

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Firewood (All Hardwood Species), Nursery Stock, Logs, Green Lumber, Stumps, Roots, Branches and Debris of Half an Inch or More

I.D. No. AAM-10-14-00001-A
Filing No. 663
Filing Date: 2014-07-24
Effective Date: 2014-08-13

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

Action taken: Amendment of section 139.2 of Title 1 NYCRR.
Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris of half an inch or more.

Purpose: To modify the Asian Long Horned Beetle quarantine to prevent the further spread of the beetle to other areas.

Text or summary was published in the March 12, 2014 issue of the Register, I.D. No. AAM-10-14-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Christopher A. Logue, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the

year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

NOTICE OF ADOPTION

Compliance with Section 415 of the Internal Revenue Code

I.D. No. AAC-22-14-00004-A
Filing No. 689
Filing Date: 2014-07-28
Effective Date: 2014-08-13

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

Action taken: Amendment of section 379.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Compliance with section 415 of the Internal Revenue Code.

Purpose: To conform the regulation to statutory language of Retirement and Social Security Law section 620(5).

Text or summary was published in the June 4, 2014 issue of the Register, I.D. No. AAC-22-14-00004-P.

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

Revised rule making(s) were previously published in the State Register on June 4, 2014.

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Flexibility Relating to Teacher Performance Assessment (edTPA)

I.D. No. EDU-19-14-00021-ERP

Filing No. 665

Filing Date: 2014-07-25

Effective Date: 2014-07-25

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

Action Taken: Amendment of sections 52.21, 80-3.3, 80-3.4 and 80-5.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

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

Specific reasons underlying the finding of necessity: As discussed at the December 2012 and October 2013 Regents meetings, the Department has partnered with the Teacher Performance Assessment Consortium (TPAC) and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a performance-based assessment designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

We are nearly five years into the implementation of the new and revised certification examinations. The Department has already provided a one year extension of the teacher performance assessment and \$ 11.5 million to CUNY, SUNY, and the independent colleges to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. However, in spite of the nearly five years of awareness raising, professional development offerings related to transition to the new assessment, and the one year extension that was already provided for programs and candidates, in order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she does not receive a satisfactory passing score on the teacher performance assessment, if the candidate either receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

The proposed amendment was adopted as an emergency rule at the April 28-29, 2014 Regents meeting, effective April 29, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on May 14, 2014. The proposed amendment has now been revised to clarify that the edTPA "safety net" approved by the Board of Regents at their April meeting allows any candidate who applies for and meets the requirements of an initial certificate on or before June 30, 2015, except he/she does not receive a passing score on the edTPA, may either: (1) take and pass the ATS-W after receipt of his/her score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate.

Because the Board of Regents meets at scheduled intervals, the earliest the revised proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register on August 13,

2014 and expiration of the 30-day public comment period for a Revised Rule Making, as provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the October 20-21, 2014 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule, if adopted at the October Regents meeting, would be November 5, 2014, the date a Notice of Adoption will be published in the State Register. However, the April emergency rule will expire on July 27, 2014, 90 days after its filing with the Department of State on April 29, 2014. A lapse in the rule's effective date could disrupt the certification process for teacher candidates who are subject to the rule and who will be applying for certification on or after May 1, 2014 and prior to June 30, 2015.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2014 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

Furthermore, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare in order to ensure that teacher candidates who will be applying for certification on or after May 1, 2014 and prior to June 30, 2015, have timely and sufficient notice that, if they fail the edTPA and subsequently take and pass the ATS-W prior to June 30, 2015 or if they passed the ATS-W (prior to the new certification requirements) and fail the edTPA prior to June 30, 2015, they may receive an initial certificate.

Subject: Flexibility Relating to Teacher Performance Assessment (edTPA).

Purpose: To provide teacher Candidates, who apply for teacher certification prior to June 30, 2015 and who take and fail the teacher performance assessment (edTPA), with the option of obtaining an initial certificate if the candidate passes the ATS-W.

Text of emergency/revised rule: 1. The amendment of section 52.21 and Part 80 of the Regulations of the Commissioner of Education that was adopted by the Board of Regents as an emergency rule at the April 28-29, 2014 Regents meeting is repealed, effective July 25, 2014.

2. Subclause (1) of clause (b) of subparagraph (iv) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective July 25, 2014, to read as follows:

(1) The department shall conduct a registration review in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed; *provided that for the 2014-2015 and 2015-2016 academic years, the department shall not conduct a registration review based solely upon students having less than an 80 percent passage rate on the teacher performance assessment. However, programs with less than an 80 percent passage rate for the 2013-2014 and 2014-2015 academic years on the teacher performance assessment will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the teacher performance assessment.* For purposes of this clause, students who have satisfactorily completed the institution's program shall mean students who have met each educational requirement of the program, excluding any institutional requirement that the student pass each required examination of the New York State teacher certification examinations for a teaching certificate in order to complete the program. Students satisfactorily meeting each educational requirement may include students who earn a degree or students who complete each educational requirement without earning a degree. For determining this percentage, the department shall consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year, academic year defined as July 1st through June 30th, and shall consider only the highest score of individuals taking a test more than once.

3. Paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective July 25, 2014, to read as follows:

(2) Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following subparagraphs:

(i)(a) Except as otherwise provided in this section, for candidates who have completed all requirements for initial certification on or before April 30, 2014 and who apply for certification on or before April 30, 2014, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate on or before April 30, 2014, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to

achieve a satisfactory level of performance on the content specialty test. Instead of meeting the examination requirements of this subdivision, a candidate applying for certification on or before April 30, 2014 may achieve a satisfactory level of performance on the set of certification examinations described in subdivision (b) of this section, *except that such candidate may receive a satisfactory level of performance on either the teacher performance assessment or the written assessment of teaching skills.*

(b) Except as otherwise provided in this section, for candidates applying for certification on or after May 1, 2014 or candidates who applied for certification on or before April 30, 2014 but did not meet all the requirements for an initial certificate on or before April 30, 2014, such candidates shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment, the educating all students test, the academic literacy skills test and the content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test or the teacher performance assessment and a candidate seeking an initial certificate in the title of Educational Technology Specialist (all grades) shall not be required to achieve a satisfactory level of performance on the teacher performance assessment. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:*

(i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(ii) passed the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

(c) ...

(ii) ...

(c) ...

4. Section 80-3.4 of the Regulations of the Commissioner of Education is amended, effective July 25, 2014, as follows:

Section 80-3.4. Requirements for the professional certificate in the classroom teaching service.

(a) ...

(b) Requirements for professional certificates in all titles in classroom teaching service, except in a specific career and technical subject within the field of agriculture, business and marketing, family and consumer sciences, health, a technical area, or a trade (grades 7 through 12). The candidate shall meet the requirements in each of the following paragraphs:

(1) ...

(2) ...

(3) Examination.

(i)(a) ...

(b) Candidates who hold a transitional C certificate for career changers and others holding a graduate academic or graduate professional degree, pursuant to the requirements of section 80-5.14 this Part, and who apply for certification on or after May 1, 2014 or candidates who apply for professional certification on or before April 30, 2014 but do not meet all the requirements for a professional certificate on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination teacher performance assessment. *Provided, however, if a candidate applies for and meets all the requirements for a professional certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for a professional certificate, if the candidate either:*

(i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(ii) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

(c) ...

5. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 80-5.13 of the Regulations of the Commissioner of Education is amended, effective April 29, 2014, to read as follows:

(ii) Examination.

(a) A candidate who applies for an initial certificate on or before

April 30, 2014, and who has completed all other requirements for an initial certificate or who has completed all requirements for an initial certificate except completion of their registered Transitional B program, on or before April 30, 2014 shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher certification examination written assessment of teaching skills test, and any other examination required for the provisional or initial certificate, as applicable, and/or a, bilingual education extension of such certificate, as applicable, on or before April 30, 2014 or a satisfactory level of performance on teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable.

(b) A candidate who applies for [certification] *an initial certificate* on or after May 1, 2014 or who applies for [certification] *an initial certificate* on or before April 30, 2014 but does not meet all the requirements for [a professional] *an initial certificate* on April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the teacher performance assessment, if applicable for that certificate title, and any other examination required for the provisional or initial certificate, as applicable, and/or a bilingual education extension of such certificate, as applicable. *Provided however, if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either:*

(i) receives a satisfactory score on the written assessment of teaching skills after receipt of his/her score on the teacher performance assessment and prior to June 30, 2015; or

(ii) passes the written assessment of teaching skills on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the teacher performance assessment prior to June 30, 2015.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on May 14, 2014, I.D. No. EDU-19-14-00021-EP. The emergency rule will expire September 22, 2014.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 80-3.3(b)(2), 80-3.4(b)(3) and 80-5.13(b)(1).

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

Data, views or arguments may be submitted to: Peg Rivers, NYS Education Department, Office of Higher Education, EB Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the *State Register* on May 14, 2014, the following substantial revisions were made to the proposed rule:

Sections 80-3.3(b)(2)(i)(b), 80-3.4(b)(3)(i)(b), 80-5.13(b)(1)(ii)(b) are amended to clarify that if a candidate applies for and meets all the requirements for an initial certificate on or before June 30, 2015 (including completing and submitting for scoring the teacher performance assessment), except the candidate does not receive a satisfactory score on the teacher performance assessment, the candidate may meet the requirements for an initial certificate, if the candidate either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

The above revisions require revisions to the Needs and Benefits section of the previously published Regulatory Impact Statement.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, creation of performance assessments for teachers and school building

leaders, and the revision of the current Content Specialty Tests (CSTs). The teacher performance assessment was intended to measure candidates' readiness for the classroom consistent with the New York State Teaching Standards, which were adopted with extensive stakeholder input.

In May 2010, the Board reaffirmed the direction for the new examinations, which includes the Academic Literacy Skills Test (ALST), the Educating All Students test (EAS), the edTPA, and the School Building Leader performance assessment (SBL), as well as revisions to the CSTs. The new certification examinations were described in New York's Race to the Top (RTTT) application in 2010, are part of New York's RTTT scope of work, and were scheduled to be implemented in May 2013. Stakeholder engagement – particularly teacher preparation program faculty – in the development of the new teacher performance assessment began in 2010. The NYS-developed performance assessment was similar in construct and was field tested twice (spring and fall of 2011) and over 250 faculty members and over 550 students participated. Work continued on the NYS-developed performance assessment until we learned about the opportunity to partner with SCALE to implement the edTPA. NYS also conducted an edTPA statewide field test in 2013. At its February 2012 meeting, the Board of Regents approved a shift in the implementation date of the new certification examinations (edTPA, ALST, EAS and the SBL) from May 1, 2013 to May 1, 2014. This implementation date was selected in order to provide educator preparation programs with an additional year to prepare teaching candidates, while at the same time ensuring that the timeframes in the State's RTTT application are met.

As discussed at the December 2012 and October 2013 Regents meetings, the Department partnered with the Teacher Performance Assessment Consortium (TPAC) in February 2012 and is utilizing the edTPA as its teacher performance assessment, which was developed by the Stanford Center for Assessment, Learning and Equity (SCALE). The edTPA is a multiple-choice measure assessment system aligned to state and national standards, including the Common Core State Standards and the Interstate Teacher Assessment and Support Consortium (InTASC). Most importantly, the edTPA is on the cutting edge of teacher candidate assessment practices nationally and has been adopted by 34 states and the District of Columbia. The assessment is based on the National Board for Professional Teaching Standards (NBPTS). The edTPA is designed to measure a candidate's readiness to teach by assessing teaching behaviors designed to foster student learning such as the candidate's ability to demonstrate effective planning, instruction, and assessment. In order for candidates to complete the edTPA, they need to submit a video of their performance in the classroom.

Early on, the Department established strong systems of support to ensure that each college and university had the information needed to successfully prepare its candidates. In April 2012, the Office of Higher Education announced the creation of a set of agreements with SUNY, CUNY, and the Commission on Independent Colleges and Universities (cIcu) to provide professional development to enhance collaboration between schools of education and colleges of arts and sciences around the Regents Reform Agenda. The project has funded trainings focused on the Common Core Learning Standards, Data-Driven Instruction, Clinically Rich Teacher Preparation, the new certification examinations, and APPR. Funding from RTTT was used to provide a total of \$10 million to SUNY, CUNY, and cIcu. In November 2013, the Office of Higher Education offered SUNY, CUNY and cIcu an additional \$1.5 million total to continue faculty professional development using RTTT funding. The faculty development scope of work is outlined and fully described in each sector's work plan, available online at <http://www.highered.nysed.gov/mou.html>.

Statewide field tests of the edTPA – with optional campus participation – occurred during the 2012-13 academic year. Fifty-one campuses participated.

In January 2013, the Governor's Education Reform Commission, recognizing the need for excellent teachers, released its preliminary report and recommended the establishment of a "bar" like exam for entry into the teaching and principal profession. In March 2013, the state budget was enacted with a provision requiring the creation of standards for a teacher and principal bar exam certification program.

We are five years into the implementation of the new and revised certification examinations. The Department has already provided a one-year extension and \$11.5 million to CUNY, SUNY, and cIcu to support the provision of faculty professional development on topics such as the Common Core and the new certification examinations. Further, with a modest, but meaningful number of operational test takers so far, (approximately 1,660), the Department has estimated that the pass rate is approximately 83%.

However, in an effort to address the concerns raised by the field, the proposed amendment provides flexibility to teacher candidates who have taken and failed the edTPA. Specifically, the proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on

or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current Section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on May 14, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that Statement in Lieu of a Regulatory Flexibility Analysis be revised to read as follows:

STATEMENT IN LIEU OF A REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact

and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Revised Rule Making in the State Register on May 14, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The above revisions to the proposed rule require that the Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services Section of the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

In order to address the concerns raised by the field while at the same time recognizing the previous extension and investments made in faculty development around the edTPA, the proposed amendment attempts to provide additional flexibility for candidates who take and fail the edTPA on their first attempt. The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate.

In addition, under the current section 52.21(b)(2)(iv) of the Commissioner's Regulations, an institution shall be required to submit a comprehensive corrective action plan in the event that fewer than 80 percent of students, who have satisfactorily completed the institution's program during a given academic year and have also completed one or more of the examinations required for a teaching certificate, pass each such examination that they have completed. If the Department does not approve the corrective action plan, the institution shall be subject to denial of re-registration in accordance with the requirements of Section 52.23 of the Commissioner's Regulations. The Department recommends that the 80% passage requirement be waived for students who take the edTPA in the 2013-2014 and 2014-2015 academic years. Instead, programs with fewer than 80% of students who pass the edTPA in these academic years will be required to submit a professional development plan to the Department that describes how the program plans to improve the readiness of faculty and pass rate for candidates on the edTPA. The Department will not use edTPA scores in the State's institutional profiles until the 2015-2016 academic year.

The proposed amendment does not require any professional services to comply.

Revised Job Impact Statement

Since publication of the Notice of Emergency Adoption and Revised Rule Making in the State Register on May 14, 2014, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement filed herewith.

The proposed amendment authorizes the Commissioner to issue an initial certificate to a candidate who applies for and meets all the requirements for an initial certificate on or before June 30, 2015, except he/she fails the edTPA, and either: (1) takes and pass the ATS-W after receipt of his/her failing score on the edTPA and prior to June 30, 2015, or (2) if the candidate had previously passed the ATS-W on or before April 30, 2014 (before the new certification examination requirements became effective) and the candidate has taken and failed the edTPA prior to June 30, 2015, the candidate will be issued an initial certificate (this applies to Transitional B program candidates who apply for an initial certificate as well). Transitional C certificate holders (generally Career and Technical Education teachers who are career changers or hold a graduate academic or professional degree) would be provided similar flexibility in meeting the edTPA requirement for a professional certificate. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Life Insurance Reserves

I.D. No. DFS-17-14-00002-RP

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

Proposed Action: Amendment of Parts 98 (Regulation 147) and 100 (Regulation 179) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Life insurance reserves.

Purpose: To modernize the current regulatory scheme with respect to term life insurance reserves.

Substance of revised rule: Section 98.3 is amended by re-lettering existing definitions for technical purposes and adding two new definitions: "segmented method for varying premium term life insurance" and "varying premium term life insurance".

Section 98.4(b)(5)(ii) is amended by adding clause (c) to allow for mortality improvement to be used in the application of the X factors for varying premium term life insurance policies issued on or after January 1, 2015.

Section 98.4(b)(5)(iii) is deleted and a new section 98.4(b)(5)(iii)(a) and (b) are added to separate the requirements for policies issued prior to January 1, 2015 and varying premium term life insurance policies issued on or after January 1, 2015. For varying premium term life insurance policies issued on or after January 1, 2015, mortality improvement may be recognized in the application of the X factors.

Section 98.4(b)(5)(vii)(b) is amended to separate the opinion requirements for policies issued prior to January 1, 2015 and varying premium term life insurance policies issued on or after January 1, 2015.

Section 98.6(a) is amended by dividing paragraph (1) into two subparagraphs, and adding new paragraphs (7) through (12), which provide the reserve methodology to be followed for varying premium term life insurance policies issued on or after January 1, 2015.

Section 98.6(b)(1) is amended by renumbering that section to 98.6(b)(1)(i) and adding a new subparagraph (ii) to address the deficiency reserve requirements for varying premium term life insurance policies issued on or after January 1, 2015.

Section 98.6(b)(2) is amended to specify reserve methodology requirements for the calculation of deficiency reserves for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.1 is amended by adding a new subdivision (c), which recognizes and permits the use of mortality improvement scale LT for varying premium term life insurance.

Section 100.2 is amended by changing the applicability section and clarifying that new section 100.11 applies only to varying premium term life insurance policies.

Section 100.3 is amended by re-lettering existing definitions for technical purposes and adding the new definitions: "mortality improvement scale LT" and "varying premium term life insurance".

Section 100.6(a)(2) is amended to recognize mortality improvement in the calculation of basic reserves for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.6(a)(3) is amended to recognize mortality improvement in the calculation of deficiency reserves for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.6(a)(7) is amended to recognize mortality improvement in the calculation of segmented basic reserves for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.6(b)(8) is amended to recognize mortality improvement in the calculation of segmented deficiency reserves for varying premium term life insurance policies issued on or after January 1, 2015.

Section 100.11 ("Severability") is re-numbered as section 100.12, and a new section 100.11 ("Varying Premium Term Life Insurance Mortality Improvement") is added to provide the mortality improvement factors and formulas for varying premium term life insurance and includes a numerical example for applying the mortality improvement factors and formulas.

Revised rule compared with proposed rule: Substantive revisions were made in sections 98.4(b)(5)(ii), (iii), (vii)(b), 98.6(b)(1), (2), 100.6(a)(2), (3), (7) and (8).

Text of revised proposed rule and any required statements and analyses may be obtained from Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the Fifth Amendment to Insurance Regulation 147 (11 NYCRR 98) and Third Amendment to Insurance Regulation 179 (11 NYCRR 100) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240, and 4517 of the Insurance Law.

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

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

Insurance Law section 1304 requires insurers to maintain reserves for life insurance policies and certificates according to prescribed tables of mortality and rates of interest.

Insurance Law section 1308 sets forth the parameters for reinsuring risks and policy liabilities, and the effect that reinsurance will have on an insurer's reserves.

Insurance Law section 4217 requires the Superintendent to annually value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York. Insurance Law section 4217(a)(1) specifies that the Superintendent may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods used in the calculation of reserves.

Insurance Law section 4217(c)(2)(A)(iii) permits, as a minimum standard of valuation for life insurance policies, any ordinary mortality table adopted by the National Association of Insurance Commissioners ("NAIC") after 1980 and approved by the Superintendent.

Insurance Law section 4217(c)(2)(A)(iv) authorizes the Superintendent to adopt any mortality table or modifications of any table for any specific class of risk.

Insurance Law section 4217(c)(6)(C) provides that reserves, according to the commissioner's reserve valuation method for life insurance policies that provide for a varying amount of insurance or requiring the payment of varying premiums, shall be calculated by a method consistent with the principles of section 4217(c)(6).

Section 4217(c)(6)(D) permits the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Insurance Law section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioner's reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioner's reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Insurance Law section 4221(k)(9)(B)(vi) permits, for policies of ordinary insurance, the use of any ordinary mortality table adopted by the NAIC after 1980 and approved by the Superintendent, for use in determining the minimum nonforfeiture standard.

Insurance Law section 4224(a)(1) prohibits unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for life insurance policies.

Insurance Law section 4240(d)(6) provides that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract. Section 4240(d)(7) authorizes the Superintendent to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

Insurance Law section 4517(b)(2) provides, with respect to fraternal benefit societies, that reserves according to the commissioner's reserve valuation method for life insurance certificates that provide for a varying amount of benefits, or requiring the payment of varying premiums, shall

be calculated by a method consistent with the principles of subsection (b). Section 4517(c)(2) requires fraternal benefit societies to comply with the minimum valuation standards of Section 4217 of the Insurance Law for life insurance certificates issued on or after January 1, 1980.

2. Legislative objectives: Maintaining solvency of insurers doing business in New York is a principal focus of the Insurance Law. One fundamental way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York State to hold reserve funds in an amount sufficient to meet the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves. At the same time, an insurer benefits when it has adequate capital to use for company expansion, product innovation, and other forms of business development.

3. Needs and benefits: The Superintendent has determined that term life insurance reserves are currently set high relative to actuarial experience due to such factors as: initial non-commission costs associated with the issuance of term life insurance constituting a higher percentage of the first years' premium compared with whole life insurance premiums; the expiration of term life insurance within 30 or fewer years, which is subject to a lesser degree of reinvestment risk as compared with longer-lasting guarantee products such as whole life insurance and universal life insurance; the impact of lapsation on term life insurance future claims; and improvement in mortality since the NAIC's last release of the CSO mortality table. To modernize the current regulatory scheme with respect to term life insurance reserves, the Superintendent is amending Insurance Regulations 147 and 179, as discussed in the Superintendent's letter to state Commissioners, dated March 27, 2014.

Insurance Regulation 147 is amended to replace the current one-year full preliminary term ("FPT") with a two-year FPT for term life insurance, in recognition that upfront expenses for acquiring and retaining such business represent a higher proportion of premium compared with other types of insurance business (e.g., whole life policies). A two-year FPT will result in a lower proportion of the first and second year premiums being held to pay claims that will not arise until well into the future, leading to a buildup in reserves after the second, rather than first, policy year.

Insurance Regulation 179 is amended consistent with mortality improvement. Because insureds are generally living longer, the amendment applies a 1.0 percent mortality improvement factor to the current mortality table (2001 CSO) for rates associated with calendar years 2009-2048, and applies a 0.5 percent mortality improvement factor for each year thereafter through policy year 30. These factors will apply during the initial level premium period. The Department anticipates that the NAIC will adopt a new mortality table next year, which may result in an additional update to Insurance Regulation 179.

The Department estimates that concurrent amendments to Insurance Regulations 147 and 179 will result in a 30-35 percent reduction in minimum statutory formula reserves for level term life insurance on a prospective basis.

4. Costs: Insurers and fraternal benefit societies that are authorized to do business in New York State that are impacted by these amendments may incur costs to modify existing computer software to incorporate the new methodologies for prospective business, as well as the testing and implementation of the changes to the software, if they choose to make these changes. However, insurers and fraternal benefit societies are not required to make the changes that are prescribed in the amendments, because not applying the changes will result in higher-than-minimum-required reserves and an insurer or fraternal benefit society may choose to hold reserves at an amount that is higher than the minimum level required.

Software modification, testing and implementation costs are estimated to be \$10,000 or less. After an insurer has modified its computer systems to comply with these amendments, only minimal additional costs should be anticipated.

The amendments are expected to result in the need for a small amount of training of Department staff. The cost of such training will be absorbed through the Department's normal budget. There are no costs to other government agencies or local governments.

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

6. Paperwork: The amendments do not alter paperwork requirements.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: One alternative considered by the Superintendent was to allow company-specific assumptions that were supported by credible experience. However, this amendment provides a more objective and uniform floor on reserves, ensuring that reduced reserves will be held at intended levels. Another alternative considered by the Superintendent was to specify a set percentage of term life insurance reserves resulting from the current standard. However, this method is not actuarially sound

because it is not supported by a mortality table. The Department's Life Bureau reached out to a number of insurers that write term life policies, which included discussions with the affected insurers' trade association, The Life Insurance Council of New York, on a prior version of these amendments. The Department considered the comments, which focused primarily on tax concerns, it received from the insurers and LICONY when it drafted these proposed amendments. Additionally, the Department considered and made changes to the amendments based on comments that it received from LICONY and an insurer during the public comment period.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: These amendments apply to policies issued on or after January 1, 2015 and will impact statements due May 15, 2015 and filed thereafter.

Revised Regulatory Flexibility Analysis

The revisions made to the earlier proposed rule have no special bearing on small businesses and no bearing on local governments; therefore, changes made to the last published rule do not necessitate revision to the previously published RFA.

Revised Rural Area Flexibility Analysis

The revisions made to the earlier proposed rule have no bearing on persons or businesses in rural areas who are affected by this rule; therefore, changes made to the last published rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

The revisions made to the earlier proposed rule have no bearing on jobs or employment opportunities; therefore, changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The Department received public comments on its proposed fifth amendment to Insurance Regulation 147 (11 NYCRR 98). One commentator, noting that subdivisions (a) and (t) of section 98.3 apply only to varying premium term life insurance involving a level premium rate guarantee ending before age 80, suggested that the Department change the "ending before age" to 91. The Department reviewed data currently available and found that there is no data to support mortality improvement at the higher age limit suggested. Therefore, no changes were made to section 98(a) and (t).

A commentator remarked that it is unclear whether section 98.4(b)(5)(vii)(b) applies the mortality improvement to deficiency reserves as well as basic reserves. To make clear that the mortality improvement applies to both basic and deficiency reserves, section 98.4(b)(5)(ii), (iii) and (vii)(b) have been amended.

Another commentator similarly remarked that it is unclear whether section 98.6 applies the mortality improvement to both basic and deficiency reserves. To clarify that the mortality improvement applies to both basic and deficiency reserves, section 98.6(b)(1) and (2) have been revised.

The Department received a comment recommending that section 98.4(b)(5) be revised to include mortality improvement in the X factor tests. The Department agrees with this comment and revised section 98.4(b)(5) accordingly.

The Department disagrees with another commentator's contention that the reserve methodology prescribed by section 98.6(a)(9) contravenes New York Insurance Law Section 4217. Insurance Law Section 4217(c)(6)(C) allows for reserves set according to the commissioner's reserve valuation method for life insurance policies to provide for a varying amount of insurance or require the payment of varying premiums to be calculated by a method consistent with the principles of paragraph (6). The methodology described in section 98.6(a)(9) is consistent with the principles espoused in Insurance Law Section 4217. The commentator also recommended that if the new reserve methodology provided in section 98.6(a)(9) is to be used, then it should be referred to as something other than the "commissioners reserve valuation method." The Department revised the reference to "the commissioners reserve valuation method for varying premium term life insurance."

One commentator requested that the Department confirm that the proposed formulas in section 98.6(a)(9)(ii)(a) and (b) are intended to represent a single year payment (at the beginning of the first and second years, respectively) of the net level premium for the coverage period after the first two years. The Department confirms that the commentator's interpretation is correct.

Third Amendment to Insurance Regulation 179 (11 NYCRR 100)

The Department received public comments on its proposed third amendment to Insurance Regulation 179. One commentator, noting that section 100.3(v) applies only to varying premium term life insurance involving a level premium rate guarantee ending before age 80, suggested that the Department change the "ending before age" to 91. The Department reviewed data currently available and found that there is no data to support

mortality improvement at the higher age limit suggested. Therefore, no changes were made to section 100.3(v).

A commentator remarked that the mortality improvement scale is referenced inconsistently in the proposed amendment. The Department agrees with this comment, and section 100.11 has been revised to correct the inconsistencies.

Another commentator opined that it is unclear whether the mortality rates as improved by the formula for LT in section 100.11(c)(2) apply to policy years beginning in a specified calendar year. Section 100.3(o) and 100.11(c) have been revised to clearly indicate that the improvement should apply by policy year and not by calendar year.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Addition of a New Multi-Jurisdiction Lottery Game

I.D. No. SGC-32-14-00005-P

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

Proposed Action: Addition of section 5007.16 to Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612(a) and 1617; Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Addition of a new multi-jurisdiction lottery game.

Purpose: To permit the Commission to raise revenue for education with a new lottery game.

Substance of proposed rule (Full text is posted at the following State website: <http://www.gaming.ny.gov>): This amendment of Part 5007, Multi-Jurisdictional Games, of Subtitle T of Title 9 NYCRR will add a new Section 5007.16, to allow the New York State Gaming Commission ("Commission") to offer the Monopoly® Millionaires' Club game.

The purpose of this rule making is to generate additional revenue for education in New York through operation of the new MONOPOLY Millionaires' Club multi-state lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

The new section of the Gaming Commission regulations describes the MONOPOLY Millionaires' Club as a multi-jurisdictional lottery game similar to the Powerball and the Mega Millions games that have been offered in New York and other states since 2002 and the Cash 4 Life game introduced in 2014. Subdivision (a) sets forth some definitions. Subdivision (b) governs ticket pricing and the terms and conditions of ticket sales. Subdivision (c) describes the game, including the primary and secondary drawings and additional game feature(s). The number of winners to be selected in a secondary drawing shall be not less than 10 and may increase based upon sales.

Subdivision (d) sets forth play characteristics and restrictions. Subdivision (e) describes the time and place of drawings. Subdivision (f) details the prize structure and probabilities of winning. Subdivision (g) describes the payment options that may be chosen by a winner. Subdivision (h) provides that Parts 5003 and 5004 govern this new game. Subdivision (i) states that this new section applies only to the new MONOPOLY Millionaires' Club game.

The full text of this proposed rule is posted on the Commission's website, www.gaming.ny.gov.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1612(a) and 1617 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax

Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a) describes the distribution of revenues for a joint, multi-jurisdiction, and out-of-state lottery. Tax Law Section 1617 authorizes the Commission to enter into an agreement with a government-authorized group of one or more other jurisdictions for the operation and administration of such a joint, multi-jurisdiction and out-of-state lottery.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To permit the Commission to operate a new multi-jurisdiction lottery game that will raise revenue for education.

3. Needs and benefits. This rulemaking will permit the Commission to offer a new multi-jurisdiction lottery game to increase lottery revenue for education.

The proposed amendment will permit the Commission to offer Monopoly® Millionaires' Club, a premium multi-state lottery draw game with an alternative jackpot prize structure that is expected to raise revenue for education by appealing to players with different preferences than players of existing lottery games offered by the Gaming Commission.

The Commission operates and administers joint, multi-jurisdiction, and out-of-state lottery games as a member of the Mega Millions and Powerball Consortia, a government-authorized group formed by an agreement of the Commission with state lotteries from other jurisdictions. Such Consortia take concepts for possible new games and subjects them to consumer research, and then develops new multi-jurisdiction lottery games of interest to one or more members of the Consortia. This allows jurisdictions in the Consortia to introduce new multi-jurisdiction lottery games that appeal to consumer interest and increase lottery sales and revenue.

Monopoly® Millionaires' Club is a new multi-state draw game developed by the Consortia that is similar to successful multi-jurisdiction lottery games played in Europe and Canada. Drawings will occur once per week on Friday. For each \$5 wager, a player in one of the participating states may have up to three chances to win: in the primary drawing; in a secondary drawing; and by collecting tickets associated with properties from the traditional MONOPOLY game board, combinations of which may earn chances for further prizes. The primary drawing may award a top prize with an annuitized value of \$15 million to \$25 million or lower-level prizes ranging from \$5 to \$100,000. Lump-sum prizes of \$1 million will be awarded in secondary drawings only if a top prize-winning ticket has been sold for the primary drawing. In such an instance, a secondary drawing of numbers will occur. A ticket holder will win if the secondary number matches the unique transactional number printed on the holder's ticket. The number of secondary winners selected at each drawing will be not less than 10 and may increase substantially, dependent upon sales. Players may also collect tickets with associated MONOPOLY properties and, depending upon the combination of properties, earn chances to win other prizes.

This game is expected to be successful because it is similar to popular lottery games offered in Europe and Canada and because MONOPOLY-themed instant lottery games and promotions typically attract a substantial following. Furthermore, market research has shown that players would like a game that creates multiple millionaires as an alternative to ones with an extremely large jackpot winner.

This proposal would authorize such lottery game in New York.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these multi-jurisdiction regulations is to continue offering the games presently offered. This alternative was rejected because offering new games is proven to generate greater revenue for education by attracting the interest of players and providing them with another game choice.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rulemaking allows the Commission to offer customers a new play option, a multi-jurisdiction lottery game known as MONOPOLY Millionaires' Club. This addition will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The new lottery game will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rulemaking.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Blood Banks

I.D. No. HLT-32-14-00001-P

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

Proposed Action: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3121(5)

Subject: Blood Banks.

Purpose: Update practice standards, reflect changes and provide clarification of regulation provisions for blood banks and transfusion services.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This proposed amendment to Subpart 58-2 updates practice standards, reflects changes in nomenclature and technology, and provides clarification of provisions pertinent to blood banks and transfusion services. The title of the Subpart is also expanded to clarify that laboratories performing immunohematology testing are subject to these requirements.

Section 58-2.1 definitions for the terms blood bank, blood donation center, transfusion service and reinfusion procedure are amended. The definition of blood components is revised to include plasma frozen within 24 hours after phlebotomy and specifically exclude lymphocytes collected from a hematopoietic progenitor cell donor. The definition for holding facility is replaced by a definition for distribution facility. Ambulance transfusion service and hospital are defined in new subdivisions (ae) and (af), respectively.

Section 58-2.2 as modified, alters the qualifications for allogeneic blood donors by removing an obsolete provision pertaining to acute respiratory diseases, expanding options for review and acceptance of donors who are 76 years of age or older, and clarifying the timing of opportunities provided for donor self-exclusion.

Section 58-2.3(e) is amended to permit infectious disease testing to be performed on a donor blood specimen collected prior to the donation of such a component.

Section 58-2.4(a) clarifies the locations at which blood collection activities may be conducted, to include a blood donation center, a self-contained blood collection vehicle, and a temporary collection operation conducted by a blood bank. A new subdivision (d) stipulates that persons collecting

blood for transfusion must be trained in recognition of donor reactions, and that a nurse or other qualified person specially trained to address donor reactions be present.

Section 58-2.6(a), which details locations for collection of blood, is repealed, as this requirement is now addressed in Section 58-2.4(a). Subdivisions (b), (c) and (d) of Section 58-2.6 are renumbered as subdivisions (a), (b) and (c), respectively. Requirements for storage of collected whole blood during transport are moved from Section 58-2.6(g) to the new subdivision (d) and limitations on duration of storage for whole blood units from which platelets will be separated are deleted. Labeling requirements now in paragraph (3) of renumbered subdivision (c) replace the existing provisions in subdivision (e), which are duplicative of Section 58-2.4(b) as amended. The labeling provisions of renumbered Section 58-2.6 (e)(2)(vi) are amended to eliminate the requirement for biohazard labeling of autogeneic blood and blood components from patient-donors testing positive for antibodies to hepatitis B core antigen. Provisions regarding storage temperature for thawed plasma, and duration of storage for thawed cryoprecipitate intended for factor VIII replacement, are moved from Section 58-2.6(f) to (h). Section 58-2.6(h) extends the allowable shelf life of non-cellular components stored at a temperature not higher than minus 65 degrees Celsius to seven years. Provisions regarding duration of storage for thawed red blood cells are moved from Section 58-2.6(f) to subdivision (j), and the allowable shelf life for red blood cells deglycerolized using a closed system is extended to 14 days. Subdivisions (g), (h) and (j) are also amended to clarify that periodic verification of refrigerator, freezer and liquid nitrogen alarm function must be documented. Section 58-2.6(l) adds a requirement that entry ports be protected from water contamination by positioning or a protective overwrap when blood components are thawed in a waterbath. The amendment also adds ambulance transfusion services to the listing in Section 58-2.6(m) of entities to which blood and blood components may be released.

Section 58-2.7(a) adds a requirement that blood specimens intended for pretransfusion testing be labeled at the patient's side at the time of collection. Subdivision (d) is amended to specify that all quality control records associated with testing be retained for five years.

Section 58-2.8(b) is amended to clarify the department's expectation that regulated parties comply with federal rules for reporting errors and accidents to federal authorities. Section 58-2.8(c) expands requirements for procedure manuals to include written procedures for: transfusion-related testing; release of blood and blood components to limited transfusion services and ambulance transfusion services; and the administration of blood components, including prevention of transfusion reactions. Section 58-2.8(c) also stipulates that written procedures for emergency release of uncrossmatched blood must expressly require completion of compatibility testing following such release and that evaluation of reported transfusion reactions be prompt.

Section 58-2.9(b) is amended to expand the circumstances under which blood components may be issued prior to completion of infectious disease testing. Section 58-2.9(c) allows release of autogeneic blood from a patient-donor whose blood tests positive for human immunodeficiency virus (HIV) or hepatitis C virus (HCV) nucleic acid, or antibodies to HCV, if authorized in writing by the patient-donor's physician. Section 58-2.9(c) requires that transfusion services issuing blood components to ambulance transfusion services perform required testing on their own premises, and deletes an inaccurate reference to limited transfusion services. Subdivision (g), specifying circumstances under which more than one unit of blood may be released at one time for a particular patient, is repealed and replaced with a more flexible requirement that the director of transfusion services specify in a written policy the permissible circumstances for simultaneous issuance of multiple units. Two new subdivisions, numbered (m) and (n), are added to Section 58-2.9 to detail the requirements for transport containers for blood components issued to a limited transfusion service or an ambulance transfusion service, respectively.

Section 58-2.11(a)(4) allows the identity of the phlebotomist collecting the blood for transfusion to be recorded by methods other than his or her signature.

Section 58-2.12(a) modifies the requisites for records to be kept when blood and blood components are issued for transfusion, clarifying that the unit identification code and blood group must be recorded and that a visual inspection and location of any remote storage must be documented. Section 58-2.12(d) is also amended to specify that these recordkeeping requirements apply to blood components issued to ambulance transfusion services.

Section 58-2.13 is repealed and replaced by a new Section 58-2.13.

Section 58-2.15(d) decreases hemoglobin/hematocrit requirements for some double red blood cell donors, provided conformance is maintained with United States Food and Drug Administration (F.D.A.) requirements for the apheresis device.

Section 58-2.16(a) has been modified to include an ambulance transfusion service as an entity to which blood can be issued. Section 58-

2.16(a)(1)(iv) clarifies the department's expectation that regulated parties comply with federal requirements for reporting serious unexpected transfusion reactions. Section 58-2.16(b), concerning transfusion committees, is modified to remove the requirement for majority attendance at meetings, add expertise in clinical medicine as possible qualification for membership, and specify an option for review of a representative sample of transfusions. Section 58-2.16(d) is modified to combine similar existing requirements pertaining to the administration of blood components. Section 58-2.16(e), as modified, simplifies the language detailing the individuals authorized to initiate transfusions and perform patient and unit identification at the patient's side. Section 58-2.16(f) clarifies the requirements for identification of a transfusion recipient. Section 58-2.16(g) clarifies that transfusions outside a health care setting do not include those in an ambulance. Renumbered subdivision (j) of Section 58-2.16 supplies examples of options for autogeneic blood transfusion that, if available at a given institution, must be made known to staff physicians through the transfusion committee.

A new Section 58-2.16(h) adds provisions to permit advanced life support emergency medical technicians with specialized training to monitor transfusions and initiate additional units during interfacility transport to facilitate expeditious transport of patients requiring transfusion during transport.

A misplaced reference to the use of a validated computer system has been moved from subdivision (a) to subdivision (c) of Section 58-2.17. Section 58-2.17(a) clarifies that the requirement for ABO reverse grouping of an intended transfusion recipient is not applicable to infants under four months of age. Section 58-2.17(b) adds a provision allowing the use of maternal serum or plasma in testing for unexpected antibodies. Provisions regarding compatibility testing in the case of infants under four months of age are moved from Section 58-2.20 to Section 58-2.17(c). Section 58-2.17(e) is repealed in light of substantial redundancy with subdivision (c) as modified.

Section 58-2.18 is repealed and replaced by a new Section 58-2.18, which clarifies the records required when blood components are transfused and eliminates a requirement that the quantity of material transfused be recorded.

Section 58-2.19 adds requirements that records regarding infusion of derivatives include the manufacturer's name, the name of the person administering the product, and documentation of identification of the recipient and visual inspection of the product.

Section 58-2.20 is repealed and replaced by a new Section 58-2.20, which adds requirements for approval of ambulance transfusion services.

Section 58-2.21(a) clarifies that a limited transfusion service may not operate in New York State without approval of the department.

The provisions of Section 58-2.22 are repealed, and the section is reserved for later use.

A new Section 58-2.27(a) clarifies that entities performing reinfusion procedures must either hold a department laboratory permit or be approved by the department as a limited reinfusion service.

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:

Article 31 of the Public Health Law (PHL) establishes the department's authority to protect the public health, safety and welfare through oversight of the collection, processing, fractionation, storage, distribution, transfusion, and supply of human blood and blood products. The New York State (NYS) Council on Human Blood and Transfusion Services (Blood Council) is authorized by Section 3121(5) to enact, amend and repeal rules and regulations setting forth minimum standards for these processes as applicable to blood and blood products, subject to the approval of the Commissioner of Health.

Legislative Objectives:

The Blood Council has proposed this revision of 10 NYCRR Subpart 58-2 to update practice standards in order to promote safe blood bank operation. The amendment is consistent with the legislative mandate that the department oversee the blood supply and ensure that the safety of blood donors and transfusion recipients is not compromised.

Needs and Benefits:

This regulatory amendment is necessitated by advances in medical technology and the need to codify practice standards and eliminate obsolete requirements, afford regulated parties with greater flexibility in complying with department regulations, clarify regulatory intent, and provide for safe transfusion of blood components during interfacility

transport of patients. Several changes are intended to align the department's rules with federal requirements.

To reflect technological advances and increase availability of blood components, the proposed amendment extends the expiration date of red cells deglycerolized in a closed system to 14 days, as approved by the U.S. Food and Drug Administration (F.D.A.). Provisions for plasma frozen within 24 hours after phlebotomy are added and the shelf life of non-cellular components is extended to seven years for frozen storage at or below -65°C .

This amendment would provide for department oversight of any ambulance service offering transfusion during interfacility transport. The proposed amendment does not require that ambulance services seek approval as an ambulance transfusion service. In fact, it is estimated that only 50 of the 619 advanced life support (ALS) providers would apply. The proposed regulation allows certain emergency medical technicians (EMTs), with specific additional training, to administer transfusions during interhospital transport, obviating the need for a registered nurse (RN) to accompany the patient. Requirements for training and structured paperwork are intended to ensure that trained EMTs perform transfusion-related procedures in a safe manner. Patients requiring transfusion during interhospital transport could receive optimal medical care without delay. The amendment would not permit blood transfusion in the field or during initial transport to a hospital. However, it is not intended that an approved ambulance transfusion service would be prohibited from transporting a patient from an approved limited transfusion service to a hospital if a medical emergency arises requiring blood transfusion during transport.

Transfusion recipient safety is enhanced by the addition of requirements that:

- frozen components be thawed in a water bath in a manner that protects the entry ports from contamination;
- the inspection of components prior to issuance be documented;
- patient specimens be labeled at the bedside;
- routine compatibility testing be completed after emergency release of uncrossmatched blood, to facilitate needed actions; and
- records for infusion of derivatives include the manufacturer's name.

To help prevent inadvertent transfusion of contaminated blood components, the list of infectious disease markers requiring written authorization of the patient-donor's physician is expanded.

Several changes are proposed to provide regulated parties with compliance flexibility, including:

- permitting "identification" of phlebotomists collecting blood rather than requiring their signature; and removal of the requirement for records to be retained in logbook format, thereby affording facilities options for electronic records;
- allowing the release of components when their clinically useful shelf-life precludes completion of testing prior to issuance;
- allowing infectious disease testing to be performed on a donor specimen collected prior to the donation when the clinically useful shelf-life precludes completion of testing prior to unit expiration;
- making blood count requirements for apheresis donors less restrictive;
- eliminating the time limit for platelet production;
- allowing inspection of derivatives at any time prior to infusion; and
- expanding options for acceptance of allogeneic blood donors who are 76 years of age or older.

To clarify regulatory intent, the proposed amendment:

- combines requirements pertaining to administration of blood components;
- simplifies the language detailing the persons authorized to initiate transfusions;
- specifies types of locations at which blood for transfusion may be collected;
- clarifies that hospital reporting of incidents to the department applies to only blood components that have been issued by the transfusion service;
- specifies that the transfusion committee is to review "all or a representative sample" of transfusions;
- codifies expectations that Subpart 58-2 pertains to laboratories performing immunohematology testing;
- specifies that the timing of opportunities for blood donors to indicate confidentially that their blood may be unsuitable for transfusion may be at the time of or after donation; and
- details requirements for reinfusion procedures.

Several changes are proposed, as advised by the U.S. Centers for Medicare and Medicaid Services, in order for NYS to retain its state-exempt status for laboratory oversight. These include:

- clarifying the expectation that facilities report errors, accidents and serious adverse reactions to federal authorities;
- expanding standard operating procedure manual requirements to include "the prevention of transfusion reactions";

- requiring that the evaluation of reported transfusion reactions must be "prompt"; and
- adding a requirement that verification of alarm function for refrigerators and freezers be documented.

The amendment eliminates obsolete provisions, including requirements that:

- an autogeneic unit from a donor with antibodies to hepatitis B core antigen (anti-HBc) be labeled as biohazardous;
- donors be free of acute respiratory diseases; and
- hospitals issuing components to limited transfusion services perform all testing onsite.

Costs:

Regulated parties would incur minimal costs to modify some written procedures. Approximately one hour of staff time would be required to complete ambulance transfusion service application forms. Ambulance services would incur some costs to provide required training (approximately four hours in duration) for some existing personnel. Training of new personnel could be incorporated into existing training programs. Duplication of training materials is estimated to cost less than \$50.

Because interfacility transfusion should not change the total number of transfusions, costs incurred by hospitals for associated supplies should not increase. It may be necessary to purchase insulated coolers, at approximately \$30 each, to maintain blood components at the proper transport temperature. Normal saline is the only solution that can be run in the same line during a transfusion. Some ambulance services may need to purchase saline solution (\$170/case of 24 500 mL bags). The cost of the saline, medications for treating transfusion reactions and any other supplies could be recouped through ambulance service fees. Hospitals transferring patients would realize some cost savings, as RNs would no longer be needed to accompany patients.

The department would incur costs in approving ambulance transfusion services and monitoring compliance. Development of training materials and application packets would require approximately 20 hours of staff time. Processing the 50 anticipated applications would require approximately 100 hours to review applications, issue approval documents, and update databases. Costs for monitoring compliance include one-time costs of revising inspection-related documents and training blood bank inspectors, estimated at under \$1,000, and recoverable through Clinical Laboratory Inspection and Reference fees.

Local Government Mandates:

The proposed regulations impose no new program, service, duty, or responsibility on any county, city, town or village government. The four counties and one city that operate hospital-based blood banks would be affected to the same extent as other regulated parties. The vast majority of interhospital transport is currently performed by commercial ambulance services; it is not anticipated that municipal ambulance services would seek approval to offer transfusion services.

Paperwork:

Blood banks may need to modify some written procedures to implement the amendment. Ambulance services that choose to offer transfusion services would need to revise written protocols, and comply with some additional recordkeeping requirements.

Duplication:

This proposed amendment does not duplicate any other State regulations, as 10 NYCRR Subpart 58-2 is the only State regulation governing the collection, processing, distribution, and transfusion of blood.

Alternatives:

The Blood Council is charged with ensuring a safe and adequate blood supply through promulgation and amendment of regulations. No alternatives would adequately protect the public health, recognize technological advances, and allow the least burdensome practices, consistent with national standards.

Failure to adopt changes in technical standards could adversely affect the blood supply. Failure to extend the expiration date of deglycerolized red cells to 14 days, and the shelf life of frozen non-cellular components to seven years at or below -65°C , would likely result in reduced availability for NYS patients. Failure to protect the entry ports of frozen components while thawing in a water bath could result in transfusion of bacterially contaminated components. Not requiring bedside labeling of patient specimens could increase the chance of specimen mislabeling and consequent issuance of incompatible blood, increasing the chance of fatal transfusion reactions. Failure to include the manufacturer's name in medical records of patients receiving derivatives would hinder identification of patients who received a recalled product. Components with a very short shelf-life (e.g., 24 hours) may outdate before the completion of infectious disease testing. Failure to allow issuance of a component when the clinically useful shelf-life precludes completion of testing could forestall needed patient therapy. Leaving blood count requirements for apheresis donors unchanged would result in deferral of suitable donors. Retaining the eight-hour time limit for platelet production would adversely affect platelet inventories when blood is collected in outlying areas.

Failure to allow some EMTs to administer blood during interfacility transport would adversely affect emergency medical care. Hospital nurses may not be immediately available to accompany patients, so some patients would encounter delays in transfer. Authorization to initiate and monitor blood transfusions cannot be extended to all EMTs because those at the basic level do not have the prerequisite knowledge base and skill set. In contrast, EMTs certified at the critical care or paramedic level have received training in IV therapy, and would need to build on this knowledge through additional training in transfusion basics and transfusion reaction recognition/management. An alternative would be to restrict this practice to EMTs certified at the paramedic level, as suggested by some commenters. However, this would severely hinder patient care, as many rural communities lack sufficient personnel so trained. Based upon its experience with certifying EMTs and approving training curricula, the department believes that EMTs certified at the critical care level, with additional training, would have sufficient knowledge and skills to transfuse patients safely. Additionally, the department intends to develop a training curriculum to ensure adequate training.

Elements of the proposed amendment were carefully considered and all viable options were identified and evaluated. The best options were selected based on their merits, with the ultimate goal of ensuring the availability of blood components and preserving or increasing patient safety.

Federal Standards:

The F.D.A. has established blood donor standards and requirements governing blood products shipped in interstate commerce. New York, however, exercises regulatory oversight of facilities and services. Specifically, Subpart 58-2 applies to NYS-permitted blood banks operating in the state. State regulations provide greater detail regarding the collection, processing and use of blood products, while maintaining consistency with F.D.A. regulations.

Compliance Schedule:

The department has notified, via mail, affected parties with a permit for blood collection and/or transfusion, in order to solicit preliminary comments regarding the proposed amendments. Ambulance services have been notified via State and regional advisory councils and regional program agencies. Revisions have been made based on comments received. Current regulated parties (blood banks) and ambulance services that may wish to seek approval as an ambulance transfusion service have been afforded notice sufficient for compliance with the amended regulations within 60 days of publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule:

Of the 235 blood banks located in New York State (NYS) holding a permit for blood collection and/or transfusion, only three are small businesses. The vast majority of blood banks are operated by hospitals or are blood centers with more than 100 employees. Four counties and one city operate hospital-based blood banks.

The proposed revisions would extend regulatory oversight by the department's Blood and Tissue Resources Program (BTRP) to any ambulance service seeking to offer, as a service, transfusion of patients during interhospital transport. The proposed amendment does not require that ambulance services seek approval as an ambulance transfusion service; in fact, only a fraction of ambulance services providing advanced life support services (ALS) also perform interhospital transport.

Of the 1,096 ambulance services that operate in NYS, 619 provide ALS services and are eligible to apply for approval as an ambulance transfusion service. Of these, 68 are owned/operated by municipalities. The vast majority of interhospital transport is performed by commercial ambulance services, and it is not anticipated that municipal ambulance services would seek approval to offer transfusion services.

Compliance Requirements:

The department believes that the small businesses approved to collect blood components would likely not be affected by this amendment. Most facilities operated by local governments would be affected by at least one proposed change, but not in an adverse manner. The department has determined that the proposed amendment, once adopted, would not impose burdensome reporting, recordkeeping, training or other compliance requirements on small businesses (e.g., ambulance services seeking approval as ambulance transfusion services) or local governments (including government-operated hospitals and ambulance services). The proposed amendment does not require that ambulance services seek approval as an ambulance transfusion service. Should an ambulance service be approved as an ambulance transfusion service, its ALS personnel would require training in the administration of blood components, as well as the recognition of and response to transfusion reactions. This provision is intended to promote safety for transfusion recipients and would minimize liability risk for ambulance services and individual personnel. A standardized training curriculum developed by BTRP, in conjunction with the department's Bureau of Emergency Medical Services, would include standard didactic training and additional training at the regional level.

Professional Services:

No professional services would be needed.

Compliance Costs:

The department has determined that the proposed amendment, once adopted, would have no adverse economic impact on small businesses or local governments. Small businesses and local governments that operate blood banks implementing the proposed requirements would incur the same minimal compliance costs and receive the same benefits as private entities.

Ambulance services, including small businesses and those operated by local governments, that choose to seek approval as an ambulance transfusion service would not encounter significant cost increases in complying with the amendment. It is estimated that approximately one hour of staff time would be required to complete the ambulance transfusion service application forms. While training of new personnel could be incorporated into existing training programs, ambulance services would incur some costs to provide required training for some existing personnel. It is estimated that this training can be accomplished in four hours. The cost of duplicating training materials is estimated to be less than \$50.

Hospitals transferring patients to another hospital would provide a blood administration set with each unit of blood issued, so that ambulance services would not need to purchase such supplies. Allowing in-ambulance transfusion should not change the total number of units transfused, so that costs incurred by hospitals for associated supplies are not expected to increase. Some blood banks and ambulance transfusion services, however, may need to purchase insulated coolers for the storage of blood components at the proper temperature during interhospital transport. A 16-quart (15-liter) hard-sided cooler may be purchased for approximately \$30. Since normal saline is the only solution that can be run in the same line during a transfusion, ambulance transfusion services not currently stocking normal saline may need to purchase it. The solution can be purchased in 500-mL bags for \$170 per 24-bag case. Ambulance transfusion services may need to stock some additional medications to be administered in case of a transfusion reaction. However, the cost of additional supplies could be recouped in fees charged by the ambulance transfusion services. Local government-operated hospitals arranging for transport would realize some cost savings, as an RN would no longer be needed to accompany a patient being transferred, solely to meet regulatory requirements.

Economic and Technological Feasibility:

The proposed changes present no economic or technical difficulties to small businesses or local governments. Although some revisions to procedures and recordkeeping practices may be necessary, the modifications would be straightforward and easily implemented by existing staff.

Transporting patients requiring transfusions from one hospital to another may prove to be a source of income for ambulance services approved as an ambulance transfusion service.

Minimizing Adverse Impact:

The proposed amendment would impose no adverse economic impact on small businesses or local government facilities presently in compliance with established industry standards. This amendment was developed with the goal of minimizing any burdens on regulated parties. The requirements for transfusions during interhospital transport, including required training of EMTs certified at the critical care or paramedic level, would minimize liability risk for ambulance services and individual personnel. Training of new personnel could be incorporated into existing training programs.

Small Business and Local Government Participation:

The department has notified regulated parties, including the small businesses and those operated by a local government, regarding the proposed regulation, in order to solicit comments. Recommended revisions have been incorporated, as appropriate, based on comments received.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

One-hundred fourteen (49 percent) of the 235 blood banks in New York State (NYS) with a department permit for collection and/or transfusion are located in rural counties, as are 287 (48 percent) of the 619 ambulance services providing advanced life support (ALS) services in NYS.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Most blood banks approved to collect and/or transfuse blood components would be affected by some of the provisions of the proposal, but not in an adverse manner. The amendments would impose no adverse effects on blood banks located in rural areas, as full compliance would not significantly increase overall costs or reporting or recordkeeping requirements. The costs for regulated parties in rural areas would be the same as for regulated parties in urban areas.

This amendment would not impose a burden on public or private entities in rural areas. Many of the proposed revisions are less restrictive than those in existing regulations. Regulated parties may, but would not be required to, modify present practices to comply with the proposed provisions that are less restrictive than current requirements.

This proposed amendment would extend regulatory oversight to any ambulance service seeking approval as an ambulance transfusion service. The service's ALS personnel would require additional training in blood administration procedures. The standardized training curriculum developed by the department's Blood and Tissue Resources Program, in conjunction with the department's Bureau of Emergency Medical Services, would be made available to the ambulance transfusion service medical director or his/her designee regardless of location. No additional professional services would be needed. No significant adverse impact is anticipated for ambulance transfusion services located in rural areas. Ambulance services choosing to offer transfusion during transport, including those located in rural counties, would need to comply with some additional recordkeeping and reporting requirements.

Costs:

Full compliance with the amendment would not increase significantly overall costs for regulated parties, including those located in rural counties. Regulated parties in rural areas implementing the revised requirements may need to modify their standard operating procedure manuals, incurring minimal costs. However, savings would be realized, as an RN would no longer be needed to accompany a patient being transferred, solely to meet regulatory requirements. This provision would result in more efficient utilization of nursing staff within the rural hospital setting, and could decrease hospital expenses and help alleviate nursing shortages. It is estimated that approximately one hour of staff time would be expended by ambulance services to complete the ambulance transfusion service application forms. While training of new personnel could be incorporated into existing training programs, ambulance services would incur some costs to provide required training for some existing personnel. It is estimated that this training can be accomplished in four hours. The cost of duplicating training materials is estimated to be less than \$50. Providing transfusion as an additional service during interhospital transport may prove to be a source of income for ambulance services approved as an ambulance transfusion service.

Hospitals arranging for transport would provide a blood administration set with each unit of blood issued, so ambulance services would not need to purchase these supplies. Allowing for in-ambulance transfusion should not change the total number of units transfused, so that costs incurred by hospitals for associated supplies are not expected to increase. Some hospital blood banks and ambulance transfusion services, however, may need to purchase insulated coolers for storage of blood components at the proper temperature during interhospital transport. A 16-quart (15-liter) hard-sided cooler may be purchased for approximately \$30. Since normal saline is the only solution that can be run in the same line during a transfusion, ambulance transfusion services not currently stocking normal saline might need to purchase the solution. Normal saline can be purchased in 500-mL bags for \$170 per 24-bag case. Ambulance transfusion services may need to stock some additional medications to be administered in case of a transfusion reaction. However, the cost of additional supplies could be recouped in fees charged by ambulance transfusion services. Hospitals arranging for transport would realize some cost savings, as an RN would no longer be needed to accompany a patient being transferred, solely to meet regulatory requirements.

Minimizing Adverse Impact:

The proposed amendment would confer no significant adverse impact on blood banks in rural areas that are presently in compliance with established industry standards. These amendments were developed with the intent of minimizing any burdens on regulated parties and increasing compliance flexibility by offering various alternatives.

Rural Area Participation:

The department has notified regulated parties, including those in rural areas, regarding the proposed regulation in order to solicit comments. Changes have been made based on comments received.

Job Impact Statement

A Job Impact Statement is not included in this proposal because it is apparent, from the nature and purpose of the proposed rule, that it would not have a substantial adverse impact on jobs and employment opportunities.

New York State Joint Commission on Public Ethics

EMERGENCY RULE MAKING

Public Service Announcement Regulations

I.D. No. JPE-32-14-00002-E

Filing No. 662

Filing Date: 2014-07-23

Effective Date: 2014-07-23

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

Action taken: Addition of Part 940 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c), (d-1); Legislative Law, art. 1-A; and Public Officers Law, sections 73(5) and 74

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

Specific reasons underlying the finding of necessity: The Public Integrity Reform Act of 2011 ("PIRA") was enacted in August 2011 and included a provision that JCOPE shall "[a]dopt, amend and rescind rules and regulations defining the permissible use of and promoting the proper use of public service announcements." See Executive Law § 94(9)(d-1).

Part 940 prohibits the publishing of public service announcements featuring certain State officers and employees ("Covered Officials") during the 90-day period preceding any statewide election. The purpose of this rule is to prevent the unwarranted use of one's State position for a personal benefit, such as increased public exposure close to a statewide election.

JCOPE promulgated these rules in accordance with the State Administrative Procedure Act, as the Notice of Proposed Rulemaking was published in the State Register on May 14, 2014. As a result of public comments received, technical, non-substantive revisions to the rules have been incorporated into the attached version of Part 940. The earliest possible date that these rules can be finally adopted is when the Notice of Adoption will be published in the August 13, 2014 issue of the State Register.

JCOPE determined that it is necessary for the preservation of the general welfare that this rule be effective prior to August 13, 2014. Therefore, as authorized by § 202(6) of the State Administrative Procedure Act, these new rules should be adopted on an emergency basis making Part 940 immediately effective upon filing with the Department of State.

As previously stated, Part 940 prohibits the publishing of public service announcements featuring Covered Officials during the 90-day period preceding any statewide election. This emergency adoption is necessary to apply these rules to the upcoming primary election on September 9, 2014 and to the general election on November 4, 2014. By immediately setting forth when Covered Officials are restricted from appearing in public service announcements, this emergency rule will serve the public interest in the upcoming election cycle.

In light of these concerns, JCOPE seeks to make this rule effective on an emergency basis until the rule becomes final, which will occur with the issuance of the State Register on August 13, 2014.

Subject: Public service announcement regulations.

Purpose: To adopt regulations defining the permissible use of, and promoting the proper use of, public service announcements.

Text of emergency rule: Chapter XX. Joint Commission On Public Ethics
Part 940 Public Service Announcements With Covered Officials:
Permissible And Proper Usage

940.1 Purpose.

Pursuant to Executive Law § 94(9)(d-1), the Joint Commission on Public Ethics shall adopt, amend, and rescind rules and regulations "defining the permissible use of and promoting the proper use of public service announcements." The purpose of these regulations is to: (a) provide guidance as to what constitutes, for the purposes of the Public Officers Law, a public service announcement; (b) clarify that an appearance in a public service announcement does not ordinarily constitute a "gift" under Public Officers Law § 73(5), Legislative Law Article 1-A, Title 19 NYCRR Part 933, and Title 19 NYCRR Part 934; and (c) place limitations on when certain individuals – referred to as "Covered Officials" – who are also Candidates may appear in public service announcements.

Public service announcements in which no Covered Official appears, is named, or is otherwise identified or referenced are not covered by these regulations.

940.2 Definitions.

(a) *Appear* shall mean to appear (by likeness, picture, or voice), be named, or otherwise identified or referenced.

(b) *Candidate* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(c) *Covered Official* shall mean an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any Member of the New York State Legislature; or any head and/or executive director of a State Agency.

(d) *Party* shall have the same meaning as that term is defined in New York Election Law § 1-104(3).

(e) *Party Committee* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(f) *Publish or Publishing* shall mean publication, dissemination, broadcast, or on-line posting through any print or electronic media, including television, radio, and the Internet.

(g) *State Agency* shall mean any civil department; State department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

940.3 Public Service Announcements.

(a) A Public Service Announcement is a communication that meets all of the following criteria:

(1) The communication (i) is designed to promote programs, activities, or services of nonprofit organizations or federal, state or local governments; or (ii) imparts information generally regarded as serving the public interest;

(2) The communication is sponsored or paid for by (i) a person or (ii) an organization or entity with a mission or history that includes providing outreach and public service announcements to the community;

(3) The communication is subject to the public service announcement policies, if any, of the entity publishing the communication;

(4) The communication does not advertise a commercial product or service;

(5) The communication is not paid for or controlled by a Covered Official who is a Candidate and who Appears in the communication, or his or her Party or Party Committee, or any organization affiliated with the Covered Official or his or her Party or Party Committee;

(6) The communication does not constitute "lobbying" or "lobbying activities," as those terms are defined in Legislative Law Article 1-A;

(7) The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official; (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official; (iii) does not include any personal, political or campaign information, and (iv) does not link or refer to any websites created or operated by a campaign or any campaign-related entity, including a campaign committee, Party, or Party Committee; and

(8) The communication is of primary interest to the general public or a segment of the general public.

(b) Examples of Public Service Announcements include, but are not limited to, communications regarding nonprofit or governmental outreach or awareness activities such as: breast cancer screening; heart disease prevention; domestic violence awareness and prevention; energy conservation; organ donation; emergency or other disaster relief; programs designed to encourage reading; job training and job fairs; and fund drives for charitable activities.

(c) The following is a non-exhaustive list of communications that are not regulated or otherwise restricted by this Part:

(1) News, Editorials, or Opinions in which a Covered Official Appears that are Published in a News Medium that is not controlled by the Covered Official or his or her Party or Party Committee;

(i) "News Medium" means an entity that regularly Publishes news to either the public-at-large or to subscribers.

(ii) "News" means information that is about current events or that would be of current interest to the public and that, through the use of editorial skills, is turned into a distinct work that is Published to an audience.

(iii) "Editorial" means a communication that provides an opinion of the news medium that is Publishing the communication.

(iv) "Opinion" means a communication, including but not limited to, a column, a letter to the editor, or blog or comment on a blog, express-

ing a viewpoint and is authored by an individual or entity other than the news medium that is Publishing the communication.

(2) State Agency websites; official websites of, and communications from, Members of the New York State Legislature;

(3) A Covered Official's personal communications, including but not limited to, letters, emails, and postings on social media pages.

940.4 Public Service Announcements Excluded as Gifts Under Parts 933 and 934.

Notwithstanding any provision of Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934, paying for the production or Publishing of a Public Service Announcement does not constitute a "gift" as that term is defined or otherwise used in Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934.

940.5 Appearance By a Covered Official in a Public Service Announcement in the Ninety Days Prior to an Election.

(a) Notwithstanding any other provision of this Part, a determination made pursuant to the provisions of Executive Law §§ 94(13), (14) that a Covered Official knowingly and intentionally Appeared in a Public Service Announcement that, with the knowledge that such Public Service Announcement would be Published in the ninety calendar days prior to any election in which the Covered Official was a Candidate, shall be a violation of Public Officers Law § 74(3)(d), in addition to any other applicable provisions, and subject the Covered Official to the penalties contained therein.

(b) An Appearance as described in Part 940.5(a) shall not be a violation of Public Officers Law § 74 when the Appearance occurs during a declared state of emergency where the Public Service Announcement relates to such emergency.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires August 13, 2014.

Text of rule and any required statements and analyses may be obtained from: Joanna Weiss, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: joanna.weiss@jcope.ny.gov

Regulatory Impact Statement

1. Statutory authority: Executive Law § 94(9)(d-1) directs the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations relating to public service announcements, and section 94(9)(c) authorizes JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures. Public Officers Law § 73(5) establishes the restrictions on soliciting, accepting or receiving gifts that apply to certain individuals affiliated with the State, including Statewide elected officials, State officers, employees, members of the Legislature, and Legislative employees. (Public Officers Law § 73(5) utilizes the definition of "Gift" in Legislative Law Article 1-A, § 1-c(j).) Public Officers Law § 74 contains the Code of Ethics by which all State officers and employees must abide.

2. Legislative objectives: Currently, New York State does not provide specific guidance to State employees and Legislative Members and employees who appear in public service announcements. By clarifying the circumstances in which a State employee or officer's appearance in a public service announcement is appropriate, the regulations promote the proper use of these announcements.

3. Needs and benefits: The proposed rulemaking is necessary to regulate and clarify that, ordinarily, the appearance of a State officer or employee or Legislative Member or employee in a Public Service Announcement (as that term is defined in the regulations) does not constitute a "Gift" to that individual under the Public Officers Law, the Legislative Law, or 19 NYCRR Parts 933 and 934. The regulations also provide that the appearance in a Public Service Announcement by a Member of the Legislature or certain State officers and employees who are candidates for State public office may, in certain circumstances, constitute a violation of Public Officers Law § 74. Thus, the regulations promote Public Service Announcements, while discouraging their use as campaign tools for elective office. The regulations provide clear guidance to questions about what constitutes a Public Service Announcement, who is covered by these regulations, and what requirements apply to these individuals in connection with their appearance in Public Service Announcements.

Part 940.1 provides the purpose and effect of the regulations.

Part 940.2 defines key terms in the regulations. In particular Part 940.2(c) defines a "Covered Official" as an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any elected member of the New York State Legislature; or any head and/or executive director of a State Agency. Part 940.2(b) defines "Candidate" according to New York Election Law § 14-100. Part 940.2(a) defines "Appear" to mean to "appear (by likeness, picture, or voice), be named, or otherwise identified or referenced."

Part 940.3 defines a Public Service Announcement as a communication

that meets all of the criteria listed therein. Among the criteria are following:

- The communication (i) is designed to promote programs, activities or services of nonprofit organizations or federal, state or local governments or (ii) imparts information generally regarded as serving the public interest;
- The communication is sponsored or paid for by (i) a person or (ii) an organization or entity with a mission or history that includes providing outreach and public service announcements to the community;
- The communication is not paid for or controlled by (i) a Covered Official who is a Candidate and who appears in the communication, or (ii) his or her party or party committee, or any organization affiliated with the covered official or his or her party or party committee;
- The communication does not constitute “lobbying” or “lobbying activities,” as those terms are defined in Legislative Law Article 1-A;
- The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official and (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official.

Part 940.3(b) provides a non-exhaustive list of examples of Public Service Announcements, which include communications regarding nonprofit or governmental outreach or awareness activities on such topics as energy conservation, emergency or other disaster relief, or job training and job fairs.

Part 940.3(c) provides a non-exhaustive list of communications that are not regulated or restricted under the regulations. This list includes: news, editorials, and opinions that are published by an entity that regularly publishes news to the public or to subscribers and is not controlled by the Covered Official appearing in the story or the Covered Official’s political party; State agency and legislative web sites; communications from Members of the Legislature officials; and personal communications from Covered Officials.

Part 940.4 clarifies that paying for the production or Publishing of a Public Service Announcement is not considered a gift, as that term is defined in Public Officers Law § 73(5), Legislative Law Article 1-A, or 19 NYCRR Parts 933 or Part 934.

Part 940.5(a) provides that a knowing and intentional appearance by a Covered Official in a Public Service Announcement within the ninety days prior to an election in which the Covered official is a Candidate may be a violation of Public Officers Law § 74(3)(d), as well as any other applicable provision, and would subject the Covered Official to the penalties contained therein.

Part 940.5(b) provides that during a state of emergency, an appearance by a Covered Official in a Public Service Announcement during the ninety days prior to an election would not be considered a violation of the Public Officers Law, as long as the Public Service Announcement relates to the emergency.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: Minimal costs to state and local governments. Minimal administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be minimal costs to regulated parties and state and local government for training staff on changes to the requirements. The cost to the agency is based on an estimated slight increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation imposes, at most, minimal new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, as they must make themselves aware of any requirements from the regulation that would apply to Public Service Announcements they would like to create and disseminate.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: JCOPE could promulgate a formal advisory opinion or other guidance, but the formal rulemaking process provides more clarity to affected parties.

9. Federal standards: These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Emergency Adoption because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any

reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that while the public service announcement regulations may, indirectly, affect when certain state employees and officers can appear in public service announcements on behalf of local governments or sponsored by small businesses, this does not impose extensive record-keeping requirements or other adverse economic impacts on these entities.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Emergency Adoption because the proposed rulemaking will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Emergency Adoption because the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes this finding based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. This regulation neither applies nor relates to economic development or employment opportunities.

Assessment of Public Comment

The Commission received public comments from two entities and one individual. The first entity provided two comments. The first comment was a proposal that the Regulations follow advice issued by the House Ethics Committee, which requires that Public Service Announcements (“PSAs”) not include any personal, political or campaign information, and not link or refer to any websites created by campaign or campaign-related entities, such as political parties and campaign committees. This suggestion was incorporated into the regulation. The second comment sought a clarification in Part 940.3(a)(2) that a PSA cannot be sponsored or paid for by an entity whose only activity is to produce and pay for a PSA. Language in the regulation was revised to clarify this definition. The second entity requested that for purposes of administrative consistency, the date restriction in Part 940.5(a) be changed from 90 days before an election to 30 days before a primary campaign and 60 days before a general election. The Commission deems the 90-day period to be a reasonable restriction on the appearance of covered officials in PSAs, as opposed to other types of communications. The individual commenter proposed that the title be changed for purposes of clarity to “Public Service Announcements and Covered Officials.”

NOTICE OF ADOPTION

Public Service Announcement Regulations

I.D. No. JPE-19-14-00001-A

Filing No. 664

Filing Date: 2014-07-24

Effective Date: 2014-08-13

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

Action taken: Addition of Part 940 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c), (d-1); Legislative Law, art. 1-A; and Public Officers Law, sections 73(5) and 74

Subject: Public service announcement regulations.

Purpose: To adopt regulations defining the permissible use of, and promoting the proper use of, public service announcements.

Text of final rule: Chapter XX. Joint Commission On Public Ethics

Part 940 Public Service Announcements With Covered Officials: Permissible And Proper Usage

940.1 Purpose.

Pursuant to Executive Law § 94(9)(d-1), the Joint Commission on Public Ethics shall adopt, amend, and rescind rules and regulations “defining the permissible use of and promoting the proper use of public service announcements.” The purpose of these regulations is to: (a) provide guid-

ance as to what constitutes, for the purposes of the Public Officers Law, a public service announcement; (b) clarify that an appearance in a public service announcement does not ordinarily constitute a "gift" under Public Officers Law § 73(5), Legislative Law Article 1-A, Title 19 NYCRR Part 933, and Title 19 NYCRR Part 934; and (c) place limitations on when certain individuals – referred to as "Covered Officials" – who are also Candidates may appear in public service announcements.

Public service announcements in which no Covered Official appears, is named, or is otherwise identified or referenced are not covered by these regulations.

940.2 Definitions.

(a) *Appear* shall mean to appear (by likeness, picture, or voice), be named, or otherwise identified or referenced.

(b) *Candidate* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(c) *Covered Official* shall mean an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any Member of the New York State Legislature; or any head and/or executive director of a State Agency.

(d) *Party* shall have the same meaning as that term is defined in New York Election Law § 1-104(3).

(e) *Party Committee* shall have the same meaning as that term is defined in New York Election Law § 14-100.

(f) *Publish* or *Publishing* shall mean publication, dissemination, broadcast, or on-line posting through any print or electronic media, including television, radio, and the Internet.

(g) *State Agency* shall mean any civil department; State department; any public benefit corporation, public authority, or commission at least one of whose members is appointed by the Governor. State Agency shall also include the State University of New York or the City University of New York, including all their constituent units except (1) community colleges of the State University of New York and (2) the independent institutions operating statutory or contract colleges on behalf of the State.

940.3 Public Service Announcements.

(a) *A Public Service Announcement* is a communication that meets all of the following criteria:

(1) The communication (i) is designed to promote programs, activities, or services of nonprofit organizations or federal, state or local governments; or (ii) imparts information generally regarded as serving the public interest;

(2) The communication is sponsored or paid for by (i) a person or (ii) an organization or entity with a mission or history that includes providing outreach and public service announcements to the community;

(3) The communication is subject to the public service announcement policies, if any, of the entity publishing the communication;

(4) The communication does not advertise a commercial product or service;

(5) The communication is not paid for or controlled by a Covered Official who is a Candidate and who Appears in the communication, or his or her Party or Party Committee, or any organization affiliated with the Covered Official or his or her Party or Party Committee;

(6) The communication does not constitute "lobbying" or "lobbying activities," as those terms are defined in Legislative Law Article 1-A;

(7) The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official; (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official; (iii) does not include any personal, political or campaign information, and (iv) does not link or refer to any websites created or operated by a campaign or any campaign-related entity, including a campaign committee, Party, or Party Committee; and

(8) The communication is of primary interest to the general public or a segment of the general public.

(b) *Examples of Public Service Announcements* include, but are not limited to, communications regarding nonprofit or governmental outreach or awareness activities such as: breast cancer screening; heart disease prevention; domestic violence awareness and prevention; energy conservation; organ donation; emergency or other disaster relief; programs designed to encourage reading; job training and job fairs; and fund drives for charitable activities.

(c) The following is a non-exhaustive list of communications that are not regulated or otherwise restricted by this Part:

(1) News, Editorials, or Opinions in which a Covered Official Appears that are Published in a News Medium that is not controlled by the Covered Official or his or her Party or Party Committee;

(i) "News Medium" means an entity that regularly Publishes news to either the public-at-large or to subscribers.

(ii) "News" means information that is about current events or that

would be of current interest to the public and that, through the use of editorial skills, is turned into a distinct work that is Published to an audience.

(iii) "Editorial" means a communication that provides an opinion of the news medium that is Publishing the communication.

(iv) "Opinion" means a communication, including but not limited to, a column, a letter to the editor, or blog or comment on a blog, expressing a viewpoint and is authored by an individual or entity other than the news medium that is Publishing the communication.

(2) *State Agency websites; official websites of, and communications from, Members of the New York State Legislature;*

(3) *A Covered Official's personal communications, including but not limited to, letters, emails, and postings on social media pages.*

940.4 *Public Service Announcements Excluded as Gifts Under Parts 933 and 934.*

Notwithstanding any provision of Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934, paying for the production or Publishing of a Public Service Announcement does not constitute a "gift" as that term is defined or otherwise used in Public Officers Law § 73(5), Legislative Law Article 1-A, Part 933, and Part 934.

940.5 *Appearance By a Covered Official in a Public Service Announcement in the Ninety Days Prior to an Election.*

(a) Notwithstanding any other provision of this Part, a determination made pursuant to the provisions of Executive Law §§ 94(13), (14) that a Covered Official knowingly and intentionally Appeared in a Public Service Announcement that, with the knowledge that such Public Service Announcement would be Published in the ninety calendar days prior to any election in which the Covered Official was a Candidate, shall be a violation of Public Officers Law § 74(3)(d), in addition to any other applicable provisions, and subject the Covered Official to the penalties contained therein.

(b) An Appearance as described in Part 940.5(a) shall not be a violation of Public Officers Law § 74 when the Appearance occurs during a declared state of emergency where the Public Service Announcement relates to such emergency.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 940.2(f), 940.3(a)(2), (7) and 940.4.

Text of rule and any required statements and analyses may be obtained from: Joanna Weiss, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: joanna.weiss@jcope.ny.gov

Revised Regulatory Impact Statement

1. Statutory authority: Executive Law § 94(9)(d-1) directs the Joint Commission on Public Ethics ("JCOPE") to promulgate regulations relating to public service announcements, and section 94(9)(c) authorizes JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures. Public Officers Law § 73(5) establishes the restrictions on soliciting, accepting or receiving gifts that apply to certain individuals affiliated with the State, including Statewide elected officials, State officers, employees, members of the Legislature, and Legislative employees. (Public Officers Law § 73(5) utilizes the definition of "Gift" in Legislative Law Article 1-A, § 1-c(j).) Public Officers Law § 74 contains the Code of Ethics by which all State officers and employees must abide.

2. Legislative objectives: Currently, New York State does not provide specific guidance to State employees and Legislative Members and employees who appear in public service announcements. By clarifying the circumstances in which a State employee or officer's appearance in a public service announcement is appropriate, the regulations promote the proper use of these announcements.

3. Needs and benefits: The proposed rulemaking is necessary to regulate and clarify that, ordinarily, the appearance of a State officer or employee or Legislative Member or employee in a Public Service Announcement (as that term is defined in the regulations) does not constitute a "Gift" to that individual under the Public Officers Law, the Legislative Law, or 19 NYCRR Parts 933 and 934. The regulations also provide that the appearance in a Public Service Announcement by a Member of the Legislature or certain State officers and employees who are candidates for State public office may, in certain circumstances, constitute a violation of Public Officers Law § 74. Thus, the regulations promote Public Service Announcements, while discouraging their use as campaign tools for elective office. The regulations provide clear guidance to questions about what constitutes a Public Service Announcement, who is covered by these regulations, and what requirements apply to these individuals in connection with their appearance in Public Service Announcements.

Part 940.1 provides the purpose and effect of the regulations.

Part 940.2 defines key terms in the regulations. In particular Part 940.2(c) defines a "Covered Official" as an individual who holds any one of the following positions or offices: Governor, Lieutenant Governor, Comptroller, or Attorney General of the State of New York; any elected

member of the New York State Legislature; or any head and/or executive director of a State Agency. Part 940.2(b) defines "Candidate" according to New York Election Law § 14-100. Part 940.2(a) defines "Appear" to mean to "appear (by likeness, picture, or voice), be named, or otherwise identified or referenced."

Part 940.3 defines a Public Service Announcement as a communication that meets all of the criteria listed therein. Among the criteria are following:

- The communication (i) is designed to promote programs, activities or services of nonprofit organizations or federal, state or local governments or (ii) imparts information generally regarded as serving the public interest;
- The communication is sponsored or paid for by (i) a person or (ii) an organization or entity with a mission or history that includes providing outreach and public service announcements to the community;
- The communication is not paid for or controlled by (i) a Covered Official who is a Candidate and who appears in the communication, or (ii) his or her party or party committee, or any organization affiliated with the covered official or his or her party or party committee;
- The communication does not constitute "lobbying" or "lobbying activities," as those terms are defined in Legislative Law Article 1-A;
- The communication (i) does not promote or support a Covered Official who is a Candidate or criticize or oppose an individual running against such Covered Official and (ii) could not reasonably be interpreted to be an appeal to vote for such Covered Official or to vote against an individual running opposed to such Covered Official.

Part 940.3(b) provides a non-exhaustive list of examples of Public Service Announcements, which include communications regarding nonprofit or governmental outreach or awareness activities on such topics as energy conservation, emergency or other disaster relief, or job training and job fairs.

Part 940.3(c) provides a non-exhaustive list of communications that are not regulated or restricted under the regulations. This list includes: news, editorials, and opinions that are published by an entity that regularly publishes news to the public or to subscribers and is not controlled by the Covered Official appearing in the story or the Covered Official's political party; State agency and legislative web sites; communications from Members of the Legislature officials; and personal communications from Covered Officials.

Part 940.4 clarifies that paying for the production or Publishing of a Public Service Announcement is not considered a gift, as that term is defined in Public Officers Law § 73(5), Legislative Law Article 1-A, or 19 NYCRR Parts 933 or Part 934.

Part 940.5(a) provides that a knowing and intentional appearance by a Covered Official in a Public Service Announcement within the ninety days prior to an election in which the Covered official is a Candidate may be a violation of Public Officers Law § 74(3)(d), as well as any other applicable provision, and would subject the Covered Official to the penalties contained therein.

Part 940.5(b) provides that during a state of emergency, an appearance by a Covered Official in a Public Service Announcement during the ninety days prior to an election would not be considered a violation of the Public Officers Law, as long as the Public Service Announcement relates to the emergency.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: Minimal costs to state and local governments. Minimal administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be minimal costs to regulated parties and state and local government for training staff on changes to the requirements: The cost to the agency is based on an estimated slight increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation imposes, at most, minimal new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, as they must make themselves aware of any requirements from the regulation that would apply to Public Service Announcements they would like to create and disseminate.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: JCOPE could promulgate a formal advisory opinion or other guidance, but the formal rulemaking process provides more clarity to affected parties.

9. Federal standards: These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Revised Regulatory Flexibility Analysis

A Revised Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Adoption because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that while the public service announcement regulations may, indirectly, affect when certain state employees and officers can appear in public service announcements on behalf of local governments or sponsored by small businesses, this does not impose extensive record-keeping requirements or other adverse economic impacts on these entities.

Revised Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Adoption because the proposed rulemaking will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. Rural areas are not affected in any way.

Revised Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Adoption because the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes this finding based on the fact that the public service announcement regulations define what constitutes a public service announcement and sets forth the limitations on when certain state employees and officers who are also candidates for public office can appear in public service announcements. This regulation neither applies nor relates to economic development or employment opportunities.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Commission received public comments from two entities and one individual. The first entity provided two comments. The first comment was a proposal that the Regulations follow advice issued by the House Ethics Committee, which requires that Public Service Announcements ("PSAs") not include any personal, political or campaign information, and not link or refer to any websites created by campaign or campaign-related entities, such as political parties and campaign committees. This suggestion was incorporated into the regulation. The second comment sought a clarification in Part 940.3(a)(2) that a PSA cannot be sponsored or paid for by an entity whose only activity is to produce and pay for a PSA. Language in the regulation was revised to clarify this definition. The second entity requested that for purposes of administrative consistency, the date restriction in Part 940.5(a) be changed from 90 days before an election to 30 days before a primary campaign and 60 days before a general election. The Commission does not consider there to be a justifiable need for administrative consistency in regard to media restrictions on candidates based on entirely different regulatory paradigms, such as the laws governing campaign finance and electioneering communications. Thus, the Commission deems the 90-day black-out period for PSAs to be a reasonable restriction that will avoid a violation of Public Officers Law § 74(3)(d). The individual commenter proposed that the title be changed for purposes of clarity to "Public Service Announcements and Covered Officials."

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dealer Plates

I.D. No. MTV-32-14-00004-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 section 78.21(j) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415(15)
Subject: Dealer Plates.

Purpose: Give the Commissioner discretion regarding the surrender of dealer plates.

Text of proposed rule: Subdivision (j) of section 78.21 is amended to read as follows:

(j) [Any] *If a dealer [who] has not sold at least five vehicles during the previous twelve months of operation, [shall not be allowed to have dealer or transporter plates for the following year, and] then the Commissioner may, upon written demand [of the Commissioner shall surrender] require such dealer to return one or more such dealer and/or transporter plates to the Commissioner or his authorized representative within ten days of such demand. It shall be a violation of this subdivision for a dealer to fail to surrender such dealer or transporter plates to the Commissioner or his authorized representative within the ten day period.*

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

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

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.

Consensus Rule Making Determination

The Department of Motor Vehicles issues dealer and transporter plates to dealers registered pursuant to Article 16 of the Vehicle and Traffic Law. The plates are used for demonstration and testing purposes, and “for the limited operation of vehicles owned or controlled by the dealer for the purpose of weighing, testing, dismantling, transporting or delivering the same, or for the purpose of moving such vehicles in connection with making installations thereon or improvements thereto, or the repossession or foreclosure thereof.” (VTL section 415(8))

Currently under Part 78.21, if a dealer has not sold at least five motor vehicles during the previous 12 month period, such dealer is not allowed to have dealer or transporter plates for the following year and may be required by the Department to surrender such plates. The Department has become aware of situations where a small dealer may not sell a motor vehicle for a year but may very well sell a limited number of vehicles in the ensuing months. Therefore, it makes sense to permit such a dealer, in the Commissioner’s discretion, to retain one or more of the dealer or transporter plates so that such dealer can continue in the business of selling motor vehicles.

Because this proposed rule is a practical and limited solution to assist a small business engaged in selling vehicles, the Department anticipates no objection to this rulemaking.

Job Impact Statement

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

Power Authority of the State of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-32-14-00007-P

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

Proposed Action: Amend the Standby Rate Provisions of the Authority’s Service Tariff No. 100 applicable to its New York City Governmental Customers and Service Tariff No. 200 applicable to its Westchester Governmental Customers.

Statutory authority: Public Authorities Law, sections 1005 (3rd undesignated paragraph) and 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To amend the Authority’s Service Tariff Nos. 100 and 200.

Substance of proposed rule: Pursuant to the State Administrative Procedure Act, the Power Authority of the State of New York (the “Authority”) proposes to amend the Standby Rate Provisions of Service Tariff No. 100 applicable to its New York City Governmental Customers and Service Tariff No. 200 applicable to its Westchester Governmental Customers.

The Authority proposes to improve the existing standby services currently offered; provide clarity to a billing structure for customers with on-site generation supplying multiple accounts; and encourage the adoption of on-site generation by customers.

Written comments on the proposed amendment will be accepted through September 27, 2014 at the address below. For further information, contact: POWER AUTHORITY OF THE STATE OF NEW YORK, Karen Delince, Corporate Secretary, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, (914) 390-8040 (fax), secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.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, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-32-14-00019-P

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

Proposed Action: Amend the Authority’s Schedule of Rates (Service Tariff No. 1C), for the sale of Firm Market Power applicable to its Market Power customers.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To modify market energy charge methodology to reflect actual NYISO charges incurred by the Authority.

Substance of proposed rule: Pursuant to the State Administrative Procedure Act, the Power Authority of the State of New York (the “Authority”) proposes to amend its Schedule of Rates (Service Tariff No. 1C), for the sale of Firm Market Power applicable to its Market Power customers.

The Authority proposes to modify its market energy charge methodology to reflect actual charges incurred by the Authority based on its New York Independent System Operator (“NYISO”) hourly market energy purchases on behalf of these customers.

Written comments on the proposed amendment will be accepted through September 27, 2014 at the address below. For further information, contact: POWER AUTHORITY OF THE STATE OF NEW YORK, Karen Delince, Corporate Secretary, 123 Main St., 11-P, White Plains, NY 10601, (914) 390-8085, (914) 390-8040 (fax), secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.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, 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.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorization of Beaver Dam to Withdraw Approximately \$50,000 from an Escrow Account Dedicated to Repaying a Long-Term Loan

I.D. No. PSC-32-14-00003-EP
Filing Date: 2014-07-24
Effective Date: 2014-07-24

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

Proposed Action: The Public Service Commission adopted an order authorizing, on an emergency basis, Beaver Dam Lake Water Corporation to withdraw up to \$50,459 from the escrow account for its loan from the Environmental Facilities Corporation to pay for immediate operating costs.

Statutory authority: Public Service Law, section 89-f

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis, under Public Service Law § 89-f, to allow the Beaver Dam Lake Water Corporation (Beaver Dam) to withdraw up to \$50,459 from an escrow account dedicated to repayment of a long-term loan from the Environmental Facilities Corporation (EFC) to pay outstanding debts and replenish its operating funds.

Beaver Dam states that its current financial situation jeopardizes its ability to operate its system and provide safe and adequate service to its ratepayers.

Subject: Authorization of Beaver Dam to withdraw approximately \$50,000 from an escrow account dedicated to repaying a long-term loan.

Purpose: To approve Beaver Dam's request to withdraw money from its escrow account.

Substance of emergency/proposed rule: The Public Service Commission issued an Order approving, on an emergency basis, a petition filed by Beaver Dam Lake Water Corporation (Beaver Dam) for authorization under Public Service Law § 89-f to withdraw approximately \$50,000 from an escrow account, dedicated to long-term loan repayment, to replenish Beaver Dam's operating fund and pay outstanding short-term debts.

In 2007, the Commission approved a long-term financing agreement between Beaver Dam and the Environmental Facilities Corporation (EFC) to perform needed infrastructure repair work and established a surcharge and escrow account to collect the funds needed to repay the EFC. Due to subsequent funding and grants under the American Recovery and Reinvestment Act of 2009, the principal on the loan is less than originally projected and the escrow account is overfunded.

Beaver Dam reports that it is experiencing a high level of leaks in its distribution system requiring repairs. These expenses, combined with a payment, from the company's operating funds, of a cost overrun related to EFC-financed work has depleted Beaver Dam's short term resources and jeopardized its daily operation. To avoid the loss of service to ratepayers, Beaver Dam requests authorization to withdraw up to \$50,459 to pay an outstanding bill and replenish its operations maintenance funds. EFC supports Beaver Dam's petition.

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 October 21, 2014.

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

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

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

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

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

(14-W-0266EP1)

NOTICE OF ADOPTION

Allowing RG&E's Filing, to Modify Language in Certain Terms and Conditions, to Go into Effect

I.D. No. PSC-01-14-00018-A
Filing Date: 2014-07-24
Effective Date: 2014-07-24

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

Action taken: On 7/24/14, the PSC adopted an order allowing Rochester Gas and Electric Corporation's (RG&E) tariff revisions to modify PSC 16 — Gas and PSC 19 — Electricity, to go into effect.

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

Subject: Allowing RG&E's filing, to modify language in certain terms and conditions, to go into effect.

Purpose: To allow RG&E's filing, to modify language in certain terms and conditions, to go into effect.

Substance of final rule: The Commission, on July 24, 2014, adopted an order allowing Rochester Gas and Electric's (RG&E) filing contained in PSC No. 16 — Gas and PSC No. 19 — Electricity, to make tariff language consistent between RG&E and New York State Electric and Gas Corporation for certain terms and conditions where the Companies' processes are consistent, to go into effect.

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

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

Assessment of Public Comment

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

(13-M-0551SA2)

NOTICE OF ADOPTION

Allowing NYSEG's Filing, to Modify Language in Certain Terms and Conditions, to Go into Effect

I.D. No. PSC-01-14-00019-A
Filing Date: 2014-07-24
Effective Date: 2014-07-24

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

Action taken: On 7/24/14, the PSC adopted an order allowing New York State Electric & Gas Corporation's (NYSEG) tariff revisions to modify PSC 119 and 120 — Electricity and PSC 87, 88 and 90 — Gas, to go into effect.

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

Subject: Allowing NYSEG's filing, to modify language in certain terms and conditions, to go into effect.

Purpose: To allow NYSEG's filing, to modify language in certain terms and conditions, to go into effect.

Substance of final rule: The Commission, on July 24, 2014, adopted an order allowing New York State Electric and Gas Corporation's (NYSEG) filing contained in PSC Nos. 119 and 120 — Electricity and PSC Nos. 87, 88 and 90 — Gas, to make tariff language consistent between NYSEG and Rochester Gas and Electric Corporation for certain terms and conditions where the Companies' processes are consistent, to go into effect.

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

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

Assessment of Public Comment

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

(13-M-0551SA3)

NOTICE OF ADOPTION**Authorizing NYSEG to Issue Long-Term Securities and to Enter into Derivative Instruments****I.D. No.** PSC-01-14-00020-A**Filing Date:** 2014-07-28**Effective Date:** 2014-07-28

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

Action taken: On 7/24/14, the PSC adopted an order authorizing New York State Electric and Gas Corporation (NYSEG) to issue long-term securities and to enter into derivative instruments.

Statutory authority: Public Service Law, section 69

Subject: Authorizing NYSEG to issue long-term securities and to enter into derivative instruments.

Purpose: To authorize NYSEG to issue long-term securities and to enter into derivative instruments.

Substance of final rule: The Commission, on July 24, 2014, adopted an order authorizing New York State Electric and Gas Corporation to issue up to \$965 million in long-term debt, preferred stock and hybrid securities and to enter into derivative instruments not later than December 31, 2017, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-M-0554SA1)

NOTICE OF ADOPTION**Allowing the Village of Freeport's Tariff Filing to Become Effective, with Modifications****I.D. No.** PSC-07-14-00018-A**Filing Date:** 2014-07-25**Effective Date:** 2014-07-25

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

Action taken: On 7/24/14, the PSC adopted an order allowing the Village of Freeport's filing contained in PSC No. 9 — Electricity, to increase its annual revenues, to go into effect, with modifications.

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

Subject: Allowing the Village of Freeport's tariff filing to become effective, with modifications.

Purpose: To allow the Village of Freeport's tariff filing to become effective, with modifications.

Substance of final rule: The Commission, on July 24, 2014, adopted an order allowing the Village of Freeport's filing contained in PSC No. 9 — Electricity, to increase its annual revenues by about \$734,481 or 2.0%, to become effective, 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.

(14-E-0035SA1)

NOTICE OF ADOPTION**Approving the Recommendations of National Grid's Gas Growth Collaborative Report****I.D. No.** PSC-09-14-00005-A**Filing Date:** 2014-07-28**Effective Date:** 2014-07-28

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

Action taken: On 7/24/14, the PSC adopted an order approving the recommendations from the Gas Growth Collaborative Report filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid).

Statutory authority: Public Service Law, section 66

Subject: Approving the recommendations of National Grid's Gas Growth Collaborative Report.

Purpose: To approve the recommendations of National Grid's Gas Growth Collaborative Report.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving the recommendations from the Collaborative Report filed by Niagara Mohawk Power Corporation d/b/a National Grid, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-G-0202SA4)

NOTICE OF ADOPTION**Allowing Central Hudson to Increase the Gas Transportation Rate Credit Provided to the US Military Academy****I.D. No.** PSC-10-14-00007-A**Filing Date:** 2014-07-24**Effective Date:** 2014-07-24

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

Action taken: On 7/24/14, the PSC adopted an order approving, with modifications, Central Hudson Gas and Electric Corporation's petition to increase the unit rate credit provided to the United States Military Academy for use of its gas distribution system.

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

Subject: Allowing Central Hudson to increase the gas transportation rate credit provided to the US Military Academy.

Purpose: To allow Central Hudson to increase the gas transportation rate credit provided to the US Military Academy.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving, with modifications, a petition by Central Hudson Gas and Electric Corporation to increase the unit rate credit used to reimburse the United States Military Academy for the use of its natural gas distribution system for gas delivery to customers in the Village of Highland Falls, 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.

(14-G-0062SA1)

NOTICE OF ADOPTION**Denying the Petition for Rehearing Filed by Earthjustice and Sierra Club in Response to an Order Issued on January 16, 2014****I.D. No.** PSC-11-14-00005-A**Filing Date:** 2014-07-25**Effective Date:** 2014-07-25

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

Action taken: On 7/24/14, the PSC adopted an order denying a petition for rehearing filed by Earthjustice and Sierra Club to modify the Reliability Support Service Agreement between New York State Electric and Gas Corporation and Cayuga Operating Company, LLC.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), 5(2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (12-a), (12-b), (16) and (20)

Subject: Denying the petition for rehearing filed by Earthjustice and Sierra Club in response to an Order issued on January 16, 2014.

Purpose: To deny the petition for rehearing filed by Earthjustice and Sierra Club in response to an Order issued on January 16, 2014.

Substance of final rule: The Commission, on July 24, 2014, adopted an order providing for clarification of its order issued January 16, 2014, but denied the petition for rehearing filed by Earthjustice and Sierra Club seeking an evidentiary hearing and to modify the Reliability Support Service Agreement between New York State Electric and Gas Corporation and Cayuga Operating Company, LLC, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov 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-0400SA3)

NOTICE OF ADOPTION**Approving the Transfer of Property Between Con Ed and NYCEDC****I.D. No.** PSC-12-14-00010-A**Filing Date:** 2014-07-25**Effective Date:** 2014-07-25

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

Action taken: On 7/24/14, the PSC adopted an order approving a petition filed by Consolidated Edison Company of New York, Inc. (Con Ed) and New York City Economic Development Corporation (NYCEDC) to transfer a bridge that traverses the Bronx Kill.

Statutory authority: Public Service Law, section 70

Subject: Approving the transfer of property between Con Ed and NYCEDC.

Purpose: To approve the transfer of property between Con Ed and NYCEDC.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving a petition by Consolidated Edison Company of New York, Inc. (Con Ed) and New York City Economic Development Corporation (NYCEDC) to transfer from Con Ed, property consisting of Randall's Island Bridge that traverses the Bronx Kill, to NYCEDC, 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.

(14-M-0078SA1)

NOTICE OF ADOPTION**Approving the Transfer of Property from O&R to WVF, with Conditions****I.D. No.** PSC-14-14-00019-A**Filing Date:** 2014-07-28**Effective Date:** 2014-07-28

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

Action taken: On 7/24/14, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) petition for the transfer of property to Warwick Valley 13 Forester, LLC (WVF), with conditions.

Statutory authority: Public Service Law, section 70(1)

Subject: Approving the transfer of property from O&R to WVF, with conditions.

Purpose: To approve the transfer of property from O&R to WVF, with conditions.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving Orange and Rockland Utilities, Inc.'s petition to transfer, with conditions, a 1.09 acre parcel of property and an appurtenant substation building located in Warwick, New York, to Warwick Valley 13 Forester, LLC, subject to the terms and conditions set forth in the order.

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

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

(14-E-0099SA1)

NOTICE OF ADOPTION**Allowing Con Ed's Filing to Modify Rider L – Direct Load Control Program****I.D. No.** PSC-16-14-00009-A**Filing Date:** 2014-07-25**Effective Date:** 2014-07-25

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

Action taken: On 7/24/14, the PSC adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff revisions to modify Rider L – Direct Load Control Program contained in PSC No. 10 – Electricity to go into effect.

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

Subject: Allowing Con Ed's filing to modify Rider L – Direct Load Control Program.

Purpose: To allow Con Ed's filing to modify Rider L – Direct Load Control Program.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff revisions to modify Rider L – Direct Load Control Program contained in PSC No. 10 – Electricity, 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.

(14-E-0121SA1)

NOTICE OF ADOPTION

Allowing National Fuel's Filing for PSC 8 — Gas, to Make Electronic Deferred Payment Agreements Permanent

I.D. No. PSC-19-14-00017-A

Filing Date: 2014-07-28

Effective Date: 2014-07-28

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

Action taken: On 7/24/14, the PSC adopted an order allowing, to go into effect, National Fuel Gas Distribution Corporation's (National Fuel) filing for PSC 8 — Gas, to make electronic Deferred Payment Agreements on a permanent basis.

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

Subject: Allowing National Fuel's filing for PSC 8 — Gas, to make electronic Deferred Payment Agreements permanent.

Purpose: To allow National Fuel's filing for PSC 8 — Gas, to make electronic Deferred Payment Agreements permanent.

Substance of final rule: The Commission, on July 24, 2014, adopted an order allowing National Fuel Gas Distribution Corporation's filing contained in PSC No. 8 — Gas, to make electronic Deferred Payment Agreements, to become effective on a permanent basis, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0016SA2)

NOTICE OF ADOPTION

Approving the Acquisition of All Assets of Lucas Estates by NYAW

I.D. No. PSC-19-14-00019-A

Filing Date: 2014-07-25

Effective Date: 2014-07-25

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

Action taken: On 7/24/14, the PSC adopted an order approving a petition by New York American Water Company, Inc. (NYAW) to purchase all assets of Lucas Estates Water Company, Inc. (Lucas Estates).

Statutory authority: Public Service Law, section 89-h

Subject: Approving the acquisition of all assets of Lucas Estates by NYAW.

Purpose: To approve the acquisition of all assets of Lucas Estates by NYAW.

Substance of final rule: The Commission, on July 24, 2014, adopted an order approving a petition by New York American Water Company, Inc. (NYAW) to purchase 100% of all assets of Lucas Estates Water Company, Inc., subject to the terms and conditions set forth in the order.

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

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

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

Assessment of Public Comment

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

(14-W-0148SA1)

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

Refueling Options for the Dunkirk Generating Station Located in Dunkirk, New York, and Alternatives

I.D. No. PSC-32-14-00009-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the joint petition for rehearing, which was filed in response to the Commission's Order issued on June 13, 2014.

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

Subject: Refueling options for the Dunkirk generating station located in Dunkirk, New York, and alternatives.

Purpose: To address the joint petition for rehearing of the Commission's Order related to refueling the Dunkirk generating station.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, the joint petition for rehearing of the Commission's Order issued on June 13, 2014 that was filed by Sierra Club and Earthjustice, on behalf of the Ratepayer and Community Intervenors on July 14, 2014, and may address other related matters.

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

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

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

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

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

(12-E-0577SP4)

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

Petition for Rehearing and/or Clarification of the Order Establishing Rates, Issued in Case 13-W-0295

I.D. No. PSC-32-14-00010-P

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

Proposed Action: The Commission is considering whether to grant or reject, in whole or in part, a petition filed by the Municipal Consortium seeking rehearing and/or clarification of the Commission's order issued in Case 13-W-0295 on June 26, 2014.

Statutory authority: Public Service Law, sections 4, 22 and 89-c

Subject: Petition for rehearing and/or clarification of the Order Establishing Rates, issued in Case 13-W-0295.

Purpose: To consider the petition for rehearing and/or clarification filed by the Municipal Consortium.

Substance of proposed rule: The Public Service Commission is consider-

ing the request of the Municipal Consortium (MC) for rehearing and/or clarification of the Commission's Order Establishing Rates for United Water New York, Inc. (UWNY), issued June 26, 2014. MC alleges the Commission committed errors of law or fact (16 NYCRR 3.7) in 1) granting UWNY a rate increase while acknowledging the company is not efficiently and economically managed; 2) not making 50% of the revenue requirement related to management & services company (M&S) fees temporary and subject to refund; 3) failing to adopt a financial incentive to reduce UWNY's non-revenue water level; 4) failing to institute a prudence investigation related to UWNY's failure to seek an economic obsolescence reduction to property taxes; and 5) recognizing the rate effect of a revised inter-company agreement relating to the allotment of water from the Lake Deforest reservoir between UWNY and its New Jersey affiliate, United Water New Jersey Inc. MC asserts that the Commission's order should be clarified regarding the scope of the management and M&S audits, UWNY communication plans and conservation rate design provisions. The Commission may accept, reject or modify MC's proposal in whole or part, or take other action in response to other parties' filings in response to the MC petition.

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

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

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

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

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

(13-W-0295SP3)

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

To Consider Modifications to the Customer Enrollment Process in the Commission's Uniform Business Practices

I.D. No. PSC-32-14-00011-P

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

Proposed Action: The Commission is considering implementing a proposed accelerated switching process which will reduce the period between when a customer enrolls with a commodity supplier and when service by that supplier commences.

Statutory authority: Public Service Law, sections 5(1)(b), 65 and 66

Subject: To consider modifications to the customer enrollment process in the Commission's Uniform Business Practices.

Purpose: To consider modifications to the customer enrollment process in the Commission's Uniform Business Practices.

Substance of proposed rule: The Commission is considering the implementation of a proposed accelerated switching process, described in a Staff proposal dated July 28, 2014 in Cases 12-M-0476, 98-M-1343 and 98-M-0667, which will reduce the period between when a customer enrolls with a commodity supplier and when service commences. The Commission may adopt, reject or modify, in whole or in part, the Staff proposal. The Commission may also consider related matters.

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

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

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

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

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

(12-M-0476SP9)

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

Whether to Grant or Deny, in Whole or in Part, the Connect New York Coalition's Petition

I.D. No. PSC-32-14-00012-P

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

Proposed Action: The PSC is considering the Connect New York Coalitions's petition seeking a formal proceeding, including evidentiary hearings, to investigate the state of telecommunications services in New York.

Statutory authority: Public Service Law, sections 91, 92, 94, 95 and 96

Subject: Whether to grant or deny, in whole or in part, the Connect New York Coalition's petition.

Purpose: To consider the Connect New York Coalition's petition seeking a formal investigation and hearings.

Substance of proposed rule: The Commission is considering whether to grant or reject, in whole or in part, a request, made by petition of the Connect New York Coalition to convene a formal proceeding, to investigate the state of telecommunications services in New York, and any other related actions. The petition seeks an investigation into the state of telecommunications networks in New York State, investments being made in those networks and the quality of service being provided by the utilities that operate them.

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

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

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

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

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

(14-C-0306SP1)

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

Petition for Submetering of Electricity

I.D. No. PSC-32-14-00013-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 1 John Street LLC to submeter electricity at 1 John Street, Brooklyn, New York.

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: Petition for submetering of electricity.

Purpose: To consider the request of 1 John Street LLC to submeter electricity at 1 John Street, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 1 John Street LLC to submeter electricity at 1 John Street, Brooklyn, New York, located in the territory of Consolidated Edison Company, Inc.

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

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

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

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

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

(14-E-0179SP1)

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

Tariff Amendments to Change Emissions Allowances in the Monthly Adjustment Clause and Monthly Supply Charge

I.D. No. PSC-32-14-00014-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. to change the emissions allowances in the Monthly Adjustment Clause and Monthly Supply Charge.

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

Subject: Tariff amendments to change emissions allowances in the Monthly Adjustment Clause and Monthly Supply Charge.

Purpose: Tariff amendments to change emissions allowances in the Monthly Adjustment Clause and Monthly Supply Charge.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to make revisions to P.S.C. No. 10—Electricity, related to the recovery of costs incurred to purchase emissions allowances for generating facilities and the crediting of customers for revenues received from the sale of emissions. Pursuant to the Environmental Protection Agency's Rule on Interstate Transport of Fine Particulate Matter and Ozone (Transport Rule), which has an expected implementation date of January 1, 2015, the Company proposes to add tariff provisions related to the purchase and sale of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions allowances through the Monthly Adjustment Clause (MAC) and Market Supply Charge (MSC) mechanisms. The Transport Rule is designed to reduce SO₂ and NO_x emissions from fossil-fuel fired electric generating units with a nameplate capacity greater than 25 megawatts. The Company's filing has an effective date of January 1, 2015. The Commission may approve, reject or modify, in whole or in part, the petition by Con Edison and may consider any related matters.

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

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

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

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

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

(14-E-0272SP1)

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

Revisions to Modify and Clarify Provisions Related to Electric Generators Taking Transportation Service Under SC Nos. 7 and 14

I.D. No. PSC-32-14-00015-P

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

Proposed Action: The Commission is considering a proposal filed by KeySpan Gas East Corp. dba Brooklyn Union of L.I. to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 1 — Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Revisions to modify and clarify provisions related to electric generators taking transportation service under SC Nos. 7 and 14.

Purpose: To modify and clarify provisions related to electric generators taking transportation service under SC Nos. 7 and 14.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corp. dba Brooklyn Union of L.I. (KEDLI) to modify, add and clarify provisions related to electric generators that take transportation service under Service Classification No. 7 – Interruptible Transportation Service (SC 7) and Service Classification No. 14 – Non-Core Transportation Service for Electric Generation (SC 14). The amendments have an effective date of November 1, 2014.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-G-0315SP1)

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

Determination on a Brooklyn/Queens Demand Management Program to Defer or Eliminate the Need for Traditional Utility Solutions

I.D. No. PSC-32-14-00016-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, reject or modify, in whole or in part, a proposal by Consolidated Edison Company of New York, Inc. to implement a Brooklyn/Queens Demand Management Program.

Statutory authority: Public Service Law, sections 2(3), (4), (12), (13), 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (9), (12)(b) and (e)

Subject: Determination on a Brooklyn/Queens Demand Management program to defer or eliminate the need for traditional utility solutions.

Purpose: Determination on a Brooklyn/Queens Demand Management program to defer or eliminate the need for traditional utility solutions.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to implement a Brooklyn/Queens Demand Management Program in north central and eastern Brooklyn (including parts of Greenpoint, East Williamsburg, Bushwick, Bedford-Stuyvesant, Crown Heights, East Flatbush, Brownsville, and East New York) and southwestern Queens (including parts of Richmond Hill, Howard Beach, Broad Channel, Ozone Park, South Ozone Park, Woodhaven and Kew Gardens).

The Company proposes to obtain 52 megawatts of non-traditional customer-side and utility-side load reduction solutions to be put in place by June 1, 2018 in order to defer or eliminate the need for a new distribution substation in the Brownsville area. Con Edison proposes to recover costs related to the Brooklyn/Queens Demand Management Program through the Monthly Adjustment Clause (MAC) and proposes a number of measures to incentivize the Company to implement the program successfully. The Commission may approve, reject or modify, in whole or in part, the petition and may consider any related matters.

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

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-E-0302SP1)

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

Transfer of Franchise or Stocks and Issuance of Securities

I.D. No. PSC-32-14-00017-P

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

Proposed Action: The Commission is considering a petition for an Internal Reorganization and Financing arrangements for United Water Works.

Statutory authority: Public Service Law, sections 89-H and 89-F

Subject: Transfer of Franchise or stocks and Issuance of Securities.

Purpose: To allow or disallow the merger of United Water Resources and United Water Mid-Atlantic Inc. into United Water Works.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a Joint Petition of United Water New York Inc., United Water Westchester Inc., United Water New Rochelle Inc., United Water Owego-Nichols Inc., United Waterworks Inc., and United Water Resources Inc. for Approval Pursuant to New York State PSL Law Sections 89-h and 89-f for an Internal Reorganization and Financing Arrangements. The Commission shall consider all other related matters.

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

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

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

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

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

(14-W-0258SP1)

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

Modifications to Provisions Related to Electric Generators and Cogeneration Facilities

I.D. No. PSC-32-14-00018-P

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

Proposed Action: The Commission is considering a proposal filed by Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Service P.S.C. No. 12.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Modifications to provisions related to electric generators and cogeneration facilities.

Purpose: Revisions related to electric generators and cogeneration facilities and align KEDNY's tariff provisions with those of KEDLI.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to modify, add and clarify provisions related to electric generators that take transportation service under Service Classification No. 18 – Non-Core Transportation Service (SC 18) and Service Classification No. 20 – Non-Core Transportation Service for Electric Generation (SC 20) and to cogeneration facilities that take service under Service Classification No. 4A – High Load Factor Sales Service (SC 4A) or Service Classification No. 17-4A – High Load Factor Transportation Service (SC 17-4A). The proposed tariff changes will align KEDNY's electric generator tariff provisions with those of KeySpan Gas East Corp. dba Brooklyn Union of L.I. (KEDLI). The proposed amendments have an effective date of November 1, 2014.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-G-0316SP1)