to attain this goal.

No Action Alternative: The proposed rule making is a relaxation of existing recreational fishing regulations for scup and summer flounder and more restrictive for black sea bass. If New York State does not amend 6 NYCRR Part 40 and implement the changes described above, the state will be out of compliance with ASMFC for black sea bass, and summer flounder and scup anglers will miss the opportunity for increased access to fisheries resources shared with other states. Furthermore, party and charter boat businesses and bait and tackle shops may lose the chance to increase business prospects and income with the expanded fishing opportunities and customer base. Failure for New York to promulgate this rule making may be to the detriment of its recreational fishing industry and the public. In addition, angler dissatisfaction may result in non-compliance and increase fishing effort upon other less robust stocks.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC recently adopted quota changes for summer flounder, scup and black sea bass. The Department of Environmental Conservation (DEC or the department) now seeks to amend its regulations to comply with the requirements of the FMP. There are severe consequences for failure to comply with FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP. Furthermore, failure to take required actions to protect our marine and anadromous resources may lead to the collapse of the targeted species' populations. Either situation could have a significant adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Those most affected by the proposed rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on marine recreational fishing management measures. The new regulations will reduce the minimum size for summer flounder and scup, increase the possession limit for scup, and increase the opportunity for anglers to take fish home. One day in September will be lost from the end of the summer flounder season. It is hoped that these more liberal regulations will encourage anglers to fish

and support the recreational fishing industries. The regulations proposed for black sea bass are more restrictive, decreasing the possession limit by almost half and removing 25 days from the beginning of the season. Anglers and businesses that depend upon black sea bass may experience reduced fishing opportunities and/or loss of revenue.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The proposed regulations may increase the income of party and charter businesses and marine bait and tackle shops because of the increase in fishing opportunities for recreational anglers who pursue summer flounder and scup. However, those dependent upon black sea bass may see decreased activity and revenue.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for summer flounder, scup and black sea bass while optimizing opportunities for its recreational fishing industry and recreational anglers. Since these regulatory amendments are consistent with the Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial Review of Rule:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder, scup and black sea bass fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for Summer Flounder, Scup and Black Sea

Bass, and to optimize recreational fishing opportunities available to New Yorkers. The proposed rule reduces the recreational summer flounder minimum size limit by half an inch, to 19.0 inches, while maintaining the possession limit and removing one day in September from the end of the season. All anglers targeting scup, whether aboard licensed party and charter vessels, fishing from a private boat, or from shore, can fish for scup from May 1 through December 31 and have a possession limit of 30 fish per angler per day (10 more fish than allowed in 2012). The minimum size limit is also 10 inches for all anglers; this is a half inch decrease for private and shore anglers and a full inch decrease for party and charter vessel anglers. In addition, anglers on board licensed party and charter vessels have a bonus season from September 1 through October 31, and may take 45 scup per angler per day (5 more than allowed in 2012). Finally, the proposed rule decreased the length of the recreational season for black sea bass by 25 days to a period from July 10 through December 31 and decreases the possession limit by 7 fish to 8 fish (it was 15 fish in 2012). The minimum size limit remains 13 inches.

Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. Relaxation of summer flounder and scup regulation may have a positive impact upon related businesses while the new black sea bass restrictions will decrease interest and spending in pursuit of this species.

2. Categories and numbers affected:

In 2012, there were 508 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. According to the American Sportfishing Association, in 2011 New York had an estimated 800,811 marine recreational anglers that spent \$1,194,493,042 on saltwater fishing, generating \$144,539,079 in state and local tax revenue. In 2012, New York anglers took 1.5 million fishing trips targeting summer flounder, scup, and black sea bass. The numbers of trips have decreased considerably from several years ago when regulations were considerably more relaxed. Despite this decrease in activity, marine recreational fishing continues to be a major outdoor activity in New York and a generator of revenue.

3. Regions of adverse impact:

More restrictive black sea bass regulations will decrease the number of trips anglers take in pursuit of this species, decreasing the amount of money they spend on bait, tackle, fares and gas. This will have a negative impact upon those businesses (bait and tackle retail, party and charter operations, gas docks, marinas, etc) that cater to these anglers.

4. Minimizing adverse impact:

Proposed regulations for summer flounder and scup recreational harvest in 2013 are more relaxed than the regulations in place for the 2012 season. This will hopefully encourage anglers to go fishing more often, having a positive impact upon marine recreational fishing related industries. In addition, black sea bass targeted trips only make up 5% of the trips taken in 2012 for summer flounder, scup and black sea bass, combined. Hopefully, increased effort in pursuit of summer flounder and scup will outweigh the negative impacts of the more restrictive black sea bass harvest rules.

5. Self-employment opportunities:

The party and charter boat businesses, the bait and tackle shops, and marinas are, for the most part, small businesses, owned and usually operated by the owner. The recreational fishing industry is mostly self-employed. This rule will likely increase opportunities for businesses related to the recreational harvest of summer flounder and scup. Any negative impact on the recreational harvest of black sea bass will be outweighed by the positive impact of the summer and scup fishery.

6. Initial review of rule:

The department will conduct an initial review of the rule within three years as required by SAPA section 207.

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; and Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: To set forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services.

Text of emergency rule: Part 501

BANKING DIVISION ASSESSMENTS

(Statutory authority: Banking Law § 17; Financial Services Law § 206)
§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

Department of Financial Services

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-20-13-00003-E

Filing No. 441

Filing Date: 2013-04-26

Effective Date: 2013-04-28

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

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance Law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

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 July 24, 2013.

Text of rule and any required statements and analyses may be obtained from: Gene C. Brooks, First Assistant Counsel, Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1641, email: gene.brooks@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, *In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al.*, 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative objectives.

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology -- the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive -- the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and benefits.

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over \$2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs.

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local government mandates.

None.

6. Paperwork.

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication.

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

8. Alternatives.

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal standards.

Not applicable.

10. Compliance schedule.

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, *In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al.*, 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers.

There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements.

The regulation would not change the current compliance requirements associated with the assessment process.

Costs.

While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts.

The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation.

This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment. All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-20-13-00004-E

Filing No. 442

Filing Date: 2013-04-26

Effective Date: 2013-04-26

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employee's retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, and January 28, 2013. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees retirement system.

Text of emergency rule: Section 136-2.2 is amended to read as follows:
§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)] (a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)] (b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.

(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.

(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.

[f] (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.

(g) OSC shall mean the Office of the State Comptroller.

[(g)] (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.

(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.

[(j)] (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the

management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] *Fund*, to [address] *preclude* potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] *Fund*, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] *the Fund shall not* [engages, hires, invests with, or commits] *engage, hire, invest with or commit to* [,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] *Fund* [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] *Retirement System's* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)](4) disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)](5) require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

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 July 24, 2013.

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services ("DFS").

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the *State Register* on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking

to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. Federal standards: The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsi-

bilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural

areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Provider Requirements for Insurance Reimbursement of Applied Behavior Analysis

I.D. No. DFS-20-13-00005-E

Filing No. 444

Filing Date: 2013-04-26

Effective Date: 2013-04-26

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

Action taken: Addition of Part 440 (Regulation 201) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1109, 3216, 3221 and 4303; and Public Health Law, section 4406

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

Specific reasons underlying the finding of necessity: Chapters 595 and 596 of the Laws of 2011 require all policies and contracts subject to sections 3216(i)(25), 3221(l)(17) and 4303(ee) of the Insurance Law, which are issued, renewed, modified, altered or amended on or after November 1, 2012, to provide coverage for autism spectrum disorder, including behavioral health treatment in the form of applied behavior analysis ("ABA").

Chapters 595 and 596 of the Laws of 2011 also require that the Superintendent of Financial Services (the "Superintendent"), in consultation with the Commissioners of Health and Education, promulgate regulations that establish standards of professionalism, supervision and relevant experience for individuals who provide or supervise behavioral health treatment in the form of ABA.

In response to the statutory directive, the Superintendent seeks to promulgate new 11 NYCRR 440 (Insurance Regulation 201). The Superintendent, in consultation with the Commissioners of Health and Education, has determined that 11 NYCRR 440 will require that certified behavior analysts who supervise ABA aides and ABA aides who work under the supervision of behavior analysts, meet the necessary minimum standards of education, training and relevant experience to ensure individuals with autism spectrum disorders ("ASDs") receive ABA services from qualified providers.

This rule also is necessary to ensure that insurers and health maintenance organizations ("HMOs") establish adequate provider networks and provider credentialing requirements that comply with this rule so that those entities may effectively provide insurance coverage for critical ABA therapy to those individuals diagnosed with ASDs, and for whom out-of-pocket costs for those services are prohibitively expensive.

In light of the foregoing, it is critical that this new 11 NYCRR 440 be

adopted as promptly as possible, and this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Provider Requirements for Insurance Reimbursement of Applied Behavior Analysis.

Purpose: Establish standards of professionalism, supervision, and relevant experience for providers of Applied Behavior Analysis.

Text of emergency rule: Section 440.0 Purpose.

The purpose of this Part is to establish standards of professionalism, supervision, and relevant experience for individuals who provide or supervise the provision of behavioral health treatment in the form of applied behavior analysis, for insurance coverage pursuant to Insurance Law sections 3216(i)(25), 3221(l)(17) and 4303(ee).

Section 440.1 Definitions.

For purposes of this Part:

(a) *Applied behavior analysis or ABA means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.*

(b) *Applied behavior analysis aide or ABA aide means an individual who has met the education and experience requirements of this Part or, with respect to ABA provided to children receiving early intervention program services pursuant to an individualized family services plan under Title II-A of Article 25 of the Public Health Law, an individual who meets the minimum qualifications set forth in 10 NYCRR 69-4.25(e).*

(c) *Applied behavior analysis provider or ABA provider means:*

(1) *an ABA aide who, under supervision of a certified behavior analyst, directly provides ABA pursuant to an ABA treatment plan to an individual diagnosed with ASD;*

(2) *a certified behavior analyst who directly provides or supervises an ABA aide in the provision of ABA;*

(3) *a licensed provider; or*

(4) *a certified provider.*

(d) *Autism spectrum disorder or ASD shall have the meaning ascribed by Insurance Law section 3216(i)(25)(C)(i).*

(e) *Behavior analyst means an individual certified as a behavior analyst pursuant to a behavior analyst certification board.*

(f) *Behavior analyst certification board means:*

(1) *the Behavior Analyst Certification Board, Inc., a nonprofit corporation established to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services; or*

(2) *another nationally recognized association that has a certification process for ABA providers designated by the superintendent, in consultation with the Commissioners of Health and Education.*

(g) *Behavioral health treatment means, when prescribed or ordered for an individual diagnosed with autism spectrum disorder by a licensed physician or licensed psychologist, counseling and treatment programs when provided by a licensed provider, and ABA when provided or supervised by a certified behavior analyst, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. Treatment programs include ABA treatment plans developed by a licensed provider and delivered by an ABA provider.*

(h) *Certified behavior analyst means a licensed provider who is certified as a behavior analyst pursuant to a behavior analyst certification board.*

(i) *Licensed provider means a psychiatrist, psychologist or licensed clinical social worker, or an individual licensed or otherwise authorized under Education Law Title VIII to practice a profession for which ABA is within the scope of that profession.*

(j) *Certified provider means a school psychologist or other individual certified by the Commissioner of Education pursuant to 8 NYCRR 80 to the extent that ABA is included within the scope of the individual's duties.*

Section 440.2 Scope of professional practice.

(a) *Pursuant to Education Law Title VIII, an ABA provider or supervisor is strictly prohibited from performing or delegating the performance of any service or intervention that is included in the scope of practice of any profession licensed or otherwise authorized by the State, unless the provider or supervisor has the appropriate license, certification or registration, or is otherwise authorized by law to provide the service or intervention.*

(b) *Nothing in this Part shall be deemed to expand or diminish the scope of practice of any profession licensed under Education Law Title VIII, or give authorization to provide services included within such scopes of practice to any individual not otherwise authorized to provide such services under Title VIII of the Education Law.*

(c) *An insurer may deny coverage for ABA provided pursuant to an*

individualized education plan under Education Law Article 89. Nothing in this Part shall be deemed to restrict or supersede any requirements prescribed by the Commissioner of Education pursuant to Education Law Article 89 relating to the qualifications of individuals providing special education or related services to children with disabilities, including ABA.

Section 440.3 Supervision of ABA aides.

(a) An ABA aide must be supervised by a certified behavior analyst.

(b) A certified behavior analyst who supervises and oversees the provision of ABA by ABA aides shall meet the following minimum education, training and experience requirements:

(1) documented completion of a minimum of 20 hours of continuing education or 12 credits of matriculated or non-matriculated relevant coursework in behavioral interventions, including at a minimum the following content areas:

- (i) basic principles, processes, and concepts of behavior analysis;
- (ii) clinical application of ABA, including behavior assessment, selecting intervention outcomes and strategies, behavior change procedures and systems support, data collection and analyses to measure and monitor progress, including measurement of behavior and displaying and interpreting data; and
- (iii) ethical issues related to the delivery of behavior interventions using ABA techniques; and

(2) a minimum of two years of documented full-time professional supervised work experience providing behavior interventions using ABA to individuals with ASD for whom such services have been proven effective in peer-reviewed, scientific research. The experience must include at a minimum:

- (i) performing behavior assessments;
- (ii) developing and evaluating individualized ABA services;
- (iii) employing an array of scientifically validated, behavior analytic procedures, including discrete trial intervention, modeling, incidental teaching, and other naturalistic teaching methods, activity-embedded instruction, task analysis, and chaining;
- (iv) using ABA methods in one-to-one intervention, small and large group intervention, and in transitions across those situations;
- (v) using behavior change procedures and systems supports;
- (vi) measuring behavior and displaying and interpreting behavior data;
- (vii) conducting functional assessments (including functional analyses) of challenging behavior and selecting the specific assessment methods that are best suited to the behavior and the context; and
- (viii) assessing, monitoring, documenting, evaluating, and modifying ABA techniques as necessary to promote the progress of the individual receiving ABA.

(3) The requirements set forth in this subdivision may be satisfied through coursework or experience submitted for professional licensure under Education Law Title VIII.

(c) A certified behavior analyst who supervises and oversees the provision of ABA by ABA aides shall be responsible for:

- (1) developing individual ABA plans in collaboration with, as appropriate, the parents or caregivers of the individual receiving ABA, as well as psychiatrists, psychologists, licensed clinical social workers, behavior analysts and ABA aides;
- (2) directing the implementation of the individual ABA plans and the ongoing monitoring, systematic measurement, data collection, and documentation of the progress of the individual receiving ABA;
- (3) modifying the individual ABA plans as necessary to promote progress toward goals, generalization of learning, and where applicable, transitioning of the individual receiving ABA across service delivery environments and settings;
- (4) providing assistance, training, and support as needed by the parents or caregivers of the individual receiving ABA, as applicable, to assist them in follow-through specified in the individual's ABA plan and to enhance development, behavior, and functioning;
- (5) supervising ABA aides, including:

- (i) a minimum of six hours per month in the first three months of employment of an ABA aide, and a minimum of four hours per month thereafter, of direct on-site observation of each ABA aide assigned to the individual receiving ABA; and
- (ii) a minimum of two hours per month of indirect supervision of an ABA aide assigned to an individual receiving ABA, in a group or individual format, including:

- (a) weekly review and signed approval of the record of the individual receiving ABA, progress notes and data, correspondence, and evaluation of written reports;
- (b) participation in telephone conferences with the ABA aide and, as appropriate, the parent or caregiver of the individual receiving ABA;
- (c) ensuring proper documentation of the intervention provided and the response of the individual receiving ABA;

(d) ensuring that the ABA aide follows the modifications in the plan of the individual receiving ABA; and

(e) other supervision and support that the ABA aide needs to successfully implement the ABA plan of the individual receiving ABA;

(6) ensuring that no responsibilities are delegated to the ABA aide that are included in the scope of any profession in Education Law Title VIII, for which the ABA aide is not licensed or otherwise authorized to perform pursuant to that Title; and

(7) convening a minimum of two team meetings per month with the ABA aide, as well as other providers, as appropriate, who are delivering services to the individual receiving ABA to review the progress, identify problems or concerns, and modify intervention strategies as necessary to enhance the development, behavior, and functioning of the individual receiving ABA.

Section 440.4 Qualifications for ABA aides.

An ABA aide shall meet the following minimum qualifications:

(a) A minimum level of education, as established by meeting at least one of the following requirements, except where Education Law Title VIII requires a higher level of education or authorization to provide ABA in the setting where the ABA aide will provide ABA:

- (1) a high school diploma or its equivalent; and
- (i) two years of full-time direct, supervised work experience providing services to children with disabilities; or
- (ii) current matriculation in a degree program that is an approved professional preparation program for licensure under Education Law Title VIII for a profession that includes ABA within its scope, or a teacher preparation program leading to teacher certification;
- (2) an associate's degree or higher level degree in a profession listed in Education Law Title VIII or in teaching;
- (3) certification as a teaching assistant; or
- (4) certification as a behavior analyst or assistant behavior analyst pursuant to a behavior analyst certification board;
- (b) Prior to the provision of any services to any individual without direct, on-site supervision, completion of a child abuse and neglect identification and reporting workshop and a minimum of 20 hours of training or in-service in behavior interventions using ABA techniques within the past five years, including at a minimum:

- (1) basic principles of behavior analysis;
- (2) the application of these principles in behavior intervention, including collection of data as needed for monitoring progress;
- (3) ethical issues related to the delivery of applied behavior interventions; and
- (4) overview of autism and pervasive developmental disorder;
- (c) Completion of a minimum of ten hours of additional training or in-service annually in topics pertaining to ABA and ASD; and
- (d) An ABA aide providing ABA to a child receiving early intervention program services pursuant to an individualized family services plan under Title II-A of Article 25 of the Public Health Law must meet the requirements set forth in 10 NYCRR 69-4.25(e).

Section 440.5 Duties of ABA aides.

Under the supervision and direction of a certified behavior analyst in accordance with this Part, an ABA aide shall:

- (a) assist in the recording and collection of data needed to monitor progress;
- (b) participate in required team meetings; and
- (c) complete any other activities as directed by his or her supervisor and as necessary to assist in the implementation of an individual ABA plan.

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 July 24, 2013.

Text of rule and any required statements and analyses may be obtained from: Camielle Barclay, NYS Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law sections 202 and 302, Insurance Law sections 301, 1109, 3216, 3221, and 4303, and Public Health Law section 4406.

Section 301 of the Insurance Law and sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization ("HMO") and its subscribers.

Insurance Law section 3216 establishes requirements for individual accident and health insurance policies and sets forth the benefits that must be covered under such contracts.

Insurance Law section 3221 establishes requirements and standard provisions for group or blanket accident and health insurance policies and sets forth the benefits that must be covered under such contracts.

Insurance Law section 4303 governs accident and health insurance contracts written by not-for-profit corporations and sets forth the benefits that must be covered under such contracts.

Public Health Law section 4406 provides that the contract between an HMO and an enrollee is subject to regulation by the Superintendent as if it were a health insurance subscriber contract, and that it shall include, but not be limited to, all mandated benefits required by Article 43 of the Insurance Law.

2. Legislative objectives: In November 2011, Chapters 595 and 596 of the Laws of 2011 amended Insurance Law sections 3216, 3221 and 4303 to expand health insurance coverage for the screening, diagnosis and treatment of autism spectrum disorder ("ASD"). The amendments also directed the Superintendent, in consultation with the Commissioners of Health and Education, to promulgate regulations that set forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of applied behavior analysis ("ABA"), under the supervision of a certified behavior analyst for insurance coverage pursuant to Insurance Law sections 3216(i)(25), 3221(l)(17), and 4303(ee). Chapters 595 and 596 took effect on November 1, 2012.

3. Needs and benefits: Prior to the enactment of Chapters 595 and 596, state law did not provide health insurers and HMOs sufficient clarity or an affirmative obligation to cover costs related to treatments for ASD. As a result, individuals diagnosed with an ASD who required treatment in addition to an individualized family services plan, individualized education program, or individualized service plan, had to pay out-of-pocket for expensive services. The law, as amended, ensures that insurance coverage is extended to individuals diagnosed with ASD for treatment such as ABA, thus alleviating the financial burdens placed on the parents and caregivers of those individuals. This rule is being promulgated pursuant to the new statutory amendments to establish the education, training and supervision requirements of ABA providers in order for them to be eligible for health insurance reimbursement under the statute, and also to ensure that only qualified ABA providers will be rendering services to individuals with ASD.

4. Costs: This rule imposes no compliance costs upon state or local governments. Some private ABA providers may incur additional costs to fulfill the educational and training requirements of the rule in order to become eligible for reimbursement from health insurance coverage for providing ABA. However, many individuals currently providing ABA are not expected to incur such costs and will be able to continue providing ABA as they always have. In addition, any such costs are likely to be offset by the additional revenue obtained from being newly eligible for health insurance reimbursement. Nonetheless, the Department of Financial Services ("Department") is unable to estimate the specific cost of such compliance because the cost depends on the number of ABA providers who intend to provide treatment to individuals with ASD for reimbursement through health insurance, and ABA providers are not regulated by the Department.

Insurers and HMOs also may incur compliance costs from having to develop an ABA provider eligibility database, and will have to expand their networks if they do not include an adequate number of ABA providers. Those costs may be passed on to consumers in the form of higher premiums, but the long-term benefits of having properly credentialed ABA providers to treat individuals with ASD greatly outweigh the costs. Furthermore, the costs for insurers and HMOs are a consequence of the legislation, not this regulation.

5. Local government mandates: This rule imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Insurers and HMOs submitted to the Department new health insurance policy forms and rates to add the new coverage for the screening, diagnosis and treatment of ASD. The requirement to make such submissions was imposed by the statutory mandate, not this rule.

7. Duplication: There are no federal or other New York State requirements that duplicate, or conflict with this regulation.

8. Alternatives: The Department, in consultation with the Department of Health and the State Education Department, considered various ways to establish the necessary standards of this regulation, such as delegating credentialing responsibility to the Behavior Analyst Certification Board, Inc. (the "Board"). However, doing so would violate scope of practice requirements under the Education Law when ABA is not provided pursuant to an individualized family service plan, individualized education plan or an individualized service plan. Moreover, State Education Department

license and certification requirements protect consumers, including vulnerable ASD patients, from negligent or fraudulent ABA providers. The Department previously promulgated on an emergency basis a different version of this rule, which required an ABA provider both to be certified by the Board and to hold a certain type of license issued pursuant to Education Law Title VIII, or to be supervised by a person with both a license and Board certification. A number of stakeholders, however, expressed concern that the prior rule would permit very few providers to be eligible for health insurance reimbursement for providing ABA – perhaps less than 100 statewide. This new rule eliminates the dual license/Board certification requirement (other than for those who supervise ABA aides) and permits certain individuals licensed or certified by the State Education Department to qualify for health insurance reimbursement for providing ABA. Licensed providers now eligible for insurance reimbursement – whether or not they are certified by the Board – include social workers, psychologists, occupational therapists, physical therapists and speech pathologists, among others. As such, this new rule is expected to expand the pool of eligible providers from as few as 100 or less to tens of thousands while still ensuring that only properly credentialed ABA providers treat individuals with ASD. In addition, some certified providers may now be eligible for insurance coverage – whether or not they are certified by the Board – including school psychologists, social workers and special education teachers.

9. Federal standards: There are no federal minimum standards or regulations regarding professionalism, supervision and relevant experience for individuals who provide ABA under the supervision of a certified behavior analyst as defined under Insurance Law sections 3216(i)(25), 3221(l)(17) and 4303(ee).

10. Compliance schedule: Because the law took effect on November 1, 2012, this rule takes effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

1. Effect of the rule: This rule will impact insurers and health maintenance organizations ("HMOs") in New York State, but none fall within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act. However, this rule may affect providers of applied behavior analysis ("ABA") to treat autism spectrum disorder ("ASD"), some of which are small businesses, because some ABA providers may be required to obtain additional education, training and experience in order to become eligible for health insurance reimbursement for rendering ABA. However, many individuals currently providing ABA in the state will not need to do so and will be able to continue providing ABA as they always have. Moreover, any impact to current ABA providers who will need additional licensure or certification is more than offset by the tens of thousands of providers currently licensed or certified by the State Education Department who will now be able to immediately start providing ABA services covered by health insurance, regardless of whether they are credentialed by the Behavior Analyst Certification Board. These providers include licensed social workers, psychologists, physical therapists and speech pathologists, as well as certain certified school professionals.

The Department of Financial Services (the "Department") is unable to quantify the precise number of small businesses affected by this rule because ABA providers are not regulated by the Department, and the Department has established no reporting requirements with respect to these small businesses, nor does the Department maintain records of ABA providers in this state.

2. Compliance requirements: This rule will not impose any reporting, recordkeeping, or other compliance requirements on small businesses, sole proprietors or local governments. The rule only establishes standards of professionalism, training and experience required to be eligible for insurance reimbursement for providing ABA.

3. Professional services: This rule does not require the use of professional services.

4. Compliance costs: This rule will not impose any compliance costs on local governments but may impose additional costs on small businesses that provide ABA to those with ASD, because some may incur costs of education, training and experience for their employees to become eligible for health insurance reimbursement for providing ABA. However, many small businesses will not incur such costs, and any such costs are likely to be more than offset by increased revenue as a result of health insurance reimbursement for these services. Nonetheless, the Department is unable to estimate the cost of such compliance because the cost depends, in part, on the number of ABA providers who intend to provide treatment to individuals with ASD for reimbursement through health insurance, and ABA providers are not regulated by the Department.

5. Economic and technological feasibility: Compliance with the rule should be economically and technologically feasible because it requires no action on the part of local governments and most small businesses. While some small businesses that provide ABA may incur some costs in education and/or training of their employees, many will not, and such

costs are likely to be more than offset by increased revenue as a result of health insurance reimbursement for providing ABA services.

6. **Minimizing adverse impact:** Although some ABA providers that are small businesses may incur additional costs to fulfill the requirements of this rule, many will not, and those costs likely will be offset by the additional revenue that will be generated from health insurance reimbursement for providing ABA services.

7. **Small business and local government participation:** This rule does not impact local government. In addition, the Department previously promulgated on an emergency basis a different version of this rule, which required an ABA provider both to be certified by the Board and to hold a certain type of license issued pursuant to Education Law Title VIII, or to be supervised by a person with both a license and Board certification. A number of stakeholders, including some representing small businesses, contacted both the Department and the Executive Chamber to comment on that earlier version. Most expressed concern that the prior rule would permit very few providers to be eligible for health insurance reimbursement for providing ABA – perhaps less than 100 statewide.

In response to these concerns, the Department made significant changes to this new version of the rule. The new rule eliminates the dual license/Board certification requirement (other than for those who supervise ABA aides) and permits certain individuals licensed or certified by the State Education Department to qualify for health insurance reimbursement for providing ABA. As such, this new rule is expected to expand the pool of eligible providers from as few as 100 or less to tens of thousands while still ensuring that only properly credentialed ABA providers treat individuals with ASD. Providers who would now be eligible for insurance coverage – whether or not they are certified by the Board – include licensed social workers, psychologists, physical therapists and speech pathologists, as well as certain certified school professionals. Further, the Department intends to subsequently file a notice of proposed rulemaking and public and private interested parties will also thereby have a formal opportunity to comment on the rule once it is published in the State Register.

Rural Area Flexibility Analysis

1. **Types and estimated numbers of rural areas:** Applied behavior analysis (“ABA”) providers, health insurers, and health maintenance organizations (HMOs) affected by this rule operate throughout this state, including rural areas as defined under State Administrative Procedure Act section 102(10).

2. **Reporting, recordkeeping and other compliance requirements, and professional services:** This rule will not impose any reporting, recordkeeping, or other compliance requirements on ABA providers located in rural areas. The rule only establishes standards of professionalism, training and experience required to be eligible for insurance reimbursement for providing ABA.

3. **Costs:** This rule may impose additional costs on some ABA providers located in rural areas, because some may need additional education, training and experience to become eligible for health insurance reimbursement for providing ABA. However, because this new rule eliminates the dual license/Board certification requirement (other than for those who supervise ABA aides), many licensed and certified professionals will be able to provide ABA immediately in rural areas without incurring the cost of pursuing Board certification. These providers include licensed social workers, psychologists, physical therapists and speech pathologists, among others. In addition, any such costs are likely to be more than offset by increased revenue as a result of health insurance reimbursement for ABA providers’ services.

Insurers and HMOs submitted to the Department of Financial Services (the “Department”) new health insurance policy forms and rates to add the new coverage for the screening, diagnosis and treatment of ASD. The requirement to make such submissions was imposed by the statutory mandate, not this rule. In addition, insurers and HMOs also may incur compliance costs from having to develop an ABA provider eligibility database, and may have to expand their networks if they do not include an adequate number of ABA providers. Those costs may be passed on to consumers in the form of higher premiums, but the long-term benefits of having properly credentialed ABA providers to treat individuals with ASD greatly outweigh the costs. Moreover, these costs, too, result from the legislation, not this rule.

4. **Minimizing adverse impact:** Although some ABA providers in rural areas may incur additional costs to fulfill the requirements of this rule, the majority will not, and those costs likely will be offset from the additional revenue that will be generated from health insurance reimbursement for their services. Moreover, any impact to current ABA providers who will need additional licensure or certification is more than offset by the tens of thousands of currently licensed and certified providers, whether or not they are credentialed by the Behavior Analyst Certification Board, who will now be able to immediately start providing ABA services covered by health insurance.

5. **Rural area participation:** The Department previously promulgated on

an emergency basis a different version of this rule, which required an ABA provider both to be certified by the Board and to hold a certain type of license issued pursuant to Education Law Title VIII, or to be supervised by a person with both a license and Board certification. A number of stakeholders, including some representing rural areas, contacted both the Department and the Executive Chamber to comment on that earlier version. Most expressed concern that the prior rule would permit very few providers to be eligible for health insurance reimbursement for providing ABA – perhaps less than 100 statewide.

In response to these concerns, the Department made significant changes to this new version of the rule. The new rule eliminates the dual license/Board certification requirement (other than for those who supervise ABA aides) and permits certain individuals licensed or certified by the State Education Department to qualify for health insurance reimbursement for providing ABA. As such, this new rule is expected to expand the pool of eligible providers from as few as 100 or less to tens of thousands while still ensuring that only properly credentialed ABA providers treat individuals with ASD. Providers who would now be eligible for insurance coverage – whether or not they are certified by the Board – include licensed social workers, psychologists, physical therapists and speech pathologists, as well as certain certified school professionals.

Further, the Department intends to subsequently file a notice of proposed rulemaking, and public and private interested parties will also thereby have a formal opportunity to comment on the rule once it is published in the State Register.

Job Impact Statement

1. **Nature of impact:** In November 2011, Chapters 595 and 596 of the Laws of 2011 amended Insurance Law sections 3216, 3221 and 4303 to expand health insurance coverage for the screening, diagnosis and treatment of autism spectrum disorder (“ASD”). The amendments also directed the Superintendent of Financial Services, in consultation with the Commissioners of Health and Education, to promulgate regulations that set forth the standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of applied behavior analysis (“ABA”). Chapters 595 and 596 took effect on November 1, 2012.

This rule should have no adverse impact on jobs and employment opportunities because it merely implements the statutory charge to establish standards of professionalism, supervision and relevant experience of individuals who provide behavioral health treatment in the form of ABA. These standards are designed to ensure that individuals with autism spectrum disorders receive treatment for those disorders only from qualified ABA providers.

2. **Categories and numbers affected:** This rule may impact some providers of ABA because some ABA providers may be required to obtain additional education, training and experience in order to become eligible for health insurance reimbursement for providing ABA. However, any costs will likely be offset by the increased revenue resulting from health insurance reimbursement for ABA services. Moreover, any impact to current ABA providers who will need additional licensure or certification is more than offset by the tens of thousands of providers currently licensed or certified by the State Education Department who will now be able to immediately start providing ABA services covered by health insurance, regardless of whether they are credentialed by the Behavior Analyst Certification Board. These professionals include licensed social workers, psychologists, physical therapists and speech pathologists, as well as certified school psychologists, social workers, and special education teachers.

The Department is unable to quantify the precise number of ABA providers affected by this rule because they are not regulated by the Department and the Department has established no reporting requirements with respect to these providers, nor does the Department maintain records of ABA providers in this state.

3. **Regions of adverse impact:** ABA providers operate in all regions of the state. Therefore, there are no regions of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities.

4. **Minimizing adverse impact:** Although some ABA providers may incur additional costs to fulfill the education, training and experience requirements of this rule, it is anticipated that many will not. In addition, any costs likely will be offset by the additional revenue that will be generated from health insurance reimbursement for ABA providers’ services. Moreover, any impact to current ABA providers who will need additional licensure or certification is more than offset by the tens of thousands of currently licensed and certified providers, whether or not they are credentialed by the Behavior Analyst Certification Board, who will now be able to immediately start providing ABA services covered by health insurance.

5. **Self-employment opportunities:** This rule will have a positive impact on ABA providers who are self-employed because opportunities will be available to provide ABA services outside of an educational setting for

reimbursement through health insurance, especially with the increasing number of individuals being diagnosed with ASD, and for whom ABA is critical.

New York State Gaming Commission

EMERGENCY RULE MAKING

Ability of a New Owner of a Claimed Horse to Void the Claim

I.D. No. RWB-08-13-00005-E

Filing No. 443

Filing Date: 2013-04-26

Effective Date: 2013-04-26

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

Action taken: Amendment of section 4038.5 of Title 9 NYCRR.

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

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

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

Between November 2011 and March 2012, 21 thoroughbred horses in New York State died or were euthanized while racing at Aqueduct Race Track. Their deaths prompted a comprehensive analysis of the circumstances and possible causes for the deaths of these horses by the New York State Task Force on Racehorse Health and Safety. One common aspect in these races was the fact that the horse that broke down was involved in a claiming race. This rule is necessary to remove an incentive that a trainer or owner may have for entering an unsound horse in claiming race for the purpose of racing and potentially transferring a horse without proper regard to the horse's well-being and the integrity of racing. The Board previously adopted an amendment to Section 4038.5 that allowed for a claim to be voided if the horse died during the race or was euthanized on the racetrack. The Task Force recommended this amendment be adopted on an emergency basis to more adequately remove any incentive for racing unsound claiming horses.

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

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government. Claiming races play an essential part of thoroughbred racing and pari-mutuel wagering. This rule is necessary to ensure integrity in the claiming process, and in turn ensure that the when a horse steps onto a race track, it doing so for the purpose of winning and not merely to foster a transaction.

Subject: Ability of a new owner of a claimed horse to void the claim.

Purpose: To remove the incentive to horse owners to race substandard horses in a claiming race.

Text of emergency rule: Under subdivision (a) of Section 4038.5 of Title 9 NYCRR, Item (iii) is added and Item (i) is amended to read as follows:

i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section [4038.18] 4038.19 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

ii. a claim shall be void for any horse that dies during a race or is euthanized on the track following a race[.]; and

iii. a claim is voidable at the discretion of the new owner, for a period of one hour after the race is made official, for any horse that is vanned off the track after the race.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. RWB-08-13-00005-P, Issue of February 20, 2013. The emergency rule will expire June 24, 2013.

Text of rule and any required statements and analyses may be obtained from: John Googas, New York State Gaming Commission, One Broadway Plaza, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, email: info@gaming.ny.gov

Regulatory Impact Statement

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

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

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule to allow a successful claimant to void a claim when the horse is unable to walk off the track and must be transported – or vanned – off the race track. The current rule provides a regulatory mechanism by which a successful claimant may void a claim in the event that a horse dies during the race or is euthanized on the track.

Adoption of this amendment was recommended by the New York Task Force on Racehorse Health and Safety, which recently released its report of investigation concerning the death of 21 thoroughbred race horse between November 2011 and March 2012. The report stated: "The Task Force recommends that (Thoroughbred Rule 9 NYCRR 4038.5) be amended to provide that a claim is voidable, at the discretion of the claimant and within one hour of the conclusion of the race, for a horse that is vanned off the track." The report further states: "The Task Force believes the (New York State Racing and Wagering Board) emergency amendment to Rule 4038 (in April 2012) represents an improvement by establishing a deterrent to the willful entry of a compromised horse, but that it should be further amended to provide that a claim is voidable by the claimant within one hour of the conclusion of the race if the horse is vanned off the track. The voiding of a claim should not require the death of a horse."

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

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

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

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives: Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The New York Racing and Wagering Board (the predecessor to the Gaming Commission) also considered a rule to required the stewards to consult with a designated veterinarian before voiding a claims for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: As an emergency rule, the amendments can be implemented immediately upon submission to the Department of State.

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

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims where a horse is injured during a race and requires transportation off the track and will not have an adverse effect on jobs or small businesses. The narrow economic impact of this amendment is limited to those instances where a claim on a thoroughbred race horse is voidable if the horse is unable to walk off the race track and is transported off the track. The Board previously adopted a similar rule that allowed a claim to be voided if the horse dies on the track or is euthanized. Since that rule was adopted as an emergency rule in April 2012, there has been only one instance of a claimed horse dying on the track. The indirect economic impact of this rule is that it will discourage horse owners from entering unsound horses in claiming races. The Board believes that this limited economic impact will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.

Assessment of Public Comment

The Gaming Commission received written comments on April 4, 2013 from the Thoroughbred Safety Committee of the Jockey Club in support of the emergency rule.

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to implement, as expeditiously as possible, the new Medicaid reimbursement methodology for nursing homes, effective January 1, 2012. The new methodology will replace an overly complex and burdensome methodology with a transparent pricing methodology that will stabilize the nursing home industry by timely providing predictable rate setting information that can be effectively used by providers to plan and manage their operations. In addition, implementing the pricing methodology as soon as possible will also mitigate the retroactive cash flow impact of reconciling rates that are paid today to the new pricing rates effective on January 1, 2012.

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

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Statewide Pricing Methodology for Nursing Homes.

Purpose: To establish a new Medicaid reimbursement methodology for Nursing Homes.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for the operating component of non-specialty residential health care facilities (nursing homes). The operating component of the price is based upon allowable costs and is the sum of the direct price, indirect price and a facility-specific non-comparable price. The direct and indirect prices are a blend of a statewide price and a peer group price. There are two peer groups: 1) all non-specialty hospital-based facilities and non-specialty freestanding facilities with certified beds capacities of 300 or more, and 2) non-specialty freestanding facilities with certified bed capacities of less than 300 beds. The direct price is subject to a case mix adjustment and a wage index adjustment. The new case mix adjustment methodology also contains mechanisms to safeguard the integrity of case mix data reporting. If reported case mix data indicates a change in the facility's case mix of more than five percent, the payment adjustment associated with the change over five percent may be held, pending an audit to verify the accuracy of the reported data. Also, facilities are required to formally certify to the accuracy of their case mix data reporting on an annual basis. The indirect price is subject to a wage index adjustment. Per diem adjustments to the operating component of the rate include add-ons for bariatric, traumatic brain-injured (TBI) extended care, and dementia residents; adjustments for the reporting of quality data; and transition payments. Non-specialty facilities will transition to the price over a five-year period (2012-2016), with prices fully implemented beginning in 2017. The non-capital component of the rate for specialty facilities, which are not subject to the new reimbursement methodology, will be the rates in effect for such facilities on January 1, 2009.

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 July 22, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.40 to establish a new Medicaid reimbursement methodology for Nursing Homes. The reimbursement methodology is based on a blend of statewide prices and peer group prices, with adjustments for case mix, regional wage differences, add-ons for certain patients, and quality incentives and payments. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new and streamlined methodology will significantly reduce administrative burdens on both nursing homes and the

Department of Health

EMERGENCY RULE MAKING

Statewide Pricing Methodology for Nursing Homes

I.D. No. HLT-20-13-00001-E

Filing No. 439

Filing Date: 2013-04-24

Effective Date: 2013-04-24

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

Action taken: Addition of section 86-2.40 to Title 10 NYCRR.

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

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

Department and, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Needs and Benefits:

The new pricing reimbursement methodology reforms an outdated, complex, administratively burdensome (to both providers and the Department) rate-setting system with a stable, predictable and transparent methodology that rewards efficiencies and incentivizes quality outcomes. The new pricing system will also provide a good foundation for the transition of nursing home residents to Managed Care that will occur over the next several years. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation. The new methodology also contains mechanisms to safeguard the integrity of case mix data reporting. If reported case mix data indicates a change in the facility's case mix of more than five percent, the payment adjustment associated with the change over five percent may be held, pending an audit to verify the accuracy of the reported data. Also, facilities are required to formally certify to the accuracy of their case mix data reporting on an annual basis.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be reporting quality measures in their annual cost report.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

The proposed regulation does not create new or additional paperwork responsibility of any kind.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The Department is required by the Public Health Law section 2808 2-c to implement the new pricing methodology. The department worked closely with the Nursing Home Industry Associations to develop the details of the pricing methodology to be implemented by the regulation.

Federal Standards:

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

Compliance Schedule:

The new prices will be published by the department and transmitted to the EMedNY system. There are no new compliance efforts required by the nursing homes.

Regulatory Flexibility Analysis

Effect of Rule:

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

To ensure a smooth transition and mitigate significant swings in Medicaid revenues, the new Medicaid reimbursement methodology for nursing homes implemented by this regulation will be phased-in over a five year period (full implementation in the sixth year). Of the 60 nursing homes, 36 nursing homes that are subject to this regulation will experience a decrease in Medicaid revenues. The losses in Medicaid revenues will occur gradually – and will increase from 4.73% of total operating revenue in year to 5.4% of total operating revenue in year six. Twenty-four nursing homes that are subject to this regulation will experience an increase in Medicaid revenues. The gains in Medicaid revenues will occur gradually – and will increase from 1.2% of total operating revenue in year to 2% of total operating revenue in year six. In addition, the new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. The Department worked closely with the Nursing Home Associations to develop the details of the pricing methodology to be implemented by the regulation. In addition, contact information for the Department was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

There are no new compliance requirements as a result of the proposed rule.

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology

over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the key components of the statewide pricing methodology. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to establish a new Medicaid reimbursement methodology for Nursing Homes will have a material impact on jobs or employment opportunities across the Nursing Home industry. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included in the proposed regulations to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year.

EMERGENCY RULE MAKING

Episodic Pricing for Certified Home Health Agencies (CHHAs)

I.D. No. HLT-20-13-00002-E

Filing No. 440

Filing Date: 2013-04-25

Effective Date: 2013-04-25

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

Action taken: Amendment of section 86-1.44 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3614(13)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure an appropriate level of reimbursement to those Certified Home Health Agencies (CHHAs) that provide services to a special needs population of medically complex children, adolescents and young disabled adults and to those CHHAs that serve primarily patients who are eligible for OPWDD services.

Section 111 of Part H of Chapter 59 of the Laws of 2011 provides the Commissioner of Health with authority to issue regulations such as these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Episodic Pricing for Certified Home Health Agencies (CHHAs).

Purpose: To exempt services to a special needs population from the episodic payment system for CHHAs.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 3614(13) of the Public Health Law and section 111(t) of part H of chapter 59 of the laws of 2011, subdivisions (a), (b) and (c) of section 86-1.44 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective May 2, 2012, and a new subdivision (k) is added, to read as follows:

Subdivisions (a) and (c) and the opening paragraph of subdivision (b) of section 86-1.44 of title 10 of NYCRR are amended to read as follows:

(a) Effective for services provided on and after [April 1] May 2, 2012, Medicaid payments for certified home health care agencies ("CHHA"), except for such services provided to children under eighteen years of age and except for services provided to a special needs population of medically complex and fragile children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department, shall be based on payment amounts calculated for 60-day episodes of care.

(b) An initial statewide episodic base price, to be effective [April 1] May 2, 2012, will be calculated based on paid Medicaid claims, as determined by the Department, for services provided by all certified home health agencies in New York State during the base period of January 1, 2009 through December 31, 2009.

(c) The base price paid for 60-day episodes of care shall be adjusted by an individual patient case mix index as determined pursuant to subdivision (f) of this section; and also by a regional wage index factor as determined pursuant to subdivision (h) of this section. *Such case mix adjustments shall include an adjustment factor for CHHAs providing care primarily to a special needs patient population coming under the jurisdiction of the Office of People With Developmental Disabilities (OPWDD) and consisting of no fewer than two hundred such patients.*

Section 86-1.44 of title 10 of NYCRR is amended by adding a new subdivision (k) to read as follows:

(k) Closures, mergers, acquisitions, consolidations, and restructurings.

(1) The commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for eligible certified home health agencies.

(2) Eligible certified home health agency providers shall include:

(i) providers undergoing closure;

(ii) providers impacted by the closure of other health care providers;

(iii) providers subject to mergers, acquisitions, consolidations or restructurings; or

(iv) providers impacted by the merger, acquisition, consolidation or restructuring of other health care facilities.

(3) Providers seeking rate adjustments under this subdivision shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

(iii) improve the cost effectiveness of the delivery of health care services; or

(iv) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(4) (i) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this subdivision shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the provider shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and applicable provisions of this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the provider's written proposal as approved by the commissioner and may also require that the provider submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

(ii) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

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 July 23, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The authority for implementation of an episodic payment system for Certified Home Health Agency services pursuant to regulations is set forth in section 3614(13) of the Public Health Law and in section 111(t) of part H of chapter 59 of the laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for certified home health agencies. Section 3614(13) also exempts the application of the episodic payment system to Medicaid reimbursement for "children under eighteen years of age and other discrete groups as may be determined by the commissioner pursuant to regulations".

Legislative Objectives:

The Legislature chose to address the issue of over-utilization of Certified Home Health Agency services as a result of the recommendations submitted by the Medicaid Redesign Team and accepted by the Governor. Pursuant to statute, an episodic payment system based on 60-day episodes

of care, with payments tied to patient acuity, was chosen as one of the vehicles to address this issue. The legislation also exempted Medicaid payments for children from the new payment system and, further, gave the Commissioner of Health authority to exempt other discrete groups through regulation.

In addition, Section 86-1.44 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended to add subdivision (k), which provides the Commissioner authority to grant temporary rate adjustments to eligible Article 36 certified home health agency providers subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in their service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The temporary rate adjustment shall be in effect for a specified period of time, as approved by the Commissioner, of up to three years. This regulation is necessary in order to maintain beneficiaries' access to services by providing needed relief to providers that meet the criteria.

Proposed subdivision (k) requires providers seeking a temporary rate adjustment to submit a written proposal demonstrating that the additional resources provided by a temporary rate adjustment will achieve one or more of the following: (i) protect or enhance access to care; (ii) protect or enhance quality of care; (iii) improve the cost effectiveness of the delivery of health care services; or (iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner. The proposed amendment permits the Commissioner to establish benchmarks and goals, in conformity with a provider's written proposal as approved by the Commissioner, and to require the provider to submit periodic reports concerning its progress toward achievement of such. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals, as determined by the Commissioner, shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

The proposed amendments to subdivisions (a), (b), and (c) will exempt services provided to a special needs population of medically complex children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department from the episodic payment system and will also provide for an adjustment of the case mix index for CHHAs serving primarily patients who are eligible for OPWDD services when such CHHAs have over 200 such patients. These amendments reflect a Health Department determination that the more stringent cost containment mechanism of episodic pricing, already deemed by the legislature to be an inappropriate reimbursement mechanism for CHHA services for children, is also not appropriate for special needs populations consisting of young adults as well as children and adolescents being cared for pursuant to an approved pilot program. These amendments will thus help assure that agencies primarily serving certain special needs populations will receive a level of reimbursement from the Medicaid system to maintain both adequate access and quality of care for members of these populations.

With regard to the new subdivision (k), in the center of a changing health care delivery system, the closure, merger, acquisition, consolidation or restructuring of a health care provider within a community often happens without adequate planning of resources for the impact on health care providers in the service delivery area. In addition, maintaining access to needed services while also maintaining or improving quality becomes challenging for the impacted providers. The additional reimbursement provided by this adjustment will support the impacted Article 36 certified home health agency providers in achieving these goals, thus improving quality while reducing health care costs.

Costs:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. It is anticipated there will be a slight decrease to the total state fiscal savings which were budgeted for the Episodic Payment System.

Local Government Mandates:

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

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

No significant alternatives are available that will protect the special needs populations identified in this amendment. With regard to the new

subdivision (k), no significant alternatives are available. Any potential certified home health agency provider project that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments to subdivisions (a), (b) and (c). With regard to the new subdivision (k), the proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for Article 36 certified home health care providers that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care provider, for a specified period of time, as determined by the Commissioner, of up to three years.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

No Job Impact Statement is required pursuant to section 201 a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Certified Home Health Agency (CHHA) and Licensed Home Care Services Agency (LHCSA) Requirements

I.D. No. HLT-43-12-00009-A

Filing No. 451

Filing Date: 2013-04-30

Effective Date: 2013-05-15

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

Action taken: Amendment of Parts 763 and 766 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3612(5), (6) and (7)

Subject: Certified Home Health Agency (CHHA) and Licensed Home Care Services Agency (LHCSA) Requirements.

Purpose: To expand access to palliative care and eliminate physician from the LHCSA quality improvement committee.

Text or summary was published in the October 24, 2012 issue of the Register, I.D. No. HLT-43-12-00009-P.

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

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

Revised Regulatory Impact Statement

Statutory Authority:

Public Health Law ("PHL") § 3612(5) authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations to effectuate the provisions and purposes of PHL Article 36 with respect to certified home health agencies. Section 3612(6) and (7) requires the Commissioner of Health to adopt, and amend as needed, rules and regulations to effectuate the purposes of Article 36 regarding quality of care and services.

Legislative Objectives:

PHL Article 36 was intended to promote the quality of home care services provided to residents of New York State and to assure adequate availability as a viable alternative to institutional care.

Needs and Benefits:

On February 24, 2011 Governor Cuomo accepted a report from the Medicaid Redesign Team (MRT) designed to meet the Medicaid savings targets contained in the Executive Budget for 2011-12. The report included 79 recommendations to redesign and restructure the Medicaid program to be more efficient and achieve better outcomes for patients. Included among the recommendations accepted were MRT proposal numbers 109 and 147.

MRT Proposal 109 sought to expand access to palliative care services. In furtherance of that objective, the proposed amendments to the regulations add a requirement that the plans of care and medical orders required for patients of certified home health agencies (CHHAs) and licensed home care services agencies (LHCSAs) address the patient's need for palliative care.

MRT Proposal 147 aimed to reduce regulatory burdens on providers. Accordingly, the proposed changes to the regulations eliminate the need for a physician to serve on the quality improvement (QI) committee of LHCSAs.

Finally, the proposed changes reflect minor amendments made to align these regulations with federal requirements and to correct errors. First, the amendments eliminate the requirement that CHHAs provide more than one qualifying service directly to coincide with the federal standards as defined in 42 CFR § 484.14(a). The current regulation appears to require CHHAs to provide more than one service directly, which the Department of Health does not require, and this has led to confusion among interested agencies.

Second, the amendments change the maximum period of time that may lapse before a comprehensive assessment is reviewed from 62 days to 60 days, as this was an error in the regulations as originally drafted. Federal regulations, at 42 CFR § 484.55(d)(1), require review at least every 60 days.

Costs:

The only new requirement imposed on agencies by these regulations is the requirement that the plan of care address palliative care, which is not anticipated to result in any appreciable burden to agencies and should not add additional costs to current operations. All other amendments are cost neutral or will decrease costs.

Local Government Mandates:

There are no mandates in this rule specific to local government. There are 28 existing county-based LHCSAs and approximately 29 county based CHHAs, and these entities will be required to comply with the same requirements as other licensed agencies.

Paperwork:

Providers are not expected to have increased paperwork as a result of these amendments.

Duplication:

The proposed regulatory changes are not duplicative of other requirements.

Alternatives:

The MRT proposals are specific in their mandates. The Department has made only those changes required to implement the MRT proposals.

Federal Standards:

There are no federal health care standards for LHCSAs. This provider type is a New York State construct. Federal regulations governing CHHAs are at 42 CFR Part 484.

Compliance Schedule:

Compliance is expected upon notice of adoption in the State Register.

Assessment of Public Comment

The agency received no public comment.

Subject: Approval of the amended petition and the related agreement.

Purpose: To approve the amended petition and the related agreement.

Substance of final rule: The Commission, on April 18, 2013, adopted an order approving an amended petition and related agreement filed by Saratoga Water Services, Inc. (Saratoga) and Malta Land Company, LLC concerning the provision of water service and the request for a waiver of its tariff, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-W-0137SA1)

NOTICE OF ADOPTION

Denying an Increase in Certain EEPS Programs Budgets

I.D. No. PSC-19-12-00008-A

Filing Date: 2013-04-25

Effective Date: 2013-04-25

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

Action taken: On 4/18/13, the PSC adopted an order denying a petition by Niagara Mohawk d/b/a National Grid to increase budgets for certain Energy Efficiency Portfolio Standard (EEPS) programs.

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

Subject: Denying an increase in certain EEPS programs budgets.

Purpose: To deny an increase in certain EEPS programs budgets.

Substance of final rule: The Commission, on April 18, 2013, adopted an order denying a petition filed by Niagara Mohawk d/b/a National Grid to increase budgets for its Small Business Services program, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA51)

NOTICE OF ADOPTION

Denying an Increase in Certain EEPS Programs Budgets

I.D. No. PSC-19-12-00018-A

Filing Date: 2013-04-25

Effective Date: 2013-04-25

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

Action taken: On 4/18/13, the PSC adopted an order denying a petition by Orange and Rockland Utilities, Inc. to increase budgets for certain Energy Efficiency Portfolio Standard (EEPS) programs.

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

Subject: Denying an increase in certain EEPS programs budgets.

Purpose: To deny an increase in certain EEPS programs budgets.

Substance of final rule: The Commission, on April 18, 2013, adopted an order denying a petition filed by Orange and Rockland Utilities, Inc. to increase budgets for its Small Business Direct Install programs, subject to the terms and conditions set forth in the order.

Public Service Commission

NOTICE OF ADOPTION

Approval of the Amended Petition and the Related Agreement

I.D. No. PSC-17-12-00013-A

Filing Date: 2013-04-24

Effective Date: 2013-04-24

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

Action taken: On 4/18/13, the PSC adopted an amended petition filed by Saratoga Water Services, Inc. and Malta Land Company, LLC for a waiver of the company's tariff.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 89-b

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.

(07-M-0548SA64)

NOTICE OF ADOPTION

Denying an Increase in Certain EEPS Programs Budgets

I.D. No. PSC-19-12-00020-A

Filing Date: 2013-04-25

Effective Date: 2013-04-25

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

Action taken: On 4/18/13, the PSC adopted an order denying a petition by New York State Electric & Gas Corporation and Rochester Gas & Electric Corporation to increase budgets for certain Energy Efficiency Portfolio Standard (EEPS) programs.

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

Subject: Denying an increase in certain EEPS programs budgets.

Purpose: To deny an increase in certain EEPS programs budgets.

Substance of final rule: The Commission, on April 18, 2013, adopted an order denying a petition filed by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to increase budgets for their Small Business Direct Install programs, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA62)

NOTICE OF ADOPTION

Approving NOCO's Petition for a Waiver of National Grid's Tariff Rule 47

I.D. No. PSC-04-13-00005-A

Filing Date: 2013-04-25

Effective Date: 2013-04-25

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

Action taken: On 4/18/13, the PSC adopted an order approving a petition by NOCO Energy Corporation (NOCO) granting a limited waiver of Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) electric tariff Rule 47.

Statutory authority: Public Service Law, sections 2, 5, 65 and 66

Subject: Approving NOCO's petition for a waiver of National Grid's tariff Rule 47.

Purpose: To approve NOCO's petition for a waiver of National Grid's tariff Rule 47.

Substance of final rule: The Commission, on April 18, 2013, adopted an order approving the petition of NOCO Energy Corporation for a limited waiver of tariff Rule 47 contained in the tariff for electric service of Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-E-0494SA1)

NOTICE OF ADOPTION

Approving Waiver of 16 NYCRR Sections 894.1 Through 894.4

I.D. No. PSC-05-13-00005-A

Filing Date: 2013-04-26

Effective Date: 2013-04-26

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

Action taken: On 4/18/13, the PSC adopted an order approving the Town of Williamstown's (Oswego County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3 and 894.4 pertaining to the cable television franchising process with Time Warner Cable.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve waiver of the rules contained in 16 NYCRR sections 894.1 to 894.4 to expedite the cable television franchising process.

Substance of final rule: The Commission, on April 18, 2013, adopted an order approving the Town of Williamstown's (Oswego County) request for waiver of the rules contained in 16 NYCRR sections 894.1, 894.2, 894.3 and 894.4 to expedite the cable television franchising process with Time Warner Cable, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-V-0573SA1)

NOTICE OF ADOPTION

Approving Asset Purchase Agreement with Princetown Cable Company, Inc. by Time Warner Cable Northeast LLC

I.D. No. PSC-05-13-00007-A

Filing Date: 2013-04-26

Effective Date: 2013-04-26

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

Action taken: On 4/18/13, the PSC adopted an order approving a petition from Time Warner Cable Northeast LLC requesting a transfer of assets from Princetown Cable Company, Inc.

Statutory authority: Public Service Law, section 222

Subject: Approving Asset Purchase Agreement with Princetown Cable Company, Inc. by Time Warner Cable Northeast LLC.

Purpose: To approve the Asset Purchase Agreement with Princetown Cable Co., Inc. by Time Warner Cable Northeast LLC.

Substance of final rule: The Commission, on April 18, 2013, adopted an order approving the petition of Time Warner Cable Northeast LLC for the transfer of assets including the franchise agreement and facilities from Princetown Cable Company, Inc., subject to the terms and conditions set forth in the order.

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

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

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

Assessment of Public Comment

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

(13-V-0010SA1)

NOTICE OF ADOPTION

Approving the Transfer of Utility Assets in Excess of \$100,000

I.D. No. PSC-06-13-00006-A

Filing Date: 2013-04-24

Effective Date: 2013-04-24

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

Action taken: On 4/18/13, the PSC adopted an order approving a petition by New York State Electric and Gas Corporation (NYSEG) for the sale of certain underground streetlight cable and steel streetlight standards to the City of Auburn.

Statutory authority: Public Service Law, section 70

Subject: Approving the transfer of utility assets in excess of \$100,000.

Purpose: To approve the sale of underground streetlight cables and steel from NYSEG to the City of Auburn.

Substance of final rule: The Commission, on April 18, 2013, adopted an order approving a petition filed by New York State Electric & Gas Corporation approving the transfer of certain underground streetlight cables and steel streetlight standards to the City of Auburn, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-M-0496SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Customer-Sited Tier of the Renewable Portfolio Standard

I.D. No. PSC-20-13-00007-P

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

Proposed Action: The Commission is considering a petition by the New York State Energy Research and Development Authority requesting modification of the implementation rules governing the Renewable Portfolio Standard, Customer—Sited Tier Standard Offer PV Program.

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

Subject: Customer-Sited Tier of the Renewable Portfolio Standard.

Purpose: To enhance the 2013 NY-Sun Program.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject in whole or in part, the request of the New York State Energy Research and Development Authority (NYSERDA), seeking to modify the implementation rules of the Renewable Portfolio Standard (RPS), Customer-Sited Tier (CST) Standard Offer and Competitive PV Programs. Specifically, NYSERDA proposes modifications to: (1) create a second tier for commercial Standard Offer PV systems larger than 50kW up to a maximum size cap of 200kW; (2) increase the threshold for the CST Competitive PV program to systems larger than 200kW; (3) create a separate, short-term, incentive opportunity for capacity additions up to the new 200kW maximum size cap for previously completed commercial

systems; and (4) raise the residential Standard Offer PV system size cap from the current 7kW to 25kW.

The Commission is considering NYSERDA's "Petition for Modification of NY-SUN Solar PV Programs" dated April 25, 2013, in addition to any related issues.

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

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

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

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

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

(03-E-0188SP40)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Relief of the Exhausting 315 Area Code

I.D. No. PSC-20-13-00008-P

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

Proposed Action: The Commission is considering the development and implementation of a Numbering Area Code Relief Plan in order to ensure code continued availability of telephone numbers in the 315 area code region beyond 2015.

Statutory authority: Public Service Law, section 97(2)

Subject: Relief of the exhausting 315 Area Code.

Purpose: To reinstate the relief process for the 315 area code region beyond 2015.

Substance of proposed rule: The Commission is considering resuming its investigation and evaluation of options for the use of additional area codes for the region covered by the existing 315 area code.

The North American Numbering Plan administrator (NANPA) advised the Commission in April of 2012 that the 315 area code, serving all or part of eighteen northern and central New York counties is running out of assignable telephone numbers. NANPA's projected date for 315 area code exhaust is the first quarter of 2015. As a result, the Commission is considering the development and implementation of a Numbering Area Code Relief Plan in order to ensure code continued availability of telephone numbers in the 315 area code region beyond 2015.

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

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

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

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

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

(07-C-1486SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYSEG and RG&E Home Energy Reports and Demonstration Programs

I.D. No. PSC-20-13-00009-P

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

Proposed Action: The Commission is considering a New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to extend the current end date for the companies' Home Energy Reports and Demonstration programs.

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

Subject: NYSEG and RG&E Home Energy Reports and Demonstration programs.

Purpose: To extend the current end date of the programs.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the joint petition filed by New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation to extend the current end date for the companies' Home Energy Reports and Demonstration programs.

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

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

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

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

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

(07-M-0548SP76)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to 16 NYCRR Chapter I, Subchapter A, Part 10

I.D. No. PSC-20-13-00010-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 Part 10 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4(1), 63-ff and 66

Subject: Amendments to 16 NYCRR Chapter I, Subchapter A, Part 10.

Purpose: To consider amendments to 16 NYCRR Chapter I, Subchapter A, Part 10.

Text of proposed rule: SUBCHAPTER A, General

PART 10

REFERENCED MATERIAL

§ 10.2 Federal Regulations.

(5) 49 CFR part 193, Liquefied Natural Gas Facilities: Federal Safety Standards (Revised as of October 1, 20[04]/2).

(6) 49 CFR part 195, Transportation of Hazardous Liquids by Pipeline (Revised as of October 1, 20[06]/2).

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.state.ny.us/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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

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

Consensus Rule Making Determination

This rule is being proposed as a consensus rule because, in accordance with State Administrative Procedure Act (SAPA) § 102(11)(c), it makes technical changes or is otherwise non-controversial.

Subchapter A of Part 10 of New York Code of Rules and Regulations (NYCRR) currently references Federal Regulations with revision dates that are no longer current. The proposed changes to this section update the revision dates of the referenced Federal Regulations to reflect the most current versions of the Federal Regulations.

The proposed rulemaking is non-controversial because regulated entities to which the sections apply are already subject to the updated Federal Regulations. No objections to adoption of the rule as written are expected. In accordance with the provisions of the SAPA § 202(1)(b)(i), this therefore should be considered a consensus rulemaking.

Job Impact Statement

The Department of Public Service (DPS) projects that there will be no adverse impacts on jobs or employment opportunities in the State of New York as a result of this proposed rule change. The proposed rule change merely brings Part 10 of New York Code of Rules and Regulations (NYCRR) Title 16 into conformance with Federal Regulations by updating the referenced Federal Regulations to reflect the current revision dates. The entities to which this provision applies are already subject to the current Federal Regulations. Since nothing in this proposed rule will create any adverse impacts on jobs or employment opportunities in the state, no further steps were needed to ascertain these facts and none were taken. As is apparent from the nature and purpose of this proposed rule change, a full job Impact Statement is not required and therefore has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interruptible Service Options

I.D. No. PSC-20-13-00011-P

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

Proposed Action: The Commission is considering whether to grant, modify or deny a tariff filing by Consolidated Edison Company of New York, Inc. proposing revisions to Interruptible Service Options contained in its gas tariff schedule, P.S.C. No. 9 — Gas.

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

Subject: Interruptible Service Options.

Purpose: To grant, modify or deny a tariff filing proposing revisions to Interruptible Service Options.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (the Company) to revise its Interruptible Service Options contained in its gas tariff schedule, P.S.C. No. 8 — Gas. The modifications would eliminate the Temperature Control Option. The Company states that this modification will provide customers benefits such as (1) more certainty as to the start and end of interruptions; (2) more advance notice of interruptions; (3) likely minimize customer alternate fuel costs and environmental impacts of burning alternate fuel; (4) enable all interruptible customers to participate in seasonally planned interruptions to test alternate fuel capability; (5) enable all interruptible customers to participate in pre-season communications tests; and (6) enable area-specific interruptions for all dual fuel customers when necessary to maintain service to firm gas customers. The amendments have an effective date of August 1, 2013. The Commission may apply its decision here to other utilities.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-G-0186SP1)

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

Grant Authority to Exempt Program Limits in New York State Electric and Gas Corporation Non Rate Economic Development Programs

I.D. No. PSC-20-13-00012-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by New York State Electric and Gas Corporation requesting an exemption in its Non Rate Economic Development program for a Southern tier facility.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Grant authority to exempt program limits in New York State Electric and Gas Corporation Non Rate Economic Development programs.

Purpose: Provide additional economic program assistance for the expansion of an existing manufacturing facility.

Substance of proposed rule: The Public Service Commission is reviewing the petition of New York State Electric & Gas Corporation for authorization to exempt limitations of assistance in its Non Rate Economic Development program. The special exemption is proposed for a manufacturing facility in the Southern Tier. The Commission may adopt permanently, reject or modify the provisions of the petition.

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

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

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

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

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

(13-E-0185SP1)

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

Granting Authority to Develop a Targeted Economic Development Program for Manufacturing Expansion

I.D. No. PSC-20-13-00013-P

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

Proposed Action: The Public Service Commission is considering a petition by Corning Natural Gas Corporation requesting approval for a targeted Economic Development program for the potential expansion of Corning Incorporated in Steuben County.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

Subject: Granting authority to develop a targeted Economic Development program for manufacturing expansion.

Purpose: To consider granting authority to develop a targeted Economic Development program for manufacturing expansion.

Substance of proposed rule: The Public Service Commission is reviewing the petition of Corning Natural Gas Corporation for authorization to

develop a targeted Economic Development program for the potential expansion of Corning Incorporated Diesel Manufacturing Plant in the Town of Erwin, Steuben County. The Commission may adopt permanently, reject or modify the provisions of the petition.

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

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

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

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

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

(13-G-0184SP1)