

# RULE MAKING ACTIVITIES

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

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

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

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## Office of Children and Family Services

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### AMENDED NOTICE OF ADOPTION

#### Child Day Care Regulations

**I.D. No.** CFS-26-13-00012-AA

**Filing No.** 1060

**Filing Date:** 2013-10-28

**Effective Date:** 2014-05-01

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

**Action taken:** Repeal of Parts 413, 416 and 417; and addition of new Parts 413, 416 and 417 to Title 18 NYCRR.

**Amended action:** This action amends the rule that was filed with the Secretary of State on October 15, 2013, to be effective October 30, 2013, File No. 994. The notice of adoption, I.D. No. CFS-26-13-00012-A, was published in the October 30, 2013 issue of the *State Register*.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and 390

**Subject:** Child Day Care Regulations.

**Purpose:** To revise and update the family and group family day care regulations.

**Substance of amended rule:** After a rigorous review of the current regulatory standards for family day care and group family day care programs and research on such issues as emergency preparedness, injuries related to supervision, national health and safety performance standards and guidelines for early care and education programs, the Office proposes

numerous changes to Title 18 of the New York State Code of Rules and Regulations (NYCRR) §§ 413, 416 and 417.

The Office's main objectives in proposing changes to current family-based child day care regulations is to strengthen health and safety standards, correct conflicting regulatory language discovered in existing citations relative to the administration of medication, to update the regulations with recent changes made to Social Services Law and the NYS Building Code, and to make the regulations easier to understand.

One major category chosen for modifications is the administration of medication in group family day care and family day care. These changes include amendments made as a result of lessons learned since 2005 when the administration of medication regulations were first adopted. The proposed regulations adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. The proposed regulatory changes focus on when permission to administer medications is required by a parent and a health care provider and when a child's dose of medication can be altered without requiring a new prescription and added cost. The proposed regulations also answer issues not addressed in 2005 such as, What is permitted when a health care consultant ends his/her affiliation with the program? May a provider refuse to administer a medication? May a Provider stock medication? When may a provider administer an auto injector or allow a child to carry an asthma inhaler?

A second category of changes focuses on obesity prevention. On this topic, the Office worked in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The group discussed best practice and the practicality of adding obesity prevention measures to child day care regulations. As a result of combined efforts, the Office was able to craft balanced regulatory requirements for providers that would also allow for parent choice. The regulations will require that low-fat milk, water or 100% juice be served, unless the parent supplies the provider with alternatives. In addition, children must have physical activity every day, and screen time activities must be limited during the child day care program.

Health, safety and emergency preparedness was also a focus in drafting proposed changes. The proposed regulations address emergency evacuation plans and drills for sheltering in place, additional smoke detectors inside sleeping areas, carbon monoxide alarms, changes in technology around phone service, safe storage of firearms, shotguns and rifles and safe sleep practices for infants.

Another key proposed change concerns adoption of an orientation session for applicants and a new training requirement for owners operating multiple sites. The Office proposes that all applicants seeking a family-based child day care license or registration complete an on-line orientation program prior to receiving an application. In addition, the Office proposes a requirement for all owners who operate multiple family-based child day care programs to receive training in administration and management of multiple sites.

Supervision is the most important element of child care services. Some would argue it is the central safety component in keeping children safe from harm. The meaning and significance of competent supervision, as a way of protecting children from injury, was studied and the Office proposes rewording the term to include the need to be close enough to redirect a child and to be aware of each child's ongoing activity.

A final category focuses on the proposed requirement for providers to be the main caregivers in family-based programs. In recent years, there has been an escalation in the number of providers who open multiple family-based programs. Providers then hire "on-site providers" to operate the programs. A number of safety issues arise from this arrangement, not the least of which are: un-cleared caregivers supervising children, un-trained providers starting in their roles as primary caregivers without health and safety training, and increases in enforcement cases with regard to these programs. Existing programs will be grandfathered, new applicants will be denied.

In addition to the categories above, the Office is proposing changes to the length of the regulations. This is more about breaking the regulations up into separate citations than it is about requiring additional standards. This change is significant to providers for the following reason: When an inspector cites a provider for a violation of regulation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

**Amended rule as compared with adopted rule:** The effective date was changed.

**Text of amended rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

#### Revised Regulatory Impact Statement

##### 1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of the SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410(1) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Chapter 416 of the Laws of 2000, enacting the Quality Child Care and Protection Act of 2000 (the Act), authorizes the Office to strengthen the existing regulations governing child day care programs. Subdivision 2-A of section 390 of the SSL, added by the Act, requires the Office to establish minimum quality program requirements.

##### 2. Legislative objectives:

The Office's objective in proposing changes to current family-based child care regulations is to strengthen health and safety standards, correct conflicting regulatory language, update the regulations with recent changes made to SSL and NYS Building Code, and to make the regulations easier to understand.

##### 3. Needs and benefits:

The proposed changes in the family-based child care regulations are needed to correct current regulatory inconsistencies, to incorporate recent statutory amendments, and to clarify the specific deficiency when a program is cited for a regulatory violation. The proposed changes can be organized into seven categories: the administration of medication and infection control, obesity prevention, safety and emergency preparedness, legislative changes, terminology and definitions, training requirements and responsibility of child care owners to administer and supervise programs.

The first category, the administration of medication and infection control, includes changes that adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. Changes are needed to correct current inconsistencies in the regulations regarding the authorization needed by the provider before administering medication to a child. The proposed changes reorganize the layout of the health and infection control section of the regulation to make referring to the regulations easier. The proposed changes will benefit the providers, children in care, and parents, by relaxing the current restrictions on medication administration, allowing providers discretion in medication administration, allowing providers to stock medication, and permitting a 60 day grace period when a health care consultant ends his/her affiliation with the program.

The second category, obesity prevention, is a topic the Office worked on in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The current regulations do not require providers to help children cultivate healthy eating and positive exercise habits to prevent childhood obesity. As a result of combined efforts, the proposed changes balance minimal requirements with parent choice. The regulations will require nutritious beverages and snacks unless the parent supplies the provider with alternatives. In addition, children must have physical activity every day, and screen time activities will be limited.

The changes to the third category, health, safety and emergency preparedness, are needed to address safety and security at the child care program. The proposed regulations allow providers to plan for and practice emergency evacuations and sheltering in place drills. The regulations require additional smoke detectors and carbon monoxide alarms, expanded requirements for safe sleep practices, and permit providers to discontinue

the expense of a landline telephone where there is a designated and operational phone.

The fourth category includes statutory requirements not yet included in regulation. These changes are needed to clarify to providers that the requests of the Office are being made because of statutory requirements. Specifically the need to complete a training topic, Education on Shaken Baby Syndrome; that at least one caregiver in Cardio Pulmonary Resuscitation and first aid must be present; the increase in the licensing or registration period from two-year to four-year intervals; the change in child capacity limits in family-based programs; prohibitions against reissuing a license or registration to a child day care provider whose license or registration was revoked or terminated during the previous two years; an expanded list of violations for which the Office may seek a fine; and an explanation of the responsibility of an authorized agency to inspect and monitor providers who care for children receiving subsidy from the authorized agency. The Federal Consumer Product Commission's new standards for cribs are included in regulation.

The fifth category includes changes to definitions and terms, which are needed to keep pace with the field observations, reflect current acceptable practices, and use of more neutral terms. The proposed regulations change the term "discipline" to behavior management, clarify the meaning and significance of competent supervision to be close enough to redirect a child and to be aware of each child's ongoing activity. The Office is also seeking to increase Class II fines from \$200 to \$250 a day and Class III fines from \$50 to \$100 a day.

The sixth category addresses the need to clarify the training requirements associated with operating a child care program. The regulation will require applicants to complete an on-line orientation program prior to receiving an application, and owners who operate multiple family-based child care programs must receive training in administration and management of multiple sites. The changes also include examples of the types of course that will be accepted toward each of the training topics.

The last category focuses on the requirement for providers to be the main caregivers in family-based programs. In recent years, there has been an escalation in the number of providers who open multiple family-based programs. Providers then hire "on-site providers" to operate the programs. A number of safety issues arise from this arrangement: unapproved staff supervising children, untrained providers without health and safety training, and increases in enforcement cases with regard to these programs. Existing programs will be grandfathered, and applicants will be denied. The enforcement of this requirement will directly protect the health and safety of children.

In addition to the above, the Office is proposing changes to the length of the regulations, to break the current provisions into separate citations, not to require additional standards. This change is significant to providers because when an inspector cites a violation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

##### 4. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some home-based child care providers. Some providers have already instituted these safety measures, however as necessary additional costs will be limited to complying with firearms safety provisions, posting house numbers for emergency vehicles when not already posted, installing smoke detectors and carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. The changes are not expected to have any adverse fiscal impact on providers.

The Office will provide an on-line orientation session for all applicants, and training to grandfathered owners of multiple home-based child care programs. The Office will use existing resources to implement these regulations. It is expected that providers will have financial relief by changing renewals from every two years to every four years. Providers will also experience savings by the elimination of required medical examinations for providers and employees after initial medical examination associated with employment.

##### 5. Local government mandates:

No new mandates are imposed on local governments by these proposed regulations.

##### 6. Paperwork:

Paperwork will be reduced because the renewal application is now due on a four year cycle instead of a two year cycle. Regulatory waiver requests will be reduced because of the changes made to the medication administration and authorization provisions. In addition, the proposed regulations eliminate routine medical exams for all providers, caregivers and household members, at renewal. An estimated 47,000 family-based child day care staff will no longer be submitting medical forms (after the initial medical evaluation) to their employer for filing. Providers would no

longer have to track each employee to ensure he/she completes the medical exam, nor would they have to file and keep such records.

Additional paperwork is required, however the additions are necessary for the health and safety of children in care, and the overall impact will be minimal on home-based child care programs. Providers will be required to submit a written emergency plan and evacuation diagram, and will need to document that they held two shelter in place drills annually, this notation can be recorded with the other evacuation drills. Providers will be required to post the transportation services they are providing to children and share this with parents using the service. A substitute (not a required role in home-based child care) employed by a child day care program will be required to submit references, criminal history attestation and a health statement. This documentation is important as it verifies the background of a person who is sometimes left in sole charge of a group of children.

The child day care provider will be required to enter the actual attendance times of each child and caregiver. The "in" time and "out" time for each child and staff person can be an added to the child's attendance form, already in use. A child day care provider must document that a daily health care check has been completed on each child in attendance. The Office will accept the addition of a check box on the attendance sheet indicating that the health care check was performed.

The Provider must collect the signatures of parents, indicating that each parent has been told that a firearm, shotgun, rifle or ammunition is on the premises.

7. Duplication:

The new requirements do not duplicate State or federal requirements.

8. Alternatives:

The Office has met with stakeholders, including child care provider union representatives, staff from NYS Department of Health, Centers for Disease Control and Prevention, NYS Education Department, Child Care Resource and Referral, to develop the proposed regulatory changes. The alternative to the proposed regulations is to continue operation under the current regulations and cite law when the regulations contain out-of-date information or are missing requirements.

9. Federal standards:

The regulations are consistent with applicable federal requirements.

10. Compliance schedule:

The regulations will become effective on May 1, 2014.

**Revised Regulatory Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The revisions to the last published rule merely clarify the text and correct technical errors, which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

**Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The revisions to the last published rule merely clarify the text and correct technical errors, which requires no change to the Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS"). The revisions to the last published rule merely provide clarifications in the text and correct technical errors, which requires no change to the Job Impact Statement.

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## Department of Economic Development

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

**START-UP NY Program**

**I.D. No.** EDV-46-13-00002-EP

**Filing No.** 1056

**Filing Date:** 2013-10-23

**Effective Date:** 2013-10-23

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

**Proposed Action:** Addition of Part 220 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 21, sections 435-36, L. 2013, ch. 68.

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

**Specific reasons underlying the finding of necessity:** On June 24, 2013, Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

**Subject:** START-UP NY Program.

**Purpose:** Establish procedures for the implementation and execution of START-UP NY.

**Substance of emergency/proposed rule (Full text is posted at the following State website: www.esd.ny.gov):** START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas and track and report on important aspects of the START-UP NY program, such as eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans submitted by private universities and colleges for the creation of Tax-Free Areas, reviews and approves certain plans from SUNY colleges, CUNY colleges, and community colleges seeking designation of Tax-Free NY Areas, and designates Strategic State Assets affiliated with eligible New York colleges or universities for use in the START-UP NY program. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating in downstate New York must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the

business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to submit in writing within sixty days a request for reapplication which identifies the reasons for rejection and offers verified factual information or arguments addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the

Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within New York State during normal business hours. DED, DTF, and DOL are to take reasonable steps to prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the removal decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner no later than thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. After receiving the appeal officer's report, the Commissioner is to render a final decision, and to provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning December 31, 2014. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records for the duration of their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business is to be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

**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 January 20, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Chung, NYS Department of Economic Development, 633 Third Avenue, New York, NY 10017, (212) 803-3783, email: jchung@esd.ny.gov

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

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

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish

procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform Upstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

#### LEGISLATIVE OBJECTIVES:

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

#### NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of the Department of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

#### COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None.

#### LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

#### PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

#### DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

#### ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program

participation requirements and is required by the legislation establishing the START-UP NY program.

#### FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

#### COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

#### Regulatory Flexibility Analysis

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

#### Rural Area Flexibility Analysis

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

#### Job Impact Statement

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## NOTICE OF ADOPTION

### Excelsior Jobs Program

**I.D. No.** EDV-35-13-00001-A

**Filing No.** 1069

**Filing Date:** 2013-10-29

**Effective Date:** 2013-11-13

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

**Action taken:** Addition of Parts 190-196 to Title 5 NYCRR.

**Statutory authority:** L. 2013, ch. 68; L. 2011, ch. 61; L. 2010, ch. 59; Economic Development Law, art. 17

**Subject:** Excelsior Jobs program.

**Purpose:** Allow Dept. to implement the Excelsior Jobs Program.

#### Substance of final rule:

The regulation creates new Parts 190-196 in 5 NYCRR as follows:

- 1) The regulation adds the definitions relevant to the Excelsior Jobs

Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Also, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. When determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

6) The rule is now amended to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which are effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominantly in agriculture must now create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, unless such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program. The amended regulation now clarifies that the exclusion of business services from eligibility refers to licensed professional services.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed. Per the new statute if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute. The Excelsior Jobs Program Credit is the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit is fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is based on the value of the property after improvements have been made. A participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits is up to ten years.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

14) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

15) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

16) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

17) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 190.2(aa-ae).

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

**Revised Regulatory Impact Statement**

**STATUTORY AUTHORITY:**

Section 356 of the Economic Development Law authorizes the Commissioner of Economic Development to promulgate regulations to implement the Excelsior Jobs Program.

**LEGISLATIVE OBJECTIVES:**

The rulemaking accords with the public policy objectives the Legislature sought to advance in creating competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars, including the manufacturing and financial industries, and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program encourages the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

**NEEDS AND BENEFITS:**

The rule is required in order to administer the Excelsior Jobs Program. Section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations with respect to an application process and eligibility criteria.

The current regulations for the Excelsior Jobs Program were last published as an emergency rule making in the July 31, 2013 State Register. This rule making will allow for the continued administration of the Excelsior Jobs Program, which is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that the administration of this Program continues so that New York remains competitive with other states, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

In addition to allowing for the continued administration of the Program, this rule making also incorporates certain changes to the rule made in the latest emergency rule making, published on July 31, 2013. Those changes modified certain key definitions in order to broaden participation in the Program and ensure accountability. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Finally, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

The rule is now further amended by to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which became effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominately in agriculture must now create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally

Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, unless such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

It should be noted that the rule, including the most recent changes prompted by changes in the law made by Chapter 68 of the Laws of 2013, was published for permanent adoption in a notice of proposed rulemaking in the August 28, 2013 State Register.

**COSTS:**

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

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

**LOCAL GOVERNMENT MANDATES:**

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

**PAPERWORK:**

The rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

**DUPLICATION:**

The rule does not duplicate any state or federal statutes or regulations.

**ALTERNATIVES:**

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

**FEDERAL STANDARDS:**

There are no federal standards in regard to the Excelsior Jobs Program. Therefore, the rule does not exceed any federal standard.

**COMPLIANCE SCHEDULE:**

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

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

Changes made to the last published Excelsior rule do not necessitate changes to RFA, RAFA and JIS because they changes made were non-substantive and typographical in nature.

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

## Education Department

### EMERGENCY RULE MAKING

#### Administration of Meningococcal Disease Vaccinations by Pharmacists

**I.D. No.** EDU-37-13-00002-E

**Filing No.** 1063

**Filing Date:** 2013-10-29

**Effective Date:** 2013-10-29

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

**Action taken:** Amendment of section 63.9 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6527(7)(c), 6802(22) and 6909(7)(c); and L. 2013, ch. 274

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

**Specific reasons underlying the finding of necessity:** The proposed amendment to the Regulations of the Commissioner of Education is necessary to implement Chapter 274 of the Laws of 2013, which amended Education Law sections 6527, 6802, and 6909, to authorize pharmacists who have been certified to administer immunizations to also administer vaccinations to prevent meningococcal disease.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the November 18-19, 2013 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the November meeting, would be December 4, 2013, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 274 of the Laws of 2013 will become effective on October 29, 2013.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 274 of the Laws of 2013, so that certified pharmacists can begin to treat patients in need of this vaccination.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the November 18-19, 2013 meeting of the Board of Regents, after publication in the State Register and expiration of the 45-day public comment period on proposed rule makings required by the State Administrative Procedure Act.

**Subject:** Administration of meningococcal disease vaccinations by pharmacists.

**Purpose:** To implement chapter 274 of the Laws of 2013 to authorize qualified pharmacists to administer meningococcal disease vaccinations.

**Text of emergency rule:** Paragraph (2) of subdivision (b) of section 63.9 of the Regulations of the Commissioner of Education is amended, effective October 29, 2013, as follows:

(2) Authorized immunization agents. A certified pharmacist who meets the requirements of this section shall be authorized to administer to patients 18 years of age or older:

(i) immunizing agents to prevent influenza, [or] pneumococcal disease or meningococcal disease [to patients 18 years of age or older], pursuant to a patient specific order or a non-patient specific order; and

(ii) ...

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-37-13-00002-P, Issue of September 11, 2013. The emergency rule will expire January 26, 2014

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making author-

ity to the Board of Regents to carry into effect the laws and policies of the State relating to education.

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

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

Paragraph (c) of subdivision (7) of section 6527 of the Education Law, as added by Chapter 274 of the Laws of 2013, authorizes physicians to prescribe and order a non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent meningococcal disease.

Subdivision (22) of section 6802 of the Education Law, as amended by Chapter 274 of the Laws of 2013, adds immunizations to prevent meningococcal disease to the list of immunizations certified pharmacists may administer.

Paragraph (c) of subdivision (7) of section 6909 of the Education Law, as added by Chapter 274 of the Laws of 2013, authorizes nurse practitioners to prescribe and order a non-patient specific regimen to a licensed pharmacist for administering immunizations to prevent meningococcal disease.

##### 2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Department shall supervise the regulation of the practice of the professions for the benefit of the public. The proposed amendment will conform Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013 which authorizes certain qualified pharmacists to administer vaccinations to prevent meningococcal disease pursuant to patient-specific prescriptions or non-patient specific orders.

##### 3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. Authorizing qualified pharmacists to administer vaccinations to prevent meningococcal disease will expand the availability of such vaccinations.

The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22).

##### 4. COSTS:

(a) Costs to State government: There are no additional costs to state government.

(b) Costs to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: The proposed amendments will not increase costs, and may provide cost-savings to patients and the health-care system. Therefore, there will be no additional costs to private regulated parties.

(d) Cost to regulating agency for implementation and continued administration of this rule: There are no additional costs to the regulating agency.

##### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the administration of vaccinations to prevent influenza, pneumococcal disease, acute herpes zoster, and meningococcal disease, and does not impose any program, service, duty, or responsibility upon local governments.

##### 6. PAPERWORK:

The proposed amendment imposes no new reporting or other paperwork requirements.

##### 7. DUPLICATION:

The proposed amendment does not duplicate other existing state or federal requirements, and is necessary to implement Chapter 274 of the Laws of 2013.

##### 8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. There are no significant alternatives to the proposed amendments, and none were considered.

##### 9. FEDERAL STANDARDS:

Since there are no applicable federal standards, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

##### 10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 274 of the Laws of 2013. The proposed amendment will become effective on October 29, 2013, which is also the effective date of Chapter 274. It is anticipated that licensees certified to administer immunizations will be able to comply with the proposed amendments by the effective date.

#### Regulatory Flexibility Analysis

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer im-

munizations against influenza, pneumococcal disease and acute herpes zoster to also administer vaccinations to prevent meningococcal disease. The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22). The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

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

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

The proposed amendment will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the approximately 24,162 pharmacists registered by the State Education Department, approximately 2,914 pharmacists report that their permanent address of record is in a rural county.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to Education Law sections 6527, 6802 and 6909, as amended by Chapter 274 of the Laws of 2013. These provisions allow pharmacists, certified to administer immunizations, to also be able to administer vaccinations to prevent meningococcal disease. The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, or professional services requirements, on entities in rural areas.

##### **3. COSTS:**

The proposed amendment does not impose any additional costs on regulated parties, including those in rural areas.

##### **4. MINIMIZING ADVERSE IMPACT:**

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law sections 6527, 6802 and 6909, as amended by Chapter 274 of the Laws of 2013. Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendment to Regulations of the Commissioner of Education and has recommended the change. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendment is supported by representatives of these sectors. The proposals make no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists, no matter their geographic location, to ensure a uniform standard of practice across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

##### **5. RURAL AREA PARTICIPATION:**

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 274 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

#### **Job Impact Statement**

The proposed amendment to the Regulations of the Commissioner of Education authorizes pharmacists who are certified to administer immunizations against influenza, pneumococcal disease and acute herpes zoster to also administer vaccinations to prevent meningococcal disease.

The proposed amendment also includes a technical revision to clarify that immunizations performed by certified pharmacists may be administered only to adult patients who are 18 years of age or older, in accordance with Education Law section 6802(22). The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### **Excess Line Placements Governing Standards**

**I.D. No.** DFS-29-13-00002-E

**Filing No.** 1062

**Filing Date:** 2013-10-28

**Effective Date:** 2013-10-28

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

**Action taken:** Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, arts. 21 and 59, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911 and 9102; and Financial Services Law, sections 202 and 302; L. 1997, ch. 225; L. 2002, ch. 587; and L. 2011, ch. 61

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

**Specific reasons underlying the finding of necessity:** This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRRA took effect on July 21, 2011, which is when the NRRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, and August 30, 2013. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013.

For the reasons stated above, emergency action is necessary for the general welfare.

**Subject:** Excess Line Placements Governing Standards.

**Purpose:** To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

**Substance of emergency rule:** On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence

search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA.

Insurance Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services ("Department") amended Section 27.0 to discuss the NRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Insurance Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

**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. DFS-29-13-00002-P, Issue of July 17, 2013. The emergency rule will expire December 26, 2013

**Text of rule and any required statements and analyses may be obtained from:** Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

#### Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 202 and 302 of the Financial Services Law, Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

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 effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for

excess line insurance. Further, the NRRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Section 27.14 of Insurance Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently, Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that an insurer deposit with the clerk of the court cash or securities or a bond with good and sufficient sureties, in an amount to be fixed by the court sufficient to secure payments of any final judgment that may be rendered by the court, with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process and, in material part, the policy is effectuated in accordance with Section 2105, the section that applies to excess line brokers. In a memorandum to the governor, dated March 30, 1949, recommending favorable executive action on the bill, the Superintendent of Insurance wrote that it was "our understanding that this subsection was inserted as the result of representations made by the representatives of Lloyds of London because the contracts of insurance customarily [written] by the underwriters and placed through licensees of this Department, contain a provision whereby the underwriters consent to be sued in the courts of this state and they maintain a trust fund in New York of a very sizable amount, which is available for the payment of any judgment which may be secured in an action involving one of their contracts of insurance."

When the Superintendent of Insurance first promulgated Insurance Regulation 41, effective October 1, 1962, pursuant to his broad power to make regulations, he codified in the regulation the longstanding practice regarding the trust fund, and established minimum provisions and requirements, thus providing a reasonable alternative for unauthorized insurers that regularly engage in the sale of insurance through the excess line market. While the specific provisions have been amended a number of times over the years, every iteration of Insurance Regulation 41 has called for a trust fund as a means of providing alternative security that the insurer would have resources to pay judgments against the insurer.

Although the NRRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law

Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Insurance Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Insurance Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the Insurance Law to conform to the NRRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

#### **Regulatory Flexibility Analysis**

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Department of Financial Services has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not

impose any reporting, recordkeeping or other compliance requirements on small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

**Rural Area Flexibility Analysis**

The Department of Financial Services (“Department”) finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

**Job Impact Statement**

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. The rule also makes an excess line insurer subject to Insurance Law section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

**Assessment of Public Comment**

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

**NOTICE OF ADOPTION**

**Unauthorized Providers of Health Services**

**I.D. No.** DFS-11-13-00008-A

**Filing No.** 1057

**Filing Date:** 2013-10-24

**Effective Date:** 2013-11-13

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

**Action taken:** Addition of Subpart 65-5 of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, section 202 and arts. 3 and 4; and Insurance Law, sections 301, 5109 and 5221 and arts. 4 and 51

**Subject:** Unauthorized Providers of Health Services.

**Purpose:** Establish standards and procedures for the investigation and suspension or removal of a health service provider’s authorization.

**Text or summary was published** in the March 13, 2013 issue of the Register, I.D. No. DFS-11-13-00008-EP.

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

**Revised rule making(s) were previously published in the State Register** on July 22, 2013

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

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Minimum Standards for the New York State Partnership for Long-Term Care Program**

**I.D. No.** DFS-36-13-00001-A

**Filing No.** 1058

**Filing Date:** 2013-10-24

**Effective Date:** 2014-01-01

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

**Action taken:** Amendment of Part 39 (Regulation 144) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insur-

ance Law, sections 301, 1117, 3201, 3217, 3221, 3229, 4235, 4237 and art. 43; and Social Services Law, section 367-f

**Subject:** Minimum Standards for the New York State Partnership for Long-Term Care Program.

**Purpose:** To amend the minimum daily benefit amounts for 2014 through 2023 for the New York State Partnership for Long-Term Care Program.

**Text or summary was published** in the September 4, 2013 issue of the Register, I.D. No. DFS-36-13-00001-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Martin J. Wojcik, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, email: martin.wojcik@dfs.ny.gov

**Revised Job Impact Statement**

The amendment will not adversely impact job or employment opportunities in New York. The amendment merely reflects in dollar amounts the minimum daily benefit amounts from 2014 to 2023 that New York State Partnership insurers shall use.

**Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

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

**Valuation of Life Insurance Reserves**

**I.D. No.** DFS-46-13-00008-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 98 (Regulation 147) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302 and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4240 and 4517

**Subject:** Valuation of Life Insurance Reserves.

**Purpose:** To remove the January 1, 2014 sunset provisions in section 98.9(c)(viii).

**Text of proposed rule:** Section 98.9(c)(2)(viii)(b)(2) is amended to read as follows:

(2) For policies issued on or after January 1, 2007 [and prior to January 1, 2014], for the purposes of applying section 98.7(b)(1) of this Part, an insurer may use a lapse rate of no more than two percent per year for the first five years, followed by no more than one percent per year to the policy anniversary specified in the following table based on issue age, and zero percent per year thereafter. If the period of time from the date of policy issuance to the date of the applicable policy anniversary age in the table is less than five years, then an insurer may use a lapse rate of no more than two percent per year for that period of time, and zero percent per year thereafter.

Issue Age	Policy Anniversary After Which the Lapse Rate is Zero
0 – 50	30th Policy Anniversary
51 – 60	Policy Anniversary Age 80
61 – 70	20th Policy Anniversary
71 – 89	Policy Anniversary Age 90
90 and Over	No Lapse

Section 98.9(c)(2)(viii)(e) is amended to read as follows:

(e) Compute the net single premium on the valuation date for the coverage provided by the secondary guarantee for the remainder of the secondary guarantee period, using the applicable valuation table and select factors as prescribed in section 98.4(a) of this Part, or Part 100 of this Title (Insurance Regulation 179), if applicable. For purposes of calculating the net single premium for policies issued on or after January 1, 2007 [and prior to January 1, 2014], a lapse rate subject to the same criteria as the lapse rate used in applying clause (b) of this subparagraph may be used.

Section 98.9(c)(2)(viii)(h)(2) is amended to read as follows:

(2) Calculate both net premiums using the maximum allowable valu-

ation interest rate and the minimum mortality standards allowable for calculating basic reserves. However, except for policies issued on or after January 1, 2007 [through January 1, 2014], if no future premiums are required to support the guarantee period being valued, there is no reduction for surrender charges. If the resulting amount is less than the sum of the basic and deficiency reserve from clause (b) of this subparagraph, then the basic and deficiency reserve to be used for the purposes of section 98.7(b)(1)(vi)(a) of this Part are those calculated in clause (b) of this subparagraph, and no further calculation is required.

Section 98.9(c)(2)(viii)(j) is amended to read as follows:

(j) With respect to any policy issued pursuant to this subparagraph, on or after January 1, 2007 [and prior to January 1, 2014], the insurer shall annually submit an actuarial opinion and memorandum on or before March 1, in form and substance satisfactory to the superintendent, which satisfies the requirements of Part 95 of this Title (*Insurance Regulation 126*). Reserves established in accordance with this subparagraph shall be increased by any additional reserves required by the stand-alone asset adequacy analysis.

**Text of proposed 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

**Data, views or arguments may be submitted to:** Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

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

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

In February 2013, the Department of Financial Services (“Department”) proposed, and promulgated as an emergency measure, its first Fourth Amendment to Part 98 (*Insurance Regulation 147*), which revised reserve standards for certain universal life insurance policies in conformity with National Association of Insurance Commissioners (“NAIC”) Actuarial Guideline 38. The emergency measure was re-promulgated in May and July, 2013. The Department allowed the last emergency measure to expire in September 2013. The Department also withdrew its proposal on October 16, 2013, because the rule resulted in insurers increasing their reserves for in-force business by less than \$1 billion in the aggregate, rather than by the \$10 billion that had been projected by the NAIC Joint Working Group that drafted Actuarial Guideline 38. Superintendent Lawsy addressed the matter in a letter to the NAIC, which is available at the following link: <http://www.dfs.ny.gov/about/press2013/pr1309111-link.pdf>. Thus, the rule currently in effect is the Third Amendment to Part 98 (*Insurance Regulation 147*).

Current Section 98.9(c)(2)(viii), which permits insurers to use certain prescribed lapse assumptions, is subject to “sunset” provisions that would make the section inoperable with respect to policies written on or after January 1, 2014. The Life Insurance Council of New York, Inc. (“LICONY”), a life insurance industry trade association that represents insurers subject to the rule, requested that the Department remove the January 1, 2014 sunset provisions to ensure that life insurers doing business in New York remain competitive. This amendment remedies the Department’s unintended expiration of the lapse assumptions provided in Section 98.9(c)(2)(viii) by removing the January 1, 2014 sunset provisions.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act (“SAPA”) § 102(11), because no person is likely to object to its adoption, and it is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis.

#### **Job Impact Statement**

Current Section 98.9(c)(2)(viii), which permits insurers to use certain prescribed lapse assumptions, is subject to “sunset” provisions that would make the section inoperable with respect to policies written on or after January 1, 2014. This amendment deletes the January 1, 2014 sunset provisions to keep the rule in operation. Therefore, amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule; it merely keeps the rule in effect with respect to policies written on or after January 1, 2014.

## Department of Health

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

#### **Empire Clinical Research Investigator Program (ECRIP)**

**I.D. No.** HLT-46-13-00003-EP

**Filing No.** 1061

**Filing Date:** 2013-10-28

**Effective Date:** 2013-10-28

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

**Proposed Action:** Addition of section 86-1.46 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2807-m

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

**Specific reasons underlying the finding of necessity:** It is necessary to issue the proposed regulation on an emergency basis in order to meet the statutory timeframes prescribed by section 60 of Part D of Chapter 56 of the Laws of 2012 related to implementing a new distribution methodology for ECRIP funding for periods on and after April 1, 2013. In addition, section 65(m) of Part D of Chapter 56 of the Laws of 2012 specifically provides the Commissioner of Health with authority to issue emergency regulations in order to distribute ECRIP funding in accordance with the new methodology on and after April 1, 2013.

Further, there is a compelling interest in enacting these regulations immediately in order for teaching hospitals to attract clinical researchers before they commit to out-of-state programs and to leverage additional and substantial research funding from the National Institutes of Health and other sources.

**Subject:** Empire Clinical Research Investigator Program (ECRIP).

**Purpose:** The redesigned ECRIP will continue individual physician research awards and provide larger center awards to teaching hospitals.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [www.health.ny.gov](http://www.health.ny.gov)):** This rule establishes a redesigned Empire Clinical Research Investigator Program (ECRIP) that will continue individual physician research awards as well as provide larger center awards to teaching hospitals. Individual teaching hospitals are eligible to submit for funding under either the individual award program or the center award program, but may not submit an abstract for both awards. An institution that has a major partnership with two medical schools may submit for two center awards. The award will include specific funding amounts. Any costs associated with the project in excess of the funding amounts described below are expected to be supported by the institution. All hospitals that submit an abstract for either type of award and meet the minimum requirements will receive funding.

#### **Individual Award**

These awards will promote development of clinician researchers by funding physician ECRIP fellows for one or two years of research training under a classic paradigm of one-on-one mentoring. Sponsor/mentors must have been a principal investigator, co-principal investigator or co-investigator of a federal research grant within five years of the abstract deadline. There will be one two-year award made per teaching hospital at \$75,000 per year. Institutions are encouraged to train two fellows at the same time in a team-based collaborative training model using additional in-kind or other grant funds. In no event will an institution receive more than \$150,000 for an individual award during the two-year period. The institution is expected to provide whatever additional funding and resources may be needed for support and training of the fellows.

#### **Center Award**

These two-year awards will promote development of clinician researchers while providing seed funding for new center grants by requiring teaching hospitals to form research teams around themes, such as ‘improved therapies for type 2 diabetes’. A theme may not be one that currently has federal center (P- or U-type) funding at the institution. The research theme must represent a strategically important growth area for the applicant institution, preferably associated with one or more federal funding opportunities with a realistic project timeline. In the event that more than three ECRIP fellow positions are funded, the abstract may describe two research teams formed around two different themes. Each research team must be led by a director who will sponsor/mentor one project and coordi-

nate the research team's activities. The director must be a PI of an active NIH research grant and the other project sponsor/mentors must have been a PI of an NIH or other federal research grant within one year of the abstract deadline. For every \$100,000 annually in State funding, the institution will be required to train at least one ECRIP fellow. Inter-institutional collaborations (with shared funding) involving other NY teaching hospitals and other NY entities such as private and public universities and colleges, government laboratories (e.g., Wadsworth Center, Nathan Kline Institute), local health departments, HHC and FQHCs are encouraged. All center awards must include a \$100,000 match, per year, by the institution with real (not in-kind) funds. All ECRIP fellows will be expected to work in a collaborative team-based training model.

**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 January 25, 2014.

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

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

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

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

#### Regulatory Impact Statement

Statutory Authority:

The requirement to distribute Empire Clinical Research Investigator Program (ECRIP) funding pursuant to regulation is set forth in paragraph (b) of subdivision (5-a) of section 2807-m of the Public Health Law.

Legislative Objectives:

The proposed rule redesigns ECRIP to maximize the impact of ECRIP funding, make New York State teaching hospitals more competitive for large NIH center awards and stimulate collaboration within and among New York's teaching institutions. This redesigned program will continue individual physician research awards as well as provide larger center awards to teaching hospitals. Awards will be distributed using a reimbursement-type methodology to teaching hospitals that meet specific program requirements.

Needs and Benefits:

The ECRIP was created by the NYS Council on Graduate Medical Education in 2000 to promote training of physicians in clinical research in order to advance biomedical research in New York State. The program was created as a result of research that demonstrated that NYS slipped from first to third nationally in its share of National Institutes of Health (NIH) research funding and was not producing the necessary clinical researchers to remain highly competitive. The importance of training clinical researchers for New York to regain its competitive edge has been heightened by new policies at NIH that will increase funding for clinical and translational research. Moreover, New York is well below the national average in its share of NIH funding received as large center grants as compared to individual investigator grants.

Since 2001, 827 project abstracts have been submitted for funding with 529 awarded to 65 teaching hospitals, totaling over \$64 million in funding. Each teaching hospital must provide matching funds to support the ECRIP researcher. These matching funds can be provided as in-kind support from the hospital directly or from other research entities such as national research institutes or private companies. These matching funds demonstrate the willingness of the institution to support a research agenda.

Sample data from the first eight years of the program show that 73 percent of ECRIP funded researchers have continued in research and 81 percent of those that continued in research have remained in NYS. Of the total positions awarded to the teaching hospitals, 92 percent were filled.

ECRIP provides funding for community-related research that is specific to an institution's region or population served. It is an open and flexible program, allowing for teaching hospitals to hire physicians in all subject areas of clinical research to perform patient-oriented, epidemiologic, behavioral, outcomes, health services and translational research. ECRIP is also leveraged by teaching hospitals to draw additional and substantial research funding from other sources (e.g. NIH, pharmaceutical companies, foundations) to continue the research.

Costs:

Costs to the State Government:

There will be no additional costs to the State Government as a result of implementing the redesigned program. The total annual funding to implement ECRIP will remain at \$8.6 million per year.

Costs to Local Government:

There will be no additional costs to the Local Government as a result of implementing the redesigned program.

Costs to Private Regulated Parties:

There will be no additional costs to Private Regulated Parties as a result of implementing the redesigned program.

Costs to the Regulatory Agency:

There will be no additional costs to the Regulatory Agency as a result of implementing the redesigned program.

Local Government Mandate:

The redesigned program 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 redesigned program does not require any additional paperwork to be completed by regulated parties.

Duplication:

The redesigned program does not duplicate any existing federal, state, or local regulation.

Alternatives:

No significant alternatives are available. The Department is required to promulgate implementing regulations pursuant to Public Health Law § 2807-m(5-a)(b)(H).

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes distribution requirements for ECRIP funding; there is no period of time necessary for regulated parties to achieve compliance.

#### Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed rule 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. The proposed rule governs distribution of ECRIP funding and participation is voluntary.

#### 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 rule does not impose an adverse impact on rural areas, and it does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed rule governs distribution of ECRIP funding and participation is voluntary.

#### Job Impact Statement

Nature of Impact:

ECRIP encourages teaching hospitals to conduct and train physicians in clinical research that will result in new positions in these facilities. Since 2001, 529 clinical research positions have been funded in 65 teaching hospitals, for a total of over \$64 million. Funding for research generates an enormous return on investment. According to a 2010 Associated Medical Schools of New York study, for every dollar in Federal and State research funding invested in New York medical schools, New York State receives a return of \$7.50. Sample data from the first eight years of the ECRIP program show that 73 percent of ECRIP funded researchers have continued in research and 81 percent of those that continued in research have remained in NYS.

Categories and Numbers Affected:

Jobs directly funded by this program are for physicians in clinical research. Other indirect job positions that are created include research fellows, faculty, administrative support and laboratory positions.

Regions of Adverse Impact:

There is no adverse impact on regions.

Minimizing Adverse Impact:

Not applicable.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Capital Projects for Federally Qualified Health Centers (FQHCs)

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

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

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

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

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

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

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

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

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

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

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

#### Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

COSTS:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

Costs to State Government:

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

Costs of Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

No additional paperwork is required to be filed by FQHCs

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

#### Regulatory Flexibility Analysis

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

#### Rural Area Flexibility Analysis

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

#### Job Impact Statement

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

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Episodic Pricing for Certified Home Health Agencies (CHHA)

I.D. No. HLT-46-13-00006-P

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

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

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

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

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

**Text of proposed rule:** 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 restructuring; 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.*

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

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

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

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

#### **Regulatory Impact Statement**

Statutory Authority:

The 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.

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

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### NOTICE OF ADOPTION

**Procedures of the Surrogate Decision-Making Committees of the  
NYS Justice Center for the Protection of People with Special  
Needs**

**I.D. No.** JCP-35-13-00005-A

**Filing No.** 1059

**Filing Date:** 2013-10-25

**Effective Date:** 2013-11-13

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

**Action taken:** Amendment of sections 710.1, 710.2, 710.3, 710.4, 710.6, 710.7 and 710.8 of Title 14 NYCRR.

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

**Subject:** Procedures of the Surrogate Decision-Making Committees of the NYS Justice Center for the Protection of People with Special Needs.

**Purpose:** Administer procedure to consent or refuse a nonemergency major medical treatment on behalf of a person with mental disabilities.

**Text or summary was published** in the August 28, 2013 issue of the Register, I.D. No. JCP-35-13-00005-P.

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

**Text of rule and any required statements and analyses may be obtained from:** David Cochran, Justice Center for Protection of People with Special Needs, 161 Delaware Avenue, Delmar, New York 12054-1310, (518) 549-0252, email: David.Cochran@Justicecenter.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

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## Niagara Frontier Transportation Authority

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

**NFTA's Procurement Guidelines**

**I.D. No.** NFT-46-13-00004-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 sections 1159.3 and 1159.5 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e(5) and 1299-t

**Subject:** The NFTA's Procurement Guidelines.

**Purpose:** To amend the NFTA's Procurement Guidelines regarding internal levels of approval.

**Text of proposed rule:** Subdivision (ae) of section 1159.3 is amended as follows:

(ae) Small Purchase. The acquisition of goods or services having an actual price less than \$[50,000] 100,000. [See section 1159.4(n) of this Part.]

Subdivision (af) of section 1159.3 is amended as follows:

(af) Small purchase formal bidding. A small purchases method of procuring goods or services under \$[50,000.00] 100,000.00, based upon competitive selection following the publication of a notice of procurement opportunity in the New York State Contract Reporter and the acceptance of sealed bids or proposals. [See section 1159.4(n)(2) of this Part.]

Subdivision (ag) of section 1159.3 is amended as follows:

(ag) Small purchase informal bidding. A small purchases method of procuring goods or services under \$[15,000.00] 50,000.00, based upon competitive selection which may be made on the basis of written or telephonic quotes and in accordance with the guidelines set forth in section 1159.4(n)(3) of this Part.

Subsection (1) to subdivision (a) of section 1159.4 is amended as follows:

(1) all contracts for goods or services in the actual or estimated value of \$[50,000] 100,000 or more;

Subsection (1) to subdivision (f) of section 1159.4 is amended as follows:

(1) Sealed bidding is the preferred procurement method for acquisitions of \$[15,000] 50,000 or more where the following factors are present:

Subsection (i) to subsection (2) to subdivision (f) of section 1159.4 is amended as follows:

(i) The purchase is under \$[15,000] 50,000 and an informal, small purchase procurement procedure is being followed;

Subsection (1) to subdivision (h) of section 1159.4 is amended as follows:

(1) Procurement by negotiation is the preferred procurement method for acquisitions of \$[15,000] 50,000 or more where one or more of the following factors are present:

Subsection (i) to subsection (2) to subdivision (h) of section 1159.4 is amended as follows:

(i) the purchase is under \$[15,000] 50,000 and an informal, small purchase procurement procedure is being followed;

Subdivision (k) of section 1159.4 is amended as follows:

(k) New York State Contract Reporter. All procurements of goods or services having an actual or estimated value of \$[15,000] or 50,000 or more shall be published in THE NEW YORK STATE CONTRACT REPORTER (NYSCR) The notice of procurement opportunity shall appear in the NYSCR at least 15 business days prior to the bid or proposal due date. However, advance publication shall not be required under emergency or exigency conditions, or when an expediency action has been adopted by the board, or if the procurement is being solicited within 45 business days after the date bids or proposals were originally due. At the time a determination of intent to award a procurement contract is made, the following information shall be submitted for publication in NYSCR: for procurement contracts obtained through the sealed bidding process, the result of the bid opening including the names of bidding firms and the amounts bid by each; for procurement contracts obtained through the negotiation and/or qualification-based processes, the names of firm submitting proposals and the proposal selected as the best value offer; and for all other procurement contracts, the name of the proposed awardee.

The Note to subsection (4) to subdivision (l) of section 1159.4 is amended as follows:

Note: With the exception of awards made under subparagraphs (i), (ii) and (iii) of this paragraph, the aggregate value of single source, unadvertised awards to any one firm or person shall not exceed \$[50,000] 100,000 per year, absent board approval.

Subsection (2) to subdivision (o) of section 1159.4 is amended as follows:

(2) Formal bidding. Contracts for goods or services equal to or in excess of \$[15,000] 50,000, but less than \$[50,000] 100,000 may be awarded by the executive director or her designee, upon satisfaction of the following minimum requirements:

Subsection (3) to subdivision (o) of section 1159.4 is amended as follows:

(3) Informal bidding. Contracts for goods or services for less than \$[15,000] 50,000 may be awarded by the executive director, her designee, or for less than \$5,000 may be awarded by the general counsel, the chief financial officer, any general manager or director, the executive director of the GBNRTC or the executive director of NITTEC, or their designee (note, that any such delegation must be in writing), upon satisfaction of the following minimum requirements:

Subsection (ii) to subsection (3) to subdivision (o) of section 1159.4 is amended as follows:

(ii) At least three written or telephonic quotes must be solicited for purchases equal to or over \$3,000 and under \$[15,000] 50,000. Purchases under \$3,000 may be made without quotes, if the procurement manager or her designee considers the prices to be fair and reasonable.

Subsection (5) to subdivision (o) of section 1159.4 is amended as follows:

(5) In the event a single source or single bid selection is the subject of a small purchase under \$[15,000] 50,000, authorization for the purchase must come from the executive director.

Subsection (2) to subdivision (r) of section 1159.4 is amended as follows:

(2) Professional service contracts which do not exceed \$[50,000] 100,000 and will not involve services to be rendered in excess of one year may be awarded following either the formal bidding or informal bidding small purchase guidelines set forth in subdivision (n)o) of this section, as is appropriate.

Subsection (2) to subdivision (w) of section 1159.4 is amended as follows:

(2) In the event the authorization limits set forth in paragraph (1) of this subdivision will be exceeded, the general counsel, chief financial officer, executive directors of the GBNRTC and NITTEC, directors or general managers shall contact the executive director or in her absence the chairman of the board. The executive director is authorized to declare an emergency or exigency and to make awards not to exceed \$[50,000] 100,000, per occurrence and shall report same to the chairman at the earliest opportunity, as described in paragraph (5) of this subdivision.

Subsection (3) to subdivision (w) of section 1159.4 is amended as follows:

(3) In the event the authorization limit set forth in paragraph (2) of this subdivision will be exceeded, the executive director shall contact the chairman of the board, or in his absence, the vice chairman of the board. The chairman (or if applicable, the vice chairman), is authorized to declare an emergency or exigency and to make awards which may exceed \$[50,000] 100,000.

Subsection (4) to subdivision (w) of section 1159.4 is amended as follows:

(4) In the event the final contract amount owed is equal to or greater than \$[50,000] 100,000, the individual responsible for declaring the emergency or exigency shall prepare and submit a "Declaration of Emergency/Exigency Report" to the executive director for submittal to the board at the earliest possible board meeting. The "Single Source Validation Report" form, in section 1159.5(f) of this Part, may be used. At a minimum, the "Declaration Report" shall set forth the following information:

Subsection (5) to subdivision (w) of section 1159.4 is amended as follows:

(5) In the event the final contract amount is less than \$[50,000] 100,000, the individual responsible for declaring the emergency or exigency shall prepare and submit a "Declaration of Emergency/Exigency Report" to the executive director at the earliest possible time, documenting the information outlined in subparagraphs (4)(i) through (vi) of this subdivision.

Subsection (ii) to subsection (2) of subdivision (ab) of section 1159.4 is amended as follows:

(ii) For the procurement of any product or service of \$[15,000] 50,000, or more, the user department shall prepare a written requisition and submit same to the procurement department a minimum of three months prior to the desired delivery, bid opening, performance, or pro-

posal due date. For purchases under \$[15,000] 50,000, the requisitions shall be submitted to the procurement department 10 days in advance. The requisition shall serve as the mechanism by which the user department communicates its specific procurement need to the procurement department and it represents the beginning of the procurement process.

Subsection (2) to subdivision (af) of section 1159.4 is amended as follows:

(2) The authority may purchase surplus and second hand supplies, materials or equipment from the Federal Government, the State of New York or any political subdivision municipality, or district without advertising or the solicitation of bids, proposal or quotations, however, purchases involving and expenditure of \$[50,000] 100,000 or more shall require Board approval.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth\_Keating@nfta.com

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

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

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

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being amended for the following reasons:

1. The only change is to the internal approval levels for procurements. This will not impact third parties.

2. The changes are not controversial.

#### **Job Impact Statement**

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The change to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Denying Modifications to KEDNY's Multifamily Energy Efficiency Program**

**I.D. No.** PSC-23-12-00004-A

**Filing Date:** 2013-10-23

**Effective Date:** 2013-10-23

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

**Action taken:** On 10/17/13, the PSC adopted an order denying The Brooklyn Union Gas Company d/b/a National Grid NY's (KEDNY) petition for modifications to their multifamily energy efficiency program.

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

**Subject:** Denying modifications to KEDNY's multifamily energy efficiency program.

**Purpose:** To deny modifications to KEDNY's multifamily energy efficiency program.

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order denying a petition by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) for modifications to its multifamily energy efficiency 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-0548SA66)

## NOTICE OF ADOPTION

**Denying Modifications to KEDLI's Multifamily Energy Efficiency Program****I.D. No.** PSC-23-12-00010-A**Filing Date:** 2013-10-23**Effective Date:** 2013-10-23

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

**Action taken:** On 10/17/13, the PSC adopted an order denying KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) petition for modifications to their multifamily energy efficiency program.

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

**Subject:** Denying modifications to KEDLI's multifamily energy efficiency program.

**Purpose:** To deny modifications to KEDLI's multifamily energy efficiency program.

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order denying a petition by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) for modifications to its multifamily energy efficiency 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](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(07-M-0548SA67)

## NOTICE OF ADOPTION

**Approval of Petition of 250 North 10th Street, LLC to Submeter Electricity at 250 North 10th Street, Brooklyn****I.D. No.** PSC-25-12-00009-A**Filing Date:** 2013-10-24**Effective Date:** 2013-10-24

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

**Action taken:** On 10/17/13, the PSC adopted an order approving the petition of 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Subject:** Approval of petition of 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn.

**Purpose:** To approve the petition of 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn.

**Substance of final rule:** The Commission, on October 17, 2013 adopted an order approving the petition of 250 North 10th Street, LLC to submeter electricity at 250 North 10th Street, Brooklyn, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(12-E-0255SA1)

## NOTICE OF ADOPTION

**Approving Modifications to Certain KEDLI Electric and Gas Programs****I.D. No.** PSC-29-12-00013-A**Filing Date:** 2013-10-23**Effective Date:** 2013-10-23

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

**Action taken:** On 10/17/13, the PSC adopted an order approving KeySpan Gas East Corporation d/b/a National Grid NY's (KEDLI) petition for modifications to certain residential electric and gas programs.

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

**Subject:** Approving modifications to certain KEDLI electric and gas programs.

**Purpose:** To approve modifications to certain KEDLI electric and gas programs.

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order approving a petition by KeySpan Gas East Corporation d/b/a National Grid (KEDLI) for modifications to its gas Enhanced Home Sealing Incentives and Energy Star Products programs and to reallocate the program budgets and energy savings targets of those programs to its residential High-Efficiency Heating and Water Heating and Controls 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](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(07-M-0548SA71)

## NOTICE OF ADOPTION

**Approving Modifications, in Part, to Certain Niagara Mohawk Electric and Gas Programs****I.D. No.** PSC-29-12-00014-A**Filing Date:** 2013-10-23**Effective Date:** 2013-10-23

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

**Action taken:** On 10/17/13, the PSC adopted an order approving, in part, Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) petition for modifications to certain residential electric and gas programs.

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

**Subject:** Approving modifications, in part, to certain Niagara Mohawk electric and gas programs.

**Purpose:** To approve, in part, modifications to certain Niagara Mohawk electric and gas programs.

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order approving a petition by Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) to terminate its gas and electric Enhanced Home Sealing Incentives and Energy Star Products programs and to reallocate the program budgets and energy savings targets of those programs to their residential High-Efficiency Heating and Water Heating and Controls programs. Additionally, the Commission, denied Niagara Mohawk's request for additional 2013 – 2015 funding and savings targets for its Energy Star Products and Recycling 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](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-M-0548SA69)

**NOTICE OF ADOPTION**

**Approving Modifications to Certain KEDNY Electric and Gas Programs**

**I.D. No.** PSC-29-12-00015-A

**Filing Date:** 2013-10-23

**Effective Date:** 2013-10-23

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

**Action taken:** On 10/17/13, the PSC adopted an order approving The Brooklyn Union Gas Company d/b/a National Grid NY's (KEDNY) petition for modifications to certain residential electric and gas programs.

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

**Subject:** Approving modifications to certain KEDNY electric and gas programs.

**Purpose:** To approve modifications to certain KEDNY electric and gas programs.

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order approving a petition by The Brooklyn Union Gas Corporation d/b/a National Grid (KEDNY) for modifications to its gas Enhanced Home Sealing Incentives and Energy Star Products programs and to reallocate the program budgets and energy savings targets of those programs to its residential High-Efficiency Heating and Water Heating and Controls 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](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(07-M-0548SA70)

**NOTICE OF ADOPTION**

**Approval of Petition of Eastgate Owner, LLC to Submeter Electricity at 222 East 39th Street New York**

**I.D. No.** PSC-30-13-00006-A

**Filing Date:** 2013-10-28

**Effective Date:** 2013-10-28

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

**Action taken:** On 10/17/13, the PSC adopted an order approving the petition of Eastgate Owner, LLC to submeter electricity at 222 East 39th Street New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Subject:** Approval of petition of Eastgate Owner, LLC to submeter electricity at 222 East 39th Street New York.

**Purpose:** To approve the petition of Eastgate owner, LLC to submeter electricity at 222 East 39th Street New York.

**Substance of final rule:** The Commission, on October 17, 2013 adopted an order approving the petition of Eastgate Owner, LLC to submeter electricity at 222 East 39th Street, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

Atlas Capital Group, LLC was listed as the initial filer in this proceeding. Certain corporate documentation was filed on July 2, 2013, substituting Eastgate Owner LLC as the Owner. Atlas Capital Group, LLC has a membership interest in Eastgate Owner LLC.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0291SA1)

**NOTICE OF ADOPTION**

**Approval of Petition of 84-86 White Street, LLC to Submeter Electricity at 84 White Street, New York**

**I.D. No.** PSC-30-13-00008-A

**Filing Date:** 2013-10-24

**Effective Date:** 2013-10-24

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

**Action taken:** On 10/17/13, the PSC adopted an order approving the petition of 84-86 White Street, LLC to submeter electricity at 84 White Street, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Subject:** Approval of petition of 84-86 White Street, LLC to submeter electricity at 84 White Street, New York.

**Purpose:** To approve the petition of 84-86 White Street, LLC to submeter electricity at 84 White Street, New York.

**Substance of final rule:** The Commission, on October 17, 2013 adopted an order approving the petition of 84-86 White Street, LLC to submeter electricity at 84 White Street, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0289SA1)

**NOTICE OF ADOPTION**

**Approving a Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)**

**I.D. No.** PSC-31-13-00008-A

**Filing Date:** 2013-10-25

**Effective Date:** 2013-10-25

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

**Action taken:** On 7/18/13, the PSC adopted an order approving the petition of the Town of Grafton to waive 16 NYCRR, sections 894.1 through 894.4 pertaining to the franchising process.

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

**Subject:** Approving a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

**Purpose:** To approve a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

**Substance of final rule:** The Commission, on October 17, 2013, adopted an order approving a petition of Town of Grafton, Rensselaer County to waive the requirements of Sections 894.1, 894.2, 894.3 and 894.4 to expedite the franchising process, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-V-0301SA1)

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

**Whether to Permit the Use of the GE/Dresser ES3 Index Assembly for Use in Commercial and Industrial Gas Meter Applications**

**I.D. No.** PSC-46-13-00007-P

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

**Proposed Action:** The Commission is considering whether to approve, deny or modify, in whole or in part, a petition of National Grid Corporation for approval to use the GE/Dresser ES3 Electronic TC Index Accessory.

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

**Subject:** Whether to permit the use of the GE/Dresser ES3 Index Assembly for use in commercial and industrial gas meter applications.

**Purpose:** To permit gas utilities in New York State to use the GE/Dresser ES3 Index Assembly.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny, or modify, in whole or part, the petition filed by National Grid, to use the GE/Dresser ES3 Electronic TC Index Accessory in commercial and industrial natural gas meter applications.

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

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

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

(13-G-0470SP1)

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**Department of State**

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

**Appraisal Standards**

**I.D. No.** DOS-46-13-00001-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 section 1106.1 of Title 19 NYCRR.

**Statutory authority:** Executive Law, section 160-d(1)(d)

**Subject:** Appraisal Standards.

**Purpose:** To adopt the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice.

**Text of proposed rule:** § 1106.1 Appraisal Standards (a) Every appraisal assignment shall be conducted and communicated in accordance with the following provisions and standards set forth in the [2012-2013] 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice:

- (1) Definitions;
- (2) Preamble;
- (3) Ethics rule;
- (4) Record keeping rule;
- (5) Competency rule;
- (6) Scope of work rule;
- (7) Jurisdictional exception rule;
- (8) Standard 1 - Real Property Appraisal, Development;
- (9) Standard 2 - Real Property Appraisal, Reporting;
- (10) Standard 3 - Appraisal Review, Development and Reporting;
- (11) [Standard 4 - Real Property Appraisal Consulting, Development;] *Retired*;
- (12) [Standard 5 - Real Property Appraisal Consulting, Reporting;] *Retired*;
- (13) Standard 6 - Mass Appraisal, Development and Reporting;
- (14) Standard 7 - Personal Property Appraisal, Development;
- (15) Standard 8 - Personal Property Appraisal, Reporting;
- (16) Standard 9 - Business Appraisal, Development; and
- (17) Standard 10 - Business Appraisal, Reporting.

(b) The [2012-2013] 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice is published by the Appraisal Foundation, which is authorized by the United States Congress as the source of appraisal standards. Copies may be obtained from: The Appraisal Foundation 1029 Vermont Avenue, NW, Suite 900 Washington, DC 20005 tel: 202-347-7722 [www.appraisalfoundation.org](http://www.appraisalfoundation.org) The [2012-2013] 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice can be viewed, downloaded and printed from <http://www.appraisalfoundation.org>. Copies are also available for inspection and copying at the following offices of the Department of State:

Division of Licensing Services N.Y.S. Department of State [Alfred E. Smith State Office Building] *One Commerce Plaza* [80 South Swan St., 10th Fl.] *99 Washington Avenue, 5th Floor*, Albany, NY [12210] 12231 tel: 518-473-2728

Division of Licensing Services N.Y.S. Department of State 65 Court Street Buffalo, NY 14202 tel: 716-847-7110

Division of Licensing Services N.Y.S. Department of State 123 William Street New York, NY 10038 tel: 212-417-5747

Division of Licensing Services N.Y.S. Department of State 250 Veterans Memorial Highway Hauppauge, NY 11788 tel: 631-952-6579

**Text of proposed rule and any required statements and analyses may be obtained from:** John Kenny, NYS Department of State, Division of Licensing Services, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231, (518) 473-2728, email: [john.kenny@dos.ny.gov](mailto:john.kenny@dos.ny.gov)

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

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

**Consensus Rule Making Determination**

This rule is being proposed as a consensus rule making. The New York State Board of Real Estate Appraisal does not expect that any person is likely to object to its adoption because the proposed rule merely implements a nondiscretionary statutory direction, i.e., the adoption of these appraisal standards is mandated by § 160(d)(1)(d) of the Executive Law.

Section 160-d(1)(d) of the Executive Law provides, in part, that the New York State Board of Real Estate Appraisal shall adopt standards for the development and communication of real estate appraisals; provided, however, that those standards must, at minimum, conform to the uniform standards of professional appraisal promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Acting pursuant to Title IX of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C.A. §§ 3310-3351), the Appraisal Standards Board has adopted and, from time to time, amended the Uniform Standards of Professional Appraisal Practice, which set forth national standards for developing an appraisal and for reporting its results. This proposal will adopt the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice relating to real estate appraisals. Since § 160-d(1)(d) directs that the standards adopted by the State Board of Real Estate Appraisal conform, at a minimum, to the standards promulgated by the Appraisal Standards Board, the State Board does not expect that any

person is likely to object to the adoption of the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice. The State Board has previously adopted the 2002, 2003, 2004, 2005, 2006, 2007, 2008-2009, 2010-2011, 2012-2013 editions of the Uniform Standards of Professional Appraisal Practice without objection.

***Job Impact Statement***

Licensed and certified real estate appraisers are currently subject to the 2012-2013 edition of the Uniform Standards of Professional Appraisal Practice, which has been revised by the 2014-2015 edition. The changes being made are minimal and are not anticipated to impact job opportunities for real estate appraisers. Accordingly, the New York State Board of Real Estate Appraisal does not believe that adoption of the 2014-2015 edition of the Uniform Standards of Professional Appraisal Practice will have any substantial adverse impact on jobs and employment opportunities.