

# RULE MAKING ACTIVITIES

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

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

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

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Avian Influenza

**I.D. No.** AAM-44-13-00003-A

**Filing No.** 85

**Filing Date:** 2014-01-24

**Effective Date:** 2014-02-12

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

**Action taken:** Amendment of Part 45 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 72

**Subject:** Avian Influenza.

**Purpose:** To amend Part 45.

**Text or summary was published** in the October 30, 2013 issue of the Register, I.D. No. AAM-44-13-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Dr. David Smith, DVM, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 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 an 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.

### NOTICE OF ADOPTION

#### Firewood (All Hardwood Species) and Other Host Tree Materials Susceptible to the Asian Long Horned Beetle

**I.D. No.** AAM-47-13-00001-A

**Filing No.** 84

**Filing Date:** 2014-01-24

**Effective Date:** 2014-02-12

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) and other host tree materials susceptible to the Asian Long Horned Beetle.

**Purpose:** To lift the Asian Long Horned Beetle quarantine in Manhattan and on Staten Island.

**Text or summary was published** in the November 20, 2013 issue of the Register, I.D. No. AAM-47-13-00001-P.

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

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

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The agency received no public comment.

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## Office of Children and Family Services

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

#### Child Care Market Rates

**I.D. No.** CFS-06-14-00005-P

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

**Proposed Action:** Amendment of section 415.9 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f) and title 5-C

**Subject:** Child Care Market Rates.

**Purpose:** To revise the child care market rates.

**Text of proposed rule:** Paragraph (1) of subdivision (j) of section 415.9 is amended to read as follows:

(1) Effective [October 1, 2011] *April 1, 2014*, the following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week.

Paragraph (3) of subdivision (j) of section 415.9 is repealed in its entirety and re-enacted as follows:

(3) *The market rates are established in five groupings of social services districts. The rates established for a group apply to all districts in the designated group. The district groupings are as follows:*

**CHILD CARE MARKET RATES**

*Market rates are established in five groupings of social services districts as follows:*

- GROUP 1: Nassau, Putnam, Rockland, Suffolk, Westchester
- GROUP 2: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren
- GROUP 3: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates
- GROUP 4: Albany, Dutchess, Orange, Ulster
- GROUP 5: Bronx, Kings, New York, Queens, Richmond

GROUP 1 COUNTIES:  
Nassau, Putnam, Rockland, Suffolk, and Westchester  
DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$340	\$311	\$285	\$283
DAILY	\$68	\$62	\$57	\$57
PART-DAY	\$45	\$41	\$38	\$38
HOURLY	\$9.50	\$9.25	\$10.00	\$10.00

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$275	\$250	\$250	\$250
DAILY	\$56	\$55	\$50	\$50
PART-DAY	\$37	\$37	\$33	\$33
HOURLY	\$10.00	\$10.00	\$10.00	\$10.00

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$285	\$275	\$275	\$275
DAILY	\$60	\$60	\$59	\$55
PART-DAY	\$40	\$40	\$39	\$37
HOURLY	\$10.00	\$10.00	\$10.00	\$10.00

(Group 1 Counties)  
SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$0	\$0	\$0	\$283
DAILY	\$0	\$0	\$0	\$57
PART-DAY	\$0	\$0	\$0	\$38
HOURLY	\$0	\$0	\$0	\$10.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$179	\$163	\$163	\$163
DAILY	\$36	\$36	\$33	\$33
PART-DAY	\$24	\$24	\$21	\$21
HOURLY	\$6.50	\$6.50	\$6.50	\$6.50

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$193	\$175	\$175	\$175
DAILY	\$39	\$39	\$35	\$35
PART-DAY	\$26	\$26	\$23	\$23
HOURLY	\$7.00	\$7.00	\$7.00	\$7.00

GROUP 2 COUNTIES:  
Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren  
DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$246	\$231	\$215	\$200
DAILY	\$52	\$49	\$44	\$40
PART-DAY	\$35	\$33	\$29	\$27
HOURLY	\$8.50	\$8.25	\$8.50	\$7.00

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$175	\$175	\$170	\$160
DAILY	\$40	\$38	\$35	\$32
PART-DAY	\$27	\$25	\$23	\$21
HOURLY	\$5.50	\$5.75	\$5.75	\$5.75

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$190	\$180	\$175	\$170
DAILY	\$38	\$40	\$38	\$35
PART-DAY	\$25	\$27	\$25	\$23
HOURLY	\$6.00	\$6.00	\$6.00	\$6.00

(Group 2 Counties)  
SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$0	\$0	\$0	\$200
DAILY	\$0	\$0	\$0	\$40
PART-DAY	\$0	\$0	\$0	\$27
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$114	\$114	\$111	\$104
DAILY	\$26	\$25	\$23	\$21
PART-DAY	\$18	\$16	\$15	\$14
HOURLY	\$3.58	\$3.74	\$3.74	\$3.74

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$123	\$123	\$119	\$112
DAILY	\$28	\$27	\$25	\$22
PART-DAY	\$19	\$18	\$16	\$15
HOURLY	\$3.85	\$4.03	\$4.03	\$4.03

GROUP 3 COUNTIES:

Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$190	\$180	\$170	\$160
DAILY	\$42	\$40	\$38	\$35
PART-DAY	\$28	\$27	\$25	\$23
HOURLY	\$6.75	\$6.75	\$6.25	\$6.25

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$150	\$140	\$140	\$140
DAILY	\$30	\$30	\$30	\$29
PART-DAY	\$20	\$20	\$20	\$19
HOURLY	\$4.75	\$4.50	\$4.50	\$5.00

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$150	\$150	\$148	\$140
DAILY	\$35	\$33	\$32	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$5.00	\$5.00	\$5.00	\$5.00

(Group 3 Counties)

SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$0	\$0	\$0	\$160
DAILY	\$0	\$0	\$0	\$35
PART-DAY	\$0	\$0	\$0	\$23
HOURLY	\$0	\$0	\$0	\$6.25

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$98	\$91	\$91	\$91
DAILY	\$20	\$20	\$20	\$19
PART-DAY	\$13	\$13	\$13	\$12
HOURLY	\$3.09	\$2.93	\$2.93	\$3.25

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$105	\$98	\$98	\$98
DAILY	\$21	\$21	\$21	\$20
PART-DAY	\$14	\$14	\$14	\$13
HOURLY	\$3.33	\$3.15	\$3.15	\$3.50

GROUP 4 COUNTIES:

Albany, Dutchess, Orange, and Ulster

DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$252	\$240	\$220	\$211
DAILY	\$58	\$55	\$49	\$43
PART-DAY	\$39	\$37	\$33	\$29
HOURLY	\$8.50	\$8.25	\$8.00	\$8.25

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$200	\$199	\$190	\$188
DAILY	\$44	\$40	\$40	\$40
PART-DAY	\$29	\$27	\$27	\$27
HOURLY	\$7.00	\$7.00	\$7.00	\$7.00

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$225	\$204	\$200	\$200
DAILY	\$45	\$45	\$41	\$38
PART-DAY	\$30	\$30	\$27	\$25
HOURLY	\$8.75	\$8.00	\$8.00	\$8.00

(Group 4 Counties)

SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$0	\$0	\$0	\$211
DAILY	\$0	\$0	\$0	\$43
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$8.25

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$130	\$129	\$124	\$122
DAILY	\$29	\$26	\$26	\$26
PART-DAY	\$19	\$18	\$18	\$18
HOURLY	\$4.55	\$4.55	\$4.55	\$4.55

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$140	\$139	\$133	\$132
DAILY	\$31	\$28	\$28	\$28
PART-DAY	\$20	\$19	\$19	\$19
HOURLY	\$4.90	\$4.90	\$4.90	\$4.90

GROUP 5 COUNTIES:  
Bronx, Kings, New York, Queens, and Richmond  
DAY CARE CENTER

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$330	\$255	\$233	\$215
DAILY	\$56	\$53	\$47	\$43
PART-DAY	\$37	\$35	\$31	\$29
HOURLY	\$15.75	\$17.00	\$15.75	\$10.75

REGISTERED FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$175	\$160	\$150	\$150
DAILY	\$33	\$32	\$31	\$30
PART-DAY	\$22	\$21	\$21	\$20
HOURLY	\$16.00	\$12.00	\$13.25	\$13.00

GROUP FAMILY DAY CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$200	\$185	\$175	\$175
DAILY	\$38	\$37	\$35	\$35
PART-DAY	\$25	\$25	\$23	\$23
HOURLY	\$18.75	\$16.00	\$13.25	\$14.00

(Group 5 Counties)

SCHOOL-AGE CHILD CARE

	AGE OF CHILD			
	Under 1½	1½ - 2	3 - 5	6 - 12
WEEKLY	\$0	\$0	\$0	\$215
DAILY	\$0	\$0	\$0	\$43
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$10.75

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
STANDARD RATE

AGE OF CHILD

	Under 1½	1½ - 2	3 - 5	6 - 12
	WEEKLY	\$114	\$104	\$98
DAILY	\$21	\$21	\$20	\$20
PART-DAY	\$14	\$14	\$14	\$13
HOURLY	\$10.40	\$7.80	\$8.61	\$8.45

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE  
ENHANCED RATE

AGE OF CHILD

	Under 1½	1½ - 2	3 - 5	6 - 12
	WEEKLY	\$123	\$112	\$105
DAILY	\$23	\$22	\$22	\$21
PART-DAY	\$15	\$15	\$15	\$14
HOURLY	\$11.20	\$8.40	\$9.28	\$9.10

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$340
DAILY	\$68
PART-DAY	\$45
HOURLY	\$18.75

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

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

Title 5-C (sections 410-u through 410-z) of the SSL governs the New York State Child Care Block Grant. It includes provisions regarding the use of funds by social services districts, the types of families eligible for services, the amount of local funds that must be spent on child care services, and reporting requirements. The Office is required to specify certain NYSCCBG requirements in regulation.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant.

Federal statute, 42 U.S.C.A. § 9858-c(c)(4)(A), and federal regulation, 45 CFR 98.43(a), require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access to care that is provided to children whose parents/caretakers are not eligible to receive assistance under federal or state programs. Ad-

ditionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the approved State plan for the Child Care and Development Fund.

#### 2. Legislative objectives:

The legislative intent of the child care subsidy program is to assist low income families in meeting their child care costs in programs that provide for the health and safety of their children. The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

The regulations support the legislative objectives underlying Sections 332-a, 334, 335 and 410 and Title 5-C of the SSL to provide child care services to public assistance recipients and low income families when necessary to promote self-sufficiency and protect children. In addition, the regulations provide social services districts with greater local flexibility to provide child care services in the manner that best meets the needs of their local communities.

#### 3. Needs and benefits:

The State is required under the Federal Child Care and Development Fund to adjust child care payment rates with each new State Plan based on a current survey of providers. The current State Plan covers the period October 1, 2013 through September 30, 2015. A current survey of providers was conducted from February to July of 2013. These regulations are needed to adjust existing rates that were established based on a survey done in 2011. Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties.

Decreases in the child care market rates reflect the market place and provide comparable access for those families in receipt of a child care subsidy to those families that do not receive a child care subsidy, as required by federal and State laws.

#### 4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; and social services districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each social services district's New York State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2013-2014, social services districts received their allocations of \$739,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations. In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent (70%) up to 75 percent (75%), if social services districts select this option.

#### 5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Social services districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

#### 6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

#### 7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

#### 8. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a), (b)(2) and (b)(3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers, and consistent with the parental choice provisions in 45 CFR 98.30.

#### 9. Compliance schedule:

These provisions must be implemented effective on April 1, 2014.

#### 10. Alternative approaches:

No alternative approaches were considered because federal regulation requires that payment rates be based on a local market rate survey.

### **Regulatory Flexibility Analysis**

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

The adjustments to the child care market rates will affect the 58 social

services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 46,000 informal providers that may provide child care services to families receiving a child care subsidy.

#### 2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the applicable market rates. Social services districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. Payment adjustments will have to be made, as appropriate.

#### 3. Professional services:

Neither social services districts, nor child care providers, should have to hire additional professional staff in order to implement these regulations.

#### 4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the New York State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2013-14, social services districts received their allocations of \$739,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

Social services districts will be required to provide an enhanced market rate, on behalf of parents for subsidized child care services, to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency. Such an enhanced rate will be at least seventy percent (70%) of the family child care rate. Social services districts have the option to pay up to seventy-five percent (75%) of the family child care rate as the enhanced market rate, if the social services district selects this option in its Children and Family Services Plan.

#### 5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

#### 6. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of 4,474 licensed and registered child care providers so that the survey was representative throughout the State. The rates were analyzed to establish the market rates at the 69th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual prices for care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

Adjustments to the child care market rates reflect both increases and decreases in the five groupings of counties. Decreases in the child care market rates reflect the market place and provide comparable access for families receiving a child care subsidy to those families not receiving a child care subsidy, as required by federal and State laws. Increases in the rates will enable social services districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to those child care providers who charge more than the previous market rates.

The market rates for legally-exempt family child care and in-home child care were established based on a 65 percent (65%) differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family and in-home child care providers is based on a 70 percent (70%) differential applied to the child care market rates established for registered family day care. The 70 percent (70%) reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, through their Child and Family Services Plans, to increase the enhanced market rate up to 75 percent (75%) of the applicable registered family day care market rate.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed as well. Rate data was collected from 4,474 providers and that information formed the basis for the updated market rates.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those social services districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Social services districts will need to review cases to determine if the payments reflect the actual cost of care up to the appropriate market rate. Neither social services districts, nor child care providers, should have to hire additional professional staff in order to implement these regulations.

Social services districts will be required to provide an enhanced market rate, on behalf of parents for subsidized child care services, to legally-exempt family child care and in-home child providers who have completed ten hours of training annually, as approved by the legally-exempt caregiver enrollment agency. Such an enhanced rate will be at least seventy percent (70%) of the family child care rate. Social services districts do have the option to pay up to seventy five percent (75%) of the family child care rate as the enhanced market rate, if the social services district selects this option in its Children and Family Services Plan.

3. Costs:

Under the State Budget for SFY 2013-2014, social services districts received their allocations of \$739,036,409 in federal and State funds under the New York State Child Care Block Grant. Social services districts have the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their New York State Child Care Block Grant allocations.

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent (75%) of the costs of providing subsidized child care services to public assistance recipients; social services districts are responsible for the other 25 percent (25%) of such costs. In addition, the State is responsible for reimbursing social services districts for 100 percent (100%) of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each social services district's State Child Care Block Grant allocation for that year.

In addition, social services districts may use block grant funds to serve the optional category of eligible individuals set forth in these regulations. Social services districts may also use block grant funds allocated to them to increase the enhanced rate from 70 percent (70%) up to 75 percent (75%), if social services districts select this option in its Children and Family Services Plan.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers and with standard statistical methodology to minimize adverse impact. The Office applied standard statistical methods to choose a sample of 4,474 licensed and registered child care providers so that the survey was representative throughout the State. The rates were analyzed to establish the market rates at the 69th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual prices for care that were reported in the survey within the counties. Adjustments to the child care market rates reflect the market place and provide access comparable to those families not receiving a child care subsidy.

Adjustments to the child care market rates reflect both increases and

decreases in the five groupings of counties. Decreases in the child care market rates reflect the market place and provide comparable access for families receiving a child care subsidy to those families not receiving a child care subsidy, as required by federal and State laws. Increases in the rates enable social services districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to those child care providers who charge more than the previous market rates.

The market rates for legally-exempt family child care and in-home child care were established based on a 65 percent (65%) differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider. The enhanced market rate for legally-exempt family and in-home child care providers is based on a 70 percent (70%) differential applied to the child care market rates established for registered family day care. The 70 percent (70%) differential reflects an incentive to legally exempt providers to pursue a minimum of ten hours of approved training. Additionally, the regulation allows local social services districts, through their Child and Family Services Plans, to increase the enhanced market rate up to 75 percent (75%) of the applicable registered family day care market rate.

The regulations recognize that there may be differences in the needs among social services districts. To the extent allowed by statute, the regulations provide social services districts with flexibility in designing their child care subsidy programs in a manner that will best meet the needs of their communities.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages. Rate data was collected from 4,474 providers and that information formed the basis for the updated market rates.

**Job Impact Statement**

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

Adjustments to the child care market rates reflect both increases and decreases. Decreases in the child care market rates reflect the market place and OCFS believes that they are not substantial enough to cause the loss of jobs in child care programs.

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## Department of Economic Development

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

**Empire State Film Production Tax Credit Program**

**I.D. No.** EDV-06-14-00003-P

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

**Proposed Action:** Amendment of Part 170 of Title 5 NYCRR.

**Statutory authority:** L. 2004, ch. 60 as amended by L. 2009, ch. 57 and L. 2010; L. 2012, ch. 268; and L. 2013, ch. 59

**Subject:** Empire State film production tax credit program.

**Purpose:** Update administrative requirements of the program in conformance with statute.

**Substance of proposed rule (Full text is posted at the following State website: [www.esd.ny.gov](http://www.esd.ny.gov)):** This rule making amends Part 170 of 5 NYCRR as follows:

1) Section 170.1 has been revised to update the references to the authorizing legislation for the Program. The revision also eliminates a reference to the New York City film tax credit program, which no longer exists.

2) Several changes to the definitions of Section 170.2 have been made. The definition of “certificate of tax credit” adds language mandating the certificate include the allocation year of tax credit earned and a disclaimer that such tax credit will not be claimed before the later of either the taxable year the production of the qualified film was completed or the taxable year immediately following the allocation year for which the film was allocated the credit. The definition of “production costs” has been amended to clarify that “licensing or rights associated with the production of a qualified film” are not included within the scope of the definition.

Further, several new important definitions have been added to help clarify the Program, including, but not limited to: “allocation year”; “end credit requirements”; “level one qualified production”; “level two qualified production”; “qualified independent film production company”; and “relocated television production.”

3) Section 170.4 has been revised to require an authorized applicant to submit an initial application before the start of principal photography. It also clarifies that the interview with the Department after submission of the initial application is discretionary, not mandatory.

4) Changes to section 170.5 clarify that the Department shall allocate the amount of credits for each calendar year based upon the date of approval of the final application and no longer on an applicant’s effective date. The obsolete reference to the maximum allowable allocation of credit limit of \$60 million per calendar year has been deleted.

5) Regarding criteria for the evaluation of initial and final applications, section 170.6 has been updated to ensure that the threshold standards mirror those in the statute.

6) Section 170.8 has been revised to clarify (i) that an appeal may be taken only from denial of a final application or disagreement over the amount awarded by the Department and (ii) that a failure to request an appeal within 30 days of denial or issuance of disputed amount of tax credit will be deemed a waiver of applicant’s right to appeal.

7) A new Section 170.9 has been added to address the sharing of information regarding credits applied for and claimed between the Department and the Department of Taxation and Finance.

8) A new Section 170.10 (derived from the statute) has been added requiring the Department to file a quarterly report with the Director of the Budget and the chairmen of the Assembly Ways and Means Committee and the Senate Finance Committee within 15 days after the close of the calendar quarter.

9) A new Section 170.11 (derived from the statute) has been added requiring the Department to file a biennial report with the Director of the Budget and the chairmen of the Assembly Ways and Means Committee and the Senate Finance Committee within 15 days after the close of the applicable calendar year.

The full text of the emergency rule is available at the Department’s website at [www.esd.ny.gov](http://www.esd.ny.gov).

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245, (518) 292-5123, email: [tregan@esd.ny.gov](mailto:tregan@esd.ny.gov)

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

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

#### **Regulatory Impact Statement**

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

Section 7(c) of Part P of Chapter 60 of the Laws of 2004 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the allocation of the Empire State Film Production Tax Credit, including provisions describing the application process, the due dates for such applications, the standards used to evaluate the applications, and the documentation provided to taxpayers to substantiate to the State Department of Taxation and Finance the amount of the tax credit for the program itself. Such legislation provides that, notwithstanding any other provisions to the contrary in the State Administrative Procedure Act, the rules and regulations may be adopted on an emergency basis. Since the initial adoption of the film tax credit regulations, the statute has been amended four times without a change to the regulations.

##### **LEGISLATIVE OBJECTIVES:**

The proposed amendments to Part 170 are in accord with the public policy objectives the Legislature sought to advance by creating the Empire State Film Production Tax Credit Program (the “Program”). The Program creates an incentive to bring strategically targeted aspects of the industry to New York State as opposed to other competitive markets such as Louisiana, Ontario, and Vancouver. It is the public policy of the State to offer a tax credit that will help draw film and television production—and the eco-

nomics activity it generates—to the State. The revisions to Part 170 help to further such objectives by updating the application process for the Program, clarifying portions of the Program through the creation of various definitions, and describing the credit allocation process itself.

##### **NEEDS AND BENEFITS:**

The revisions to Part 170 are necessary to properly update the administration of the Program and ensure that the regulations conform to the statutory changes made to the Program since 2004. The revisions clarify the law’s requirements related to facilities and qualifying productions, update definitions and processes to reflect changes to the industry and the law, and further define necessary administrative procedures. Several new definitions have been added to Section 170.2, including the terms “allocation year”; “end credit requirements”; “level one qualified production”; “level two qualified production”; “qualified independent film production company”; and “relocated television production.” Administrative changes of note include: (1) adding a provision to Section 170.4(a)(1) that requires an authorized applicant to submit an initial application before the start of principal photography; (2) clarifying in Section 170.4(a)(2) that the interview with the Department after submission of the initial application is discretionary, not mandatory; (3) requiring in Sections 170.6(a)(1) and 170.6(b)(1) that both the initial and final applications must be complete rather than substantially complete; (4) removing the requirement in current Section 170.4(a)(5) that applications shall be reviewed in the order they are received; (5) clarifying in Section 170.5 that the Department shall allocate the amount of credits for each calendar year based upon the date of approval of a complete final application rather than on an applicant’s effective date; and (6) adding a requirement in Sections 170.6(a)(11) and 170.6(b)(9) that applicants acknowledge the support of the Program by satisfying the end credit requirements in Section 170.2(i).

Section 170.8 is revised to make clear (i) that an appeal may only be taken from denial of a final application or disagreement over the amount awarded by the Department and (ii) that a failure to request an appeal within 30 days of denial or issuance of disputed amount of tax credit will be deemed a waiver of applicant’s right to appeal.

This rule making also adds new Sections 170.10 and 170.11 to detail the Department’s obligations, as required by statute, to submit quarterly and biennial reports on the Program to the Director of the Budget and the chairs of the Assembly Ways and Means Committee and the Senate Finance Committee.

##### **COSTS:**

a. Costs to the regulated parties for the implementation of and continuing compliance with the rule:

Minimal costs associated with applying for the program. This is a voluntary program and regulated parties may receive substantial tax credits if they qualify.

b. Costs to the regulating agency, the state, and local governments for the implementation and continued administration of the rule: N/A.

c. The information, including the source(s) of such information and the methodologies upon which the cost analysis is based: N/A.

##### **LOCAL GOVERNMENT MANDATES:**

None.

##### **PAPERWORK:**

The rule updates the application process for eligible applicants, including changes to initial and final applications, certain tax certificates, and forms relating to film expenditures.

##### **DUPLICATION:**

The proposed rule will serve as an amendment to the existing regulations of the Commissioner of the Department of Economic Development, Part 170 of 5 NYCRR.

##### **ALTERNATIVES:**

No alternatives were considered in revising Part 170. Many of the changes are driven by changes to the statute since Part 170 was first promulgated. For example, the revised Part 170 reflects the new reporting requirements of Chapter 59 of the Laws of 2013 to apply to taxpayers that have received a certificate of tax credit rather than taxpayers that were allocated a credit after initial application. This is a reasonable approach for several reasons. First, reporting based on completed projects is justifiable in that it avoids the Department providing misinformation in reports based on a project’s estimated initial costs from its initial application which invariably change as the production is completed. Also, this approach is sensitive to companies’ concerns that release of estimated information while the production is still being made would negatively impact their ability to enter into contracts and ultimately market their film.

##### **FEDERAL STANDARDS:**

There are no federal standards in regard to the Program; it is purely a State program that offers a State tax credit to eligible applicants. Therefore, the proposed rule does not exceed any federal standard.

##### **COMPLIANCE SCHEDULE:**

The Department and the business applicants will be able to achieve compliance with the revised regulation as soon as it is adopted.

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

The revisions to Part 170 are intended to bring the regulations into conformity with statutory changes made to the Program over the last several years. Participation in the Program is voluntary and entirely at the discretion of qualified film production companies. Neither the statute nor the regulations impose any obligation on any local government nor business entity to participate in the program. The regulation does not impose any adverse economic impact or their compliance requirements on small businesses or local governments.

The Program is open to participation from all qualified film production companies, and the location of the companies is irrelevant, so long as they meet the necessary qualifications. The regulation will not have a substantial adverse economic impact on rural areas.

The program is designed to provide tax credits to the film industry doing business in New York State and to have a positive impact on job creation. The regulation will not have a substantial adverse impact on jobs and employment opportunities.

Because it is evident from the nature of the rule that it will have either no impact or a positive impact on small businesses and local government, rural areas, and jobs and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. For these reasons, (i) a regulatory flexibility analysis for small business and local government, (ii) a rural area flexibility analysis, and (iii) a job impact statement are not required and have not been prepared.

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## Education Department

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

**Mandatory Reporting Requirements and Testing Misconduct**

I.D. No. EDU-45-13-00033-RP

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

**Proposed Action:** Amendment of section 102.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 225(1)-(11), 305(1), (2); and Civil Service Law, section 75-b(2)(a)

**Subject:** Mandatory reporting requirements and testing misconduct.

**Purpose:** To formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program.

**Text of revised rule:** 1. Section 102.4 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

Section 102.4. Fraud in examinations.

(a) **Prohibited Student Fraud.** If, in the judgment of the principal responsible for administration of an examination under the authority of the Regents, upon the basis of evidence deemed by him to be sufficient, a student has been found guilty of having committed or attempted to commit fraud in the examination, the principal shall be authorized to cancel the examination and to exclude this student from any subsequent Regents examination until such time as the student has demonstrated by exemplary conduct and citizenship, to the satisfaction of the principal, that the student is entitled to restoration of this privilege. As used in this [section] *subdivision*, fraud shall include the use of unfair means to pass an examination, giving aid to, or obtaining aid from, another person in any examination, alteration of any Regents passcard or other credential, and intentional misrepresentation in connection with examinations or credentials. Before such penalty shall be applied, the student accused of fraud shall be given an opportunity to make satisfactory explanations, including the right to appear before the board of education or a person or persons designated by such board, together with his parent or parents and, if so desired by the parent or parents, an attorney, all of whom shall be given the opportunity to ask questions of the examiner or examiners and any other person having direct personal knowledge of the facts. The board of education or the person or persons designated by the board for the purpose of such inquiry may affirm, modify or reverse the findings or penalty, if any, imposed by

the principal. The principal shall report promptly to the commissioner the name of each student penalized under this regulation, together with a brief description of circumstances.

(b) **Prohibited Testing Misconduct.** *Testing misconduct, assisting in the engagement of, or soliciting another to engage in testing misconduct, and/or the knowing failure to report testing misconduct in accordance with subdivision (d) of this section when committed by an employee of a school district, board of cooperative educational services or charter school in a position for which a teaching or school leader certificate is required, shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and shall be subject to referral to the Office of School Personnel Review and Accountability at the State Education Department to the extent provided in Section 83.1 of this Title. Each school district, board of cooperative educational services or charter school employee in a position for which a teaching or school leader certificate is not required who commits an unlawful act in respect to examination and records that is prohibited by Education Law § 225 shall be subject to disciplinary action by the board of education, the board of cooperative educational services or charter school in accordance with subdivision 11 of Education Law § 225.*

(c) *For purposes of this section, testing misconduct shall include, but need not be limited to, the following acts or omissions:*

- (1) *Accessing secure test booklets and/or answer sheets prior to the time allowed by New York State testing rules;*
  - (2) *Duplicating, reproducing, or keeping any part of any secure examination materials without obtaining prior written authorization from the State Education Department;*
  - (3) *Reviewing test booklets prior to test administration in order to:*
    - (i) *determine and record correct responses for use during testing;*
    - (ii) *create pre-test lessons or discussions with students about concepts being tested; and/or*
    - (iii) *create a "cheat sheet" for students to use during any State assessment, including but not limited to, sharing formulas, concepts, or definitions, necessary for the test;*
  - (4) *Providing students clues or answers during test administration, including, but not limited to, one or more of the following actions:*
    - (i) *coaching students about correct answers;*
    - (ii) *defining terms and concepts contained in the test;*
    - (iii) *pointing out wrong answers to a student and suggesting that the student reconsider or change the recorded response;*
    - (iv) *reminding students during testing of concepts they learned in class; and/or*
    - (v) *making facial or other non-verbal suggestions regarding answers.*
  - (5) *Allowing any student more time to take an examination than is allowed for that student;*
  - (6) *Leaving any materials displayed in the room containing topics being tested;*
  - (7) *Writing test specific formulas, concepts, or definitions on the board prior to and while a State assessment is administered;*
  - (8) *Reviewing a student answer sheet for wrong answers and returning it to a student with instructions to change or reconsider wrong responses;*
  - (9) *Altering, erasing, or in any other way changing a student's recorded responses after the student has handed in his/her test materials; or*
  - (10) *Rescoring portions of the test solely to add or find points so a student will pass the test or earn a higher score on the test, other than legitimate rescoring activities authorized by the superintendent of a public school district or chief administrative officer of a nonpublic or charter school or by the State Education Department; and/or*
  - (11) *Encouraging or assisting an individual to engage in the conduct described in paragraphs (1) through (10) of this subdivision.*
- (d) **Mandatory Reporting of Testing Misconduct.** *Each school district, board of cooperative educational services or charter school employee shall be required to report to the Department any known incident of testing misconduct by a certified educator or any known conduct by a non-certified individual involved in the handling, administration or scoring of State assessments that may reasonably be considered to be in violation of section 225 of the Education Law, in accordance with directions and procedures established by the Commissioner for the purpose of maintaining the security and confidential integrity of State assessments.*
- (e) **Prohibition Against Taking Adverse Action Against Certain Employees for Filing a Report.** *In accordance with section 75-b of the Civil Service Law, a school district or board of cooperative educational services shall not dismiss or take other disciplinary or adverse action against an employee because he/she submitted a report pursuant to subdivision (d) of this section. Any such adverse action by an individual holding a teaching or school leader certificate shall be deemed to raise a reasonable question of moral character under Part 83 of this Title and may be referred to the Office of School Personnel Review and Accountability at the State Education Department.*

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 102.4(b), (c)(2), (10) and (d).

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

**Data, views or arguments may be submitted to:** Peg Rivers, State Education Department, Office of Higher Education, Room 979, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: privers@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 Proposed Rule Making in the State Register on November 6, 2013, the following substantial revisions were made to the proposed rule:

the proposed rule has been revised as follows:

Subdivision (b) of section 102.4 has been revised to require charter school employees in a position for which a teaching or school leader certificate is required to report testing misconduct or face potential Part 83 moral character charges. It also requires that each charter school employee in a position for which a certificate is not required to be subject to disciplinary action by the charter school in accordance with Education Law § 225(11).

Paragraph (2) of subdivision (c) of section 102.4 shall be revised to clarify that testing misconduct shall only apply to duplicating, reproducing, or keeping any part of any secure examination materials if no prior written authorization is obtained by the Department.

Paragraph (10) of subdivision (c) of section 102.4 is revised to exclude from the definition of testing misconduct legitimate rescoring activities authorized by the superintendent of a public school district or chief administrative officer of a nonpublic or charter school or by the Department.

Subdivision (d) of section 102.4 is revised to require charter school employees to report known testing misconduct.

The above changes require that the Needs and Benefits, Federal Standards, and Compliance sections of the previously published Regulatory Impact Statement be revised to read as follows:

#### **3. NEEDS AND BENEFITS:**

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry "Hank" Greenberg as a Special Investigator, and tasked him with performing a review of the Department's processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department's processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department's ('NYSED') Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator's recommendations, which included the creation of a new Test Security Unit ("TSU") that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes "testing misconduct."

Additionally, Special Investigator Greenberg recommended that NYSED "[p]rotect from retribution persons who report security breaches and other testing irregularities." (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by

amending Section 102.4 of the Commissioner's Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of "a law, rule, or regulation" that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and other employees in school districts and BOCES who file reports of suspected cheating from retaliation by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

#### **9. FEDERAL STANDARDS:**

There are no Federal standards that require school personnel to report testing misconduct in this State.

#### **10. COMPLIANCE SCHEDULE:**

It is anticipated that the proposed amendment will be adopted at the April Regents meeting and will become effective on May 14, 2014.

### **Revised Regulatory Flexibility Analysis**

Since publication of a Notice of Proposed Rule Making in the State Register on November 6, 2013, the proposed rule was revised as set forth in the Revised Regulatory Impact Statement herewith.

The above revisions to the proposed rule require that the Effect of Rule, Compliance Requirements, Professional Services, Compliance Costs and Economic and Technological Feasibility sections of the Local Government section of the previously published Regulatory Flexibility Analysis be revised to read as follows:

#### **1. EFFECT OF RULE:**

The rule applies to all school personnel in public school districts, boards of cooperative educational services ("BOCES") and charter schools in the State.

#### **2. COMPLIANCE REQUIREMENTS:**

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry "Hank" Greenberg as a Special Investigator, and tasked him with performing a review of the Department's processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department's processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department's ('NYSED') Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator's recommendations, which included the creation of a new Test Security Unit ("TSU") that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting requirement in the Department's testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg's recommendations by amending Section 102.4 of the Commissioner's Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes "testing misconduct."

Additionally, Special Investigator Greenberg recommended that NYSED "[p]rotect from retribution persons who report security breaches

and other testing irregularities.” (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner’s Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of “a law, rule, or regulation” that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and others who file reports of suspected cheating from retaliation in school districts and BOCES by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

### 3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional services requirements on school districts, BOCES or charter schools.

### 4. COMPLIANCE COSTS:

The purpose of the proposed amendment is to formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program by prohibiting certain testing misconduct, establishing a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, and to sanction those who fail to comply. The proposed amendment does not impose any additional costs on school districts, BOCES and charter schools beyond those currently imposed.

### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The rule does not impose any additional costs or technological requirements on school districts, BOCES or charter schools beyond those already imposed.

#### *Revised Rural Area Flexibility Analysis*

Since publication of a Notice of Proposed Rule Making in the State Register on November 6, 2013, 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 sections the previously published Rural Area Flexibility Analysis be revised to read as follows:

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

In November 2011, pursuant to Education Law § 104 and section 3.9 of the Rules of the Board of Regents, the Commissioner appointed Henry “Hank” Greenberg as a Special Investigator, and tasked him with performing a review of the Department’s processes and procedures for handling and responding to reports of allegations of misconduct related to the administration and scoring of New York State assessments. In this capacity, Special Investigator Greenberg performed an exhaustive review of the Department’s processes and procedures for the intake, review, referral, investigation, findings, response, follow-up, and records retention policy regarding allegations of educator misconduct during the administration and scoring of State assessments. The review included interviews of Department personnel and others involved in testing investigations, and the review of pending and closed investigative case files, guidance materials, manuals, statutes, and regulations, among other relevant items.

On March 19, 2012, Special Investigator Greenberg reported his findings and recommendations to the Board. See Greenberg, H., Review of the New York State Education Department’s (“NYSED”) Processes and Procedures for Handling and Responding to Reports of Alleged Irregularities in the Administration and Scoring of State Assessments. The Board accepted all of the Special Investigator’s recommendations, which included the creation of a new Test Security Unit (“TSU”) that would focus on the detection and deterrence of security breaches and other testing irregularities.

Another significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the TSU incorporated a mandatory reporting require-

ment in the Department’s testing manuals for Regents and Grades 3 through 8 examinations. The TSU recommends that the Board formalize Special Investigator Greenberg’s recommendations by amending Section 102.4 of the Commissioner’s Regulations to prohibit certain testing misconduct and that the regulation be amended to include specific concrete examples of what constitutes “testing misconduct.”

Additionally, Special Investigator Greenberg recommended that NYSED “[p]rotect from retribution persons who report security breaches and other testing irregularities.” (Greenberg Report, p. 11). Therefore, the TSU recommends that the Board formalize this recommendation for protecting persons who report test security violations to the TSU by amending Section 102.4 of the Commissioner’s Regulations to include such protection. Under Civil Service Law § 75-b, protections exist for public employees who report violations of “a law, rule, or regulation” that the reporting person reasonably believes has occurred. The proposed amendment clarifies that certified individuals who take retaliatory action against a person who makes a test fraud report in compliance with the proposed amendment may be subject to Part 83 sanctions.

The proposed amendments enhance the security of the State Assessment program in several ways. First, the regulation defines specific types of testing misconduct, prohibits such misconduct and requires that incidents of suspected testing misconduct be reported to the Department so that they can be investigated and addressed. Second, the proposed amendment serves to protect district personnel, educators and others in school districts and boards of cooperative educational services who file reports of suspected cheating from retaliation by prohibiting them from being disciplined and/or from any other adverse action as the result of the filing of a report while at the same time deterring misconduct and encouraging a culture of ethical testing by serving notice that any ethical testing breaches will be reported to the Department if they become known. The mandatory reporting requirements in the proposed amendment are consistent with the requirements of several other states, including but not limited to, Virginia, Illinois, Texas and Nevada.

#### *Revised Job Impact Statement*

Since publication of a Notice of Revised Rule Making in the State Register on November 6, 2013, the proposed rule has been revised as set forth in the Revised Regulatory Impact Statement published herewith. The purpose of the proposed amendment, as revised, is to formally implement the recommendations of Special Investigator Hank Greenberg to enhance the security of the State assessment program. Specifically, the proposed amendment prohibits certain testing misconduct and establishes a mandatory reporting requirement for school personnel who learn of any security breach or other testing misconduct, and to sanction those who fail to comply. Because it is evident from the nature of the proposed revised rule that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### *Assessment of Public Comment*

Since publication of a Notice of Revised Rule Making in the State Register on November 6, 2013, the State Education Department received the following comments.

##### 1. COMMENT:

One commenter asked what the Department’s intent was regarding the applicability of the rules to teachers, administrators and other staff of charter schools who are involved in the administration and scoring of student assessments. Does the Department intend the prohibition of testing misconduct to apply to these individuals? How are charter school staff meant to be covered by the mandatory misconduct reporting requirement? If subject to the reporting mandate, how are staff intended to be protected from retaliatory actions?

##### DEPARTMENT RESPONSE:

In order to ensure to protect the integrity of the State assessments and to eliminate any testing and/or security breaches on such assessments, the Department has revised the proposed amendment to require employees of charter schools to be covered by the reporting requirement and to make the prohibition of testing misconduct apply to charter school employees. While Civil Service Law 75-b does not apply to charter schools, we would encourage charter schools to not take any retaliatory actions against an employee for reporting under this section of the regulations.

##### 2. COMMENT:

The proposed amendment would impose requirements on school employees that are inconsistent with existing school governance and reporting structures. Specifically, the Proposed Rule would require employees to report suspected incidents of academic dishonesty directly to the SED Executive Director of the Test Security and Educator Integrity Unit (“SED Director”). This reporting requirement, however, conflicts with demonstrated methods of effective school governance, and would unnecessarily delay the prompt resolution of any suspected cases of testing misconduct.

The Rule should be amended so that school employees are required to report to school leadership (i.e., the principal) any suspected incidents of academic dishonesty. School leadership would then conduct an investigation, make a determination based on the facts, and report substantiated incidents to the SED Director. School employees should only be required to bypass the procedure described above when:

1. Principals are implicated in the suspected misconduct; and/or
2. School leadership declines to report the incident to the SED Director after conducting an investigation, where the employee continues to believe that a reportable incident took place.

Bypassing school-level reporting structures undermines good school governance and inhibits effective school management, which requires that school leadership serve as the first point of contact for school-level allegations. Additionally, the Rule as currently written would impose an unnecessary delay to the start of the investigation. School leadership, on the other hand, is positioned to investigate and resolve or address such incidents immediately as they are raised.

**DEPARTMENT RESPONSE:**

A significant recommendation from Special Investigator Greenberg that the Board adopted was that the Department establish a mandatory reporting requirement for school personnel, who learn of any security breach or other testing misconduct, define specific context based examples of prohibited testing misconduct, and sanction those who fail to comply. (Greenberg Report, pgs. 10 and 14, emphasis in original). Pursuant to this recommendation, the Department’s Test Security Unit incorporated a mandatory reporting requirement in the Department’s testing manuals for Regents and Grades 3 through 8 examinations. The proposed amendment merely formalizes Special Investigator Greenberg’s recommendations by amending Section 102.4 of the Commissioner’s Regulations to prohibit certain testing misconduct and provides specific concrete examples of what constitutes “testing misconduct.”

There is nothing in the proposed amendment that prohibits a school district, BOCES or charter school from conducting its own internal investigation of any testing misconduct for purposes of discipline and/or enhancing its own testing procedures. However, the Department also has a significant interest in protecting the integrity of the State assessments. The proposed amendment merely formalizes a current requirement that school districts and BOCES report testing misconduct to the Department’s Test Security Unit and requires charter school employees to do the same.

*elections shall transmit to the state board of elections, in a format and manner prescribed by the state board of elections, a list of all polling places designated by the local board of elections and all accompanying accessibility surveys required by Part 6206.1 of this title. For any polling place which has been moved or to which changes or improvements have been made after the designation pursuant to subdivision 1 of Section 4-104 of the Election Law, a new accessibility survey shall be transmitted to the state board of elections within 5 days of its designation as a polling place.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Paul Collins, Deputy Counsel, New York State Board of Elections, 40 North Pearl Street, Albany, NY 12207, (518) 474-6367, email: paul.collins@elections.ny.gov

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

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

**Regulatory Impact Statement**

**Statutory Authority:** Election Law §§ 3-102, 4-104(1), (1-a), (1-b), (1-c), (6) and (6-a). The cited provision of Election Law § 4-104 mandate county by county surveys of proposed poll sites and that such surveys be forwarded to the State Board of Elections.

**Legislative Objectives:** These regulations insure that all poll sites in the state be truly accessible to all voters and provide a system of accountability through the requirement of the submission of poll site surveys to the State Board of Elections.

**Needs and Benefits:** The State Board is charged with overseeing elections throughout the state and an integral part of that process is to ensure that all voters have access to the polling sites. By adopting a uniform system of poll site surveys and mandating a specific compliance date that goal can be achieved. The poll site survey was developed by using the standards set forth in the Americans with Disabilities Act.

**Costs:** The ultimate cost of compliance will fall to the counties but the statutory framework already in existence requires that the counties pick accessible sites and determine that those sites remain accessible. Thus there should be no additional cost over what the counties have experienced by appropriately complying with existing statutes. It is envisioned that counties and the State Board will use existing staff to comply with the proposed regulation. Those counties which have not complied with their duties as to accessibility will incur increased costs of undetermined amount. The cost of investigating requests for waivers will be eliminated.

**Local Government Mandate:** Compliance will fall to the county boards of elections, as it has in the past.

**Paperwork:** Clearly the imposition of the obligation that the accessibility surveys be created and filed with the State Board will create additional paperwork. However, the waiver of compliance process has been eliminated so there is a potential for a decrease in paperwork.

**Duplication:** This regulatory change does not duplicate any federal or state statute but merely provides for a better implementation of same and a viable tracking of compliance system.

**Alternative:** The concept of continuing to allow waivers of compliance was considered and rejected as the laws as to accessibility must be adhered to, not waived.

**Federal Standards:** The regulation does not exceed the applicable federal standard, the Americans with Disabilities Act.

**Compliance Schedule:** The compliance schedule is simple: within 5 days of designating poll sites. Poll sites are annually designated by May 1st.

**Regulatory Flexibility Analysis**

**Effect of Rule:** No small businesses will be affected by the Rule but all County Boards of Elections will be affected.

**Compliance Requirements:** County Boards of Elections will have to affirmatively survey potential poll sites for accessibility and report to the State Board of Elections on a form created by the State Board.

**Professional Services:** It is not anticipated that any professional services will be engaged.

**Compliance Costs:** Only County Boards of Elections will incur costs and then only in personnel costs for performing the survey. Clearly counties with more poll sites will be obligated to incur more personnel costs of compliance.

**Economic and Technological Feasibility:** It is anticipated that County Boards of Elections will be able to perform and document surveys without hiring additional staff after appropriate training.

**Minimizing Adverse Impact:** The County Boards of Elections are statutorily obligated to provide accessible poll sites and providing them with a survey toll will reduce county efforts in determining whether proposed sites are compliant.

**Small Business and Local Government Participation:** As small businesses are not affected by the proposed regulation, there was no small business participation. The County Boards of Elections can participate

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## State Board of Elections

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

**Polling Place Accessibility Surveys**

**I.D. No.** SBE-06-14-00001-P

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

**Proposed Action:** Repeal of Part 6206; and addition of new Part 6206 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102, 4-104(1), (1-a), (1-b), (1-c), (6) and (6-a)

**Subject:** Polling Place Accessibility Surveys.

**Purpose:** Designate date by which local boards of elections must transmit polling site accessibility surveys to State Board of Elections.

**Text of proposed rule:** Part 6206 of Title 9 NYCRR is repealed and a new Part 6206 is added as follows:

**POLLING PLACE ACCESSIBILITY SURVEYS**

*(Statutory authority: Election Law, §§ 3-102, 4-104(1), (1-a), (1-b), (1-c), (6), (6-a))*

*Section 6206.1 Accessibility survey to be conducted.*

*The local board of elections shall cause an accessibility survey to be conducted for every polling site designated pursuant to subdivision 1 of Section 4-104 of the Election Law to verify substantial compliance with the accessibility standards cited in subdivision 1-a of Section 4-104 of the Election Law. The transmittal of each survey shall be in a format and manner prescribed by the state board of elections.*

*Section 6206.2 Compliance date.*

*Not later than 5 days after the designation of polling places pursuant to subdivision 1 of Section 4-104 of the Election Law, each local board of*

through monthly telephone conference with the Election Commissioners' Association and the State Board. The form of the poll site surveys is in compliance with what the Help America Vote Act requires, verbatim.

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

Types and estimated number of rural areas: Every county in the state will have to comply to bring the state into compliance with the Americans with Disabilities Act and rural areas will be treated no differently.

Reporting, recordkeeping and other compliance requirements: The annual poll site surveys will have to be uploaded to the State Board of Elections within 5 days of poll site designations.

Costs: Rural areas are less likely to incur increased costs as they generally provide fewer poll sites than urban areas. The system is designed to have the surveys done by existing board of elections personnel.

Minimizing adverse impact: There must be statewide poll site accessibility and there is no other way to meet that goal than the survey of sites to determine their accessibility.

Rural area participation: Rural areas participated through the Election Commissioners Association in various telephone conferences and meeting with the State Board of Elections.

#### **Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal establishes uniform system of poll site surveys and requires a specific compliance date that can be achieved by each election district. The poll site survey was developed by using the standards set forth in the Americans with Disabilities Act.

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

### **Demonstration Models, Precinct-Based Voting Equipment Systems**

**I.D. No.** SBE-06-14-00002-P

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

**Proposed Action:** Repeal of Part 6211; and amendment of sections 6210.4 and 6210.9 of Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102(1), 7-200, 7-201, 7-206, 4-104(1-a), (1-b), (1-c), (6) and (6-a)

**Subject:** Demonstration Models, Precinct-Based Voting Equipment Systems.

**Purpose:** Establishes precinct-based voting equipment demonstration model instruction requirements for county boards of elections.

**Text of proposed rule:** Part 6211 of Title 9 NYCRR is repealed and Part 6210 is amended as follows:

Section 6210.4 Demonstration models.

(a) During the first five years after purchase, any county which purchases *precinct-based* voting equipment systems shall provide a model, diagram, video or other electronic instruction (example CD ROM) of such voting system's equipment for each polling place in its jurisdiction.

Section 6210.9 Vote tabulation.

[(c) Testing following the machine tabulation on ballots by central count systems. Immediately following the machine tabulation of the ballots from all the election districts and the production of the county-wide totals of votes, the pre-count tests listed in section 6210.2 of this Part, shall be run so as to demonstrate the accuracy and dependability of the count.]

**Text of proposed rule and any required statements and analyses may be obtained from:** Paul M. Collins, Deputy Counsel, New York State Board of Elections, 40 North Pearl Street, 5th Floor, Albany, NY 12207, (518) 474-6367, email: paul.collins@elections.ny.gov

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

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

#### **Regulatory Impact Statement**

Statutory Authority: Election Law §§ 3-102, 7-200, 7-201, 7-202, 7-203, 7-206 gives the State Board of Elections the authority to promulgate rules relating to the administration of the election process. § 7-200. Adoption and use of voting machine or system. The State Board of Elections has the authority to cause a machine or system to be examined and a report of the examination to be made and filed in the office of the State Board. Such examination shall include a determination as to whether the machine or system meets the requirements of section 7-202 of this title and a thorough review and testing of any electronic or computerized features of the machine or system. Such report shall state an opinion as to whether the

kind of machine or system so examined can safely and properly be used by voters and local boards of elections at elections, under the conditions prescribed in this article and the requirements of the federal Help America Vote Act. Section 7-202 gives the Board the authority to establish the requirements of a voting machine or system. § 7-203 contains the required times to us Voting machines. § 7-206. Requires the Board to test voting machines.

**Legislative Objectives:** These regulations insure that all electronic scanning vote tabulating units shall be subject to the same testing requirements. As only the precinct based units interface with the voter, the requirements of demonstration models are limited to those units. The proposed rule repeals Part 6211, Operation of Absentee Counting System Utilizing Electronically Tabulated Punchcard Ballots Regulations as it is no longer lawful to use punch card tabulating system.

**Needs and Benefits:** The State Board is charged with overseeing elections throughout the state and an integral part of that process is to ensure that all voters have their votes counted in the same manner and that all scanners are subject to the same testing requirements.

**Costs:** The ultimate cost of compliance will fall to the counties but the statutory and regulatory framework already is in existence as and the cost will not change by the implementation of these regulations.

**Local Government Mandate:** Compliance will fall to the county boards of elections, as it has in the past.

**Paperwork:** It is anticipated that there will be a decrease in paper work as the post-election testing of the central count scanners will be reduced to testing commensurate with testing for precinct based scanners.

**Duplication:** This regulatory change does not duplicate any federal or state statute but merely provides for a better implementation of same and a viable tracking of compliance system.

**Alternative:** The concept of continuing to mandate separate testing protocols for precinct and central count scanners is an unacceptable alternative. To continue to have regulations concerning punch card systems which are no longer lawful would be confusing to the county boards and the public.

**Federal Standards:** The regulation does not exceed the applicable federal standards.

**Compliance Schedule:** The compliance schedule is simple as the new regulations will apply to elections held after the adoption date.

#### **Regulatory Flexibility Analysis**

**Effect of Rule:** No small businesses will be affected by the Rule but all County Boards of Elections will be affected.

**Compliance Requirements:** County Boards of Elections will required to continue the obligation to provide documentation for precinct based scanners. They will be relieved of the obligation to provide extension post-election testing of central count systems and demonstration models.

**Professional Services:** It is not anticipated that any professional services will be engaged.

**Compliance Costs:** Only County Boards of Elections will incur costs and then only in personnel costs for providing the information continued to be required.

**Economic and Technological Feasibility:** It is anticipated that County Boards of Elections will be able to continue compliance with the less burdensome regulations.

**Minimizing Adverse Impact:** The reduction in requirements on County Boards is a minimization in and of itself.

**Small Business and Local Government Participation:** As small businesses are not affected by the proposed regulation, there was no small business participation. The County Boards of Elections can participate through monthly telephone conference with the Election Commissioners' Association and the State Board.

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

Types and estimated number of rural areas: Every county in the state will have to comply to bring the state into compliance with these regulations and rural areas will be the beneficiaries of these simplifying and clarifying changes.

Reporting, recordkeeping and other compliance requirements: There will be less paperwork as all scanners, precinct based and central count will be subject to the same testing standards.

Costs: It is anticipated that the new regulations will result in a savings not an increase in costs.

Minimizing adverse impact: There must be statewide uniformity in the testing protocols and these regulations accomplish that goal. The elimination of references to a no longer lawful punch card system will be beneficial state wide.

Rural area participation: Rural areas participated through the Election Commissioners Association in various telephone conferences and meeting with the State Board of Elections.

#### **Job Impact Statement**

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This pro-

positional establishes uniform system to ensure that all voters have their votes counted in the same manner and that all scanners are subject to the same testing requirements.

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## Department of Financial Services

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### NOTICE OF ADOPTION

#### Unclaimed Life Insurance Benefits and Policy Identification

**I.D. No.** DFS-44-13-00008-A

**Filing No.** 92

**Filing Date:** 2014-01-27

**Effective Date:** 2014-02-12

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

**Action taken:** Addition of Part 226 (Regulation 200) to Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, 4525 and art. 24

**Subject:** Unclaimed Life Insurance Benefits and Policy Identification.

**Purpose:** To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

**Text or summary was published** in the October 30, 2013 issue of the Register, I.D. No. DFS-44-13-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

#### 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 agency received no public comment.

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## Department of Health

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### EMERGENCY RULE MAKING

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

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

**Filing No.** 87

**Filing Date:** 2014-01-24

**Effective Date:** 2014-01-24

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

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

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

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

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

Further, there is a compelling interest in enacting these regulations immediately in order for teaching hospitals to attract clinical researchers

before they commit to out-of-state programs and to leverage additional and substantial research funding from the National Institutes of Health and other sources.

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

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

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

#### Individual Award

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

#### Center Award

These two-year awards will promote development of clinician researchers while providing seed funding for new center grants by requiring teaching hospitals to form research teams around themes, such as 'improved therapies for type 2 diabetes'. A theme may not be one that currently has federal center (P- or U-type) funding at the institution. The research theme must represent a strategically important growth area for the applicant institution, preferably associated with one or more federal funding opportunities with a realistic project timeline. In the event that more than three ECRIP fellow positions are funded, the abstract may describe two research teams formed around two different themes. Each research team must be led by a director who will sponsor/mentor one project and coordinate the research team's activities. The director must be a PI of an active NIH research grant and the other project sponsor/mentors must have been a PI of an NIH or other federal research grant within one year of the abstract deadline. For every \$100,000 annually in State funding, the institution will be required to train at least one ECRIP fellow. Inter-institutional collaborations (with shared funding) involving other NY teaching hospitals and other NY entities such as private and public universities and colleges, government laboratories (e.g., Wadsworth Center, Nathan Kline Institute), local health departments, HHC and FQHCs are encouraged. All center awards must include a \$100,000 match, per year, by the institution with real (not in-kind) funds. All ECRIP fellows will be expected to work in a collaborative team-based training model.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-46-13-00003-P, Issue of November 13, 2013. The emergency rule will expire March 24, 2014.

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

#### Regulatory Impact Statement

##### Statutory Authority:

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

##### Legislative Objectives:

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

**Needs and Benefits:**

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

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

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

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

**Costs:****Costs to the State Government:**

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

**Costs to Local Government:**

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

**Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties as a result of implementing the redesigned program.

**Costs to the Regulatory Agency:**

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

**Local Government Mandate:**

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

**Paperwork:**

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

**Duplication:**

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

**Alternatives:**

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

**Federal Standards:**

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

**Compliance Schedule:**

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

**Regulatory Flexibility Analysis**

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

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed rule does not impose an adverse impact on rural areas, and it does not impose

reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposed rule governs distribution of ECRIP funding and participation is voluntary.

**Job Impact Statement****Nature of Impact:**

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

**Categories and Numbers Affected:**

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

**Regions of Adverse Impact:**

There is no adverse impact on regions.

**Minimizing Adverse Impact:**

Not applicable.

## EMERGENCY RULE MAKING

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

**I.D. No.** HLT-46-13-00005-E

**Filing No.** 88

**Filing Date:** 2014-01-24

**Effective Date:** 2014-01-24

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

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

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

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

**Specific reasons underlying the finding of necessity:** The proposed amendment establishes a payment methodology to reimburse Federally Qualified Health Centers for the costs of capital projects with a total budget of less than \$3 million exempt from Certificate of Need (CON) requirements.

Public Health Law section 2807-z(9) provides the Commissioner of Health with authority to issue emergency regulations in order to implement the provisions of PHL Section 2807-z. Emergency adoption of the proposed regulation is necessary to provide timely revision to rate-setting regulations to comply with the requirements of PHL Section 2807-z.

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

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

**Text of emergency rule:** Pursuant to the authority vested in the Commissioner of Health by Section 2807-z(9) of the Public Health Law, Section 86-4.16(d) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended to be effective upon filing with the Secretary of State, to read as follows:

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

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

pursuant to this paragraph shall be effective on the date the new service or program is implemented or, in the case of capital renovation, expansion or replacement, on the date the project is completed and in use.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-46-13-00005-P, Issue of November 13, 2013. The emergency rule will expire March 24, 2014.

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

#### **Regulatory Impact Statement**

##### Statutory Authority:

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

##### Legislative Objectives:

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

##### Needs and Benefits:

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

##### COSTS:

##### Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties.

##### Costs to State Government:

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

##### Costs of Local Government:

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

##### Costs to the Department of Health:

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

##### Local Government Mandates:

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

##### Paperwork:

No additional paperwork is required to be filed by FQHCs.

##### Duplication:

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

##### Alternatives:

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

##### Federal Standards:

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

##### Compliance Schedule:

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

#### **Regulatory Flexibility Analysis**

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

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

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

#### **Job Impact Statement**

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

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

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

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## Office of Mental Health

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

#### **Restraint and Seclusion**

**I.D. No.** OMH-06-14-00004-P

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

**Proposed Action:** Amendment of Parts 27, 526 and 587 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.19 and 33.04; 42 C.F.R. sections 482.13, 483.358, 483.360, 483.362, 483.364, 483.366, 483.368, 483.370, 483.372 and 483.376

**Subject:** Restraint and Seclusion.

**Purpose:** Update regulations governing the use of restraint and seclusion in mental health facilities.

**Substance of proposed rule (Full text is posted at the following State website: [www.omh.ny.gov](http://www.omh.ny.gov)):** This rulemaking will amend Title 14 NYCRR to amend Section 27.2 to remove outdated definitions of "restraint and seclusion"; to repeal Section 27.7 (Restraint and Seclusion); to amend Part 526 (Quality of Care and Treatment) by amending Section 526.1 (Background and Intent), Section 526.2 (Legal base) and Section 526.3 (Applicability), and by adding a new Section 526.4 (Restraint and Seclusion) governing facilities under the jurisdiction of the Office of Mental Health; and to amend Section 587.6 (Organization and Administration section of Operation of Outpatient Programs). A previous rulemaking filed by the Office for People with Developmental Disabilities superseded the application of 14 NYCRR Part 27 to its facilities (except with respect to sections pertaining to an integrated residential community) by replacing Part 27 with 14 NYCRR Part 633.

Specifically, the amendments:

- Update the "background and intent" provisions of 14 NYCRR Part 526 to reflect new "person-first" language, and to set forth the intent of the Office of Mental Health with respect to the use of restraint and seclusion as emergency interventions in facilities under its jurisdiction;

- Amend the "legal base" provisions to more comprehensively reflect the agency's statutory authority with respect to quality of care, and to include applicable references to federal regulations governing restraint and seclusion;

- Update provisions governing the definitions and use of restraint and

seclusion, reflecting current State statutory authority and incorporating, as appropriate, applicable federal Centers for Medicare and Medicaid regulations;

- Implement the requirements of Mental Hygiene Law Section 33.04 that orders for restraint and seclusion must be written by a physician, after examination, or if the physician is unavailable, by the most senior, qualified staff member present, by permitting acceptance of a verbal order of the physician, followed by confirmation of the order by the physician in writing within 30 minutes (and in no event beyond an hour);

- Require monitoring/documentation of the patient's condition during the use of restraint or seclusion;

- Prohibit the simultaneous use of mechanical restraint and seclusion;
- Require order renewals to be signed after evaluation by physician and at least every 4 hours for adults; 1 hour for children 9-17 years and ½ hour for children under 9 years;

- Incorporate the federal requirement of notice to parents or guardians when restraint or seclusion is used at residential treatment facilities for children;

- Require facilities to conduct post-event analysis and debriefing activities by staff and patients to identify preventive measures that may be implemented in the future;

- Clarify that certain actions, when performed as defined in the regulation, do not constitute "restraint" or "seclusion," i.e. "time out", "mechanical support", and "physical escort;" and

- Clarify that outpatient programs licensed by the Office of Mental Health shall not use restraint as a treatment intervention or in response to a crisis situation.

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory Authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

Section 31.19 of the Mental Hygiene law provides that no individual who is or appears to be mentally disabled shall be detained, deprived of his/her liberty, or otherwise confined without lawful authority, or inadequately, unskillfully, cruelly, or unsafely cared for or supervised by any person.

Section 33.04 of the Mental Hygiene Law establishes requirements for the application of restraint in facilities under the jurisdiction of the Office of Mental Health.

42 C.F.R. Section 482.13(e) and (f) establish standards governing the use of restraint and seclusion in hospitals as a term and condition of participation in the federal Medicaid program.

42 CFR Sections 483.358, 483.360, 483.362, 483.364, 483.366, 483.368, 483.370, 483.372, and 483.376 establish standards governing the use of restraint and seclusion in psychiatric residential treatment facilities providing inpatient psychiatric services for individuals under age 21 as a term and condition of participation in the federal Medicaid program.

##### 2. Legislative Objectives:

Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

Section 33.03 of the Mental Hygiene Law evinces the Legislature's intent to authorize the Commissioner to promulgate regulations with respect to quality of care and treatment in facilities under its jurisdiction, and Section 33.04 of such law authorizes the Commissioner to set standards with respect to the use of restrictive interventions including restraint.

##### 3. Needs and Benefits:

Restraint is an emergency intervention that has historically been utilized to control the behavior of persons with mental illness in psychiatric facilities. However, this intervention has come under intense scrutiny, due to the significant physical and psychological risks associated with its use, on the part of both patients and staff.

In June 2000, the federal Centers for Medicare and Medicaid Services (CMS), promulgated new regulations governing restraint (42 C.F.R. Part 482) for inpatient psychiatric facilities. These regulations apply to most inpatient mental health facilities in New York, since most of these facilities are hospitals which participate in the federal Medicaid and Medicare programs. Subsequently, in January 2001, CMS promulgated interim final regulations governing restraint in non-hospital residential treatment facilities (RTFs), which serve patients with mental illness under age 21, at 42 C.F.R. Parts 441 and 483.

The National Association of State Mental Health Program Directors reported in a recent White Paper that "most States and providers with laws, regulations, or policies governing the use of restraint and seclusion have adopted an approach that mirrors the minimum standards as provided in the Federal regulation." (Haimowitz, S. and Urff, J. Ending Harm from Restraint and Seclusion: the Evolving Efforts, submitted for publication). While existing Mental Hygiene Law conforms in some ways to the federal law and regulations that govern mental health providers, in several ways it is critically incongruent with the federal requirements governing mental health providers.

Specifically, under the federal CMS regulations for hospitals and non-hospital RTFs, the term "restraint" includes a drug used as a restraint, manual restraint, and mechanical restraint. Under 14 NYCRR Section 27.7 the term is much more narrowly defined as the "use of an apparatus," i.e., mechanical restraint. This has caused confusion for mental health providers struggling to comply with disparate requirements and, in some cases, has resulted in facilities being cited by CMS upon audit for not having policies that accurately reflect federal regulations. Current regulations at 14 NYCRR Section 27.7 apply only to facilities under the jurisdiction of OMH (OPWDD has superseded these provisions for their facilities in 14 NYCRR Part 633), and are outdated with respect to mental health facilities, (e.g., they permit orders for restraint or seclusion to be renewed daily and allow use of restraint as part of an individual service plan).

These amendments bring State regulations governing the use of restraint and seclusion in mental health facilities up to date, and make them consistent with applicable federal regulations. Without these amendments, the incongruity between federal standards and state regulations is not in the best interest of mental health consumers. As such, the amendments reflect the current evidence-based practice approach to the use of restraint and seclusion in facilities serving persons with mental illness.

Notably, although these amendments represent significant change to 14 NYCRR Section 27.7, providers subject to these regulations will not experience dramatic change in their daily practices as a result of their adoption. Because the regulations do not apply to any provider that is not already subject to the Medicaid regulations and the amendments conform the state regulations to the federal standards, the actions necessary to comply with the state regulations have already been instituted by regulated parties. These amendments offer overwhelming benefits with respect to mental health providers. The amendments are designed to enhance the safety of mental health consumers, assist providers in maintaining compliance with federal regulations necessary for reimbursement in the Medicaid program, and prevent mental health consumers from abuse in settings not authorized to utilize restraint.

##### 4. Costs:

The proposed amendments conform the state regulations to federal standards, which have been in place since 2001. The actions necessary to comply with state regulations should have already been instituted by regulated parties. As such, the regulation will maintain ongoing costs of compliance, which may include updating policy/procedure manuals, education and training, reporting, professional staffing; and notice provision by certain providers. Because compliance has been required for several years, to the extent any new costs will be incurred, they should not be significant.

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government. Automated data are reported to OMH on an ongoing basis through the New York State Incident Management and Reporting System (NIMRS). NIMRS is implemented at State-operated psychiatric hospitals and OMH-licensed residential treatment facilities; and use of the incident module is required in all OMH licensed Article 28 and Article 31 hospitals as of December 31, 2010. Education and training programs are made available by the State. Preventing and Managing Crisis Situations (PMCS) curriculum is used in state-operated facilities and the program is available to OMH licensed residential treatment facilities, Article 28 and Article 31 hospitals at no cost. OMH also makes available the Safety in the Community program for OMH-licensed community-based programs. In this Program, physical restraint techniques are omitted (because restraint is not allowed in these settings).

OMH has made training available through the Positive Alternatives to Restraint and Seclusion (PARS) Learning Collaboratives, through a 3-year grant from the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. OMH is conducting learning collaboratives in which 29 licensed programs are participating.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government. Ongoing costs of implementation, including reporting, education and training, and professional staffing should be absorbed into existing budgets.

(c) cost to regulated parties: These regulatory amendments will not result in any additional costs to regulated parties. Ongoing costs include reporting, education and training of staff; professional staffing, updating

of facility policy and procedure manuals, and notices to patients/parents (for RTFs) are already requirements under federal regulations; thus, to the extent any new costs will be incurred, they should not be significant.

#### 5. Local Government Mandates:

The proposed amendments conform the state regulations to the minimum federal standards, which have been in place since 2001, as a term and condition of Medicaid reimbursement. The higher standard imposed by OMH on time frames applicable to use of restraint of children (which reflect current practice) will apply, but use of restraint is not mandated, and in any event, will have no significant cost impact on local governments. Use of a higher standard is warranted because children are subjected to restraint and seclusion at higher rates than adults and also are at greater risk of injury and/or death. The majority of hospital and RTF providers already utilize reduced time limits; the maximum duration for a restraint order in an RTF is half an hour.

#### 6. Paperwork:

The proposed amendments conform the state regulations to the federal standards, which have been in place since 2001. Therefore, actions necessary to comply with state regulations should have already been instituted by regulated parties. However, the proposed amendments require updating of facility policy and procedures to conform with these changes and OMH guidelines. The conditions justifying use of restraint and seclusion have not changed and the requirement for written orders is not new; both reflect current State law and federal regulations. Some procedural changes, though in practice, may increase paperwork for those not complying with current expectations, e.g., post-event analysis and debriefing. These requirements are rationally related to the compliance with the federal minimum regulations and reflect best practices in the care and treatment of persons with mental illness. Continued reduction in the use of restraint and seclusion as a behavioral management intervention via the use of proven de-escalation strategies should continue to off-set any increase in paperwork or costs associated with these requirements.

#### 7. Duplication:

These regulatory amendments do not duplicate existing State or federal requirements, but conform State regulations to applicable federal standards.

#### 8. Alternatives:

Banning the use of restraint and seclusion in OMH facilities was rejected as an option because it is a legally permissible emergency intervention in carefully prescribed circumstances, and in some cases, is the only option available to protect a patient or others from imminent harm. The regulation incorporates state and federal requirements and reflects the expertise of interested parties, such as the PARS grant providers, to ensure that when restraint or seclusion is used, it is done safely and in compliance with governing authority. Inaction would perpetuate the current confusion that exists for providers now, so that alternative was rejected.

#### 9. Federal Standards:

The regulatory amendments conform to the minimum standards of the federal government for the same or similar subject areas, except as explained herein.

#### 10. Compliance Schedule:

Effective immediately upon adoption.

### **Regulatory Flexibility Analysis**

New York State has a large, multi-faceted mental health system that serves more than 500,000 individuals each year. OMH operates psychiatric centers across the State, and also regulates, certifies and oversees more than 2,500 programs, which are operated by local governments and non-profit agencies. These programs include various inpatient and outpatient programs, emergency, community support, residential and family care programs. The proposed amendments apply to hospitals operated by OMH as identified in Section 7.17 of the Mental Hygiene Law; licensed inpatient units and hospitals (there are 112 licensed psychiatric inpatient units in general hospitals, and 6 licensed inpatient psychiatric hospitals); and 19 licensed residential treatment facilities for children (RTFs), which serve persons under age 21.

The proposed amendments to 14 NYCRR Parts 27, 526, and 587 would not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small business and local government because the amendments merely update provisions that reflect outdated statutory references, nomenclature, practices or principles. They are also intended to conform the state regulations to federal standards, which have been in place since 2001. Therefore, providers that are subject to the proposed amendments are already required to comply with them, either as a matter of State law and regulation or federal Conditions of Participation in the Medicaid program.

For example, providers subject to these amendments are required to have a current restraint/seclusion policy, and to train staff. State reviews include interviews of staff to ensure they understand issues on the use of restraint, which is indicative of competence. Medical records already must

include written orders for no more than four hours duration. Documentation that patients were monitored, assessments done minimum every thirty minutes, with half-hour assessment notes, is required. OMH reviews check to see whether there are any cases of an emergency requiring restraint authorized by senior professional staff where a physician was not available, and, if so, whether a physician arrived within 30 minutes to personally assess the patient and write the order. Further, reviews examine if there was a delay, and if the reason was documented. Reviews also check to ensure families of children are notified of restraint/seclusion use, and to determine whether documentation indicates that patients were debriefed after an episode of restraint and seclusion.

The providers to whom the regulatory amendments will apply must already comply with the federal Conditions of Participation related to restraint and seclusion. The proposed amendments bring the state closer to federal regulation with which providers already have to comply. The federal standard, in some cases, will remain much more prescriptive than the state regulation. For example, with respect to the federal Condition of Participation applicable to the RTFs, the Condition is more prescriptive about the frequency and required documentation for education and training of staff related to preventing and managing emergency safety situations and Cardiopulmonary Resuscitation (CPR).

### **Rural Area Flexibility Analysis**

The proposed amendments would not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. New York State has a large, multi-faceted mental health system that serves more than 500,000 individuals each year. OMH operates psychiatric centers across the State, and also regulates, certifies and oversees more than 2,500 programs, which are operated by local governments and nonprofit agencies. These programs include various inpatient and outpatient programs, emergency, community support, residential and family care programs. The proposed amendments apply to hospitals operated by OMH as identified in Section 7.17 of the Mental Hygiene Law; licensed inpatient units and hospitals (there are 112 licensed psychiatric inpatient units in general hospitals, and 6 licensed inpatient psychiatric hospitals); and 19 licensed residential treatment facilities for children (RTFs), which serve persons under age 21.

The proposed amendments to 14 NYCRR Parts 27, 526, and 587 would not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on providers in rural areas, because the amendments merely update provisions that reflect outdated statutory references, nomenclature, practices or principles. They are intended to conform the state regulations to federal standards, which have been in place since 2001. Therefore, providers that are subject to the proposed amendments are already required to comply with them, either as a matter of State law and regulation or federal Conditions of Participation in the Medicaid program. The amendments are intended to protect the health, safety and welfare of persons with mental illness, regardless of where they are served.

For example, all providers subject to these amendments are required to have a restraint/seclusion policy, and to train staff. State reviews include interviews of staff to ensure they understand issues on the use of restraint, which is indicative of competence. Medical records already must include written orders for no more than four hours duration. Documentation that patients were monitored, assessments done minimum every thirty minutes, with half-hour assessment notes, is required. OMH reviews check to see whether there are any cases of an emergency requiring restraint authorized by senior professional staff where a physician was not available, and, if so, whether a physician arrived within 30 minutes to personally assess the patient and write the order. Reviews examine whether, if there was a delay, the reason was documented. Reviews also check to ensure families of children are notified of restraint/seclusion use, and to determine whether documentation indicates that patients were debriefed after an episode of restraint and seclusion.

The providers to whom the regulatory amendments will apply must already comply with the federal Conditions of Participation related to restraint and seclusion. The proposed regulation brings the state closer to federal regulation, with which providers already have to comply. The federal standard, in some cases, will remain much more prescriptive than the state regulation. For example, with respect to the federal Condition of Participation applicable to the RTFs, the Condition is more prescriptive about the frequency and required documentation for education and training of staff related to preventing and managing emergency safety situations and Cardiopulmonary Resuscitation (CPR). The amendments will assist providers in rural areas in identifying more clearly and concisely what is necessary for compliance to maintain Medicaid funding and state certification.

### **Job Impact Statement**

A Job Impact Statement is not being submitted with this notice because it is evident from the subject matter of the amendments that they will have

no impact on jobs and employment opportunities. The proposed amendments to 14 NYCRR Parts 27, 526, and 587 would not impose any adverse impact on hiring, impose new requirements that could compromise job retention, or necessarily offer new opportunities for employment. The amendments merely update provisions that reflect outdated statutory references, nomenclature, practices or principles. They are intended to conform the state regulations to federal standards, which have been in place since 2001. Therefore, providers that are subject to the proposed amendments are already required to comply with them, either as a matter of State law and regulation or federal Conditions of Participation in the Medicaid program. For example, providers subject to these amendments are already required to have a restraint/seclusion policy, and are already required to train staff. State reviews include interviews of staff to ensure they understand issues on the use of restraint, which is indicative of competence.

The providers to whom the regulatory amendments will apply must already comply with the federal Conditions of Participation related to restraint and seclusion. The proposed regulation brings the state much closer to federal regulation with which providers already have to comply. The federal standard, in some cases, will remain much more prescriptive than the state regulation. It is likely that providers will find the proposed changes easier to understand and implement because the proposed rule brings the state and federal requirements closer.

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## Niagara Frontier Transportation Authority

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### NOTICE OF ADOPTION

#### NFTA's Procurement Guidelines

**I.D. No.** NFT-46-13-00004-A

**Filing No.** 89

**Filing Date:** 2014-01-27

**Effective Date:** 2014-02-12

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

**Action taken:** Amendment of sections 1159.3 and 1159.5 of Title 21 NYCRR.

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

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

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

**Text or summary was published** in the November 13, 2013 issue of the Register, I.D. No. NFT-46-13-00004-P.

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

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

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

The agency received no public comment.

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## Public Service Commission

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

#### **Waiver of Certain Tariff Requirements Related to Customers' Bills**

**I.D. No.** PSC-06-14-00009-EP

**Filing Date:** 2014-01-28

**Effective Date:** 2014-01-28

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

**Proposed Action:** The PSC adopted an order providing a waiver of the requirements of certain tariff provisions of Niagara Mohawk Power Corporation d/b/a National Grid to the method by which mass market customers (residential and small commercial customers) are billed so that the Company can apply a credit to customers to mitigate the significant impacts of the extreme weather effects on commodity prices.

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

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

**Specific reasons underlying the finding of necessity:** This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). Failure to grant the waiver on an emergency basis could result in extreme financial hardship to certain customers experiencing significantly high utility bills due to extreme cold weather. Such results would adversely impact the public safety, health and general welfare of the citizens of New York. As a result, compliance with the advance notice and comment requirements of SAPA § 202(1) would be contrary to the public interest, and an immediate waiver of certain requirements of PSC 220, Rule 46.3.2 is necessary for the preservation of the public health, safety and general welfare.

**Subject:** Waiver of certain tariff requirements related to customers' bills.

**Purpose:** The waiver will allow for a one-time credit to certain customers.

**Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.ny.gov):** The Public Service Commission, on January 28, 2014, adopted an order waiving, on a one-time basis, the requirements of certain tariff provisions of Niagara Mohawk Power Corporation d/b/a National Grid NY related to the method by which mass market customers (residential and small commercial customers) are billed so that the Company can apply a credit to customers to mitigate the impacts of the extreme weather effects on commodity prices.

**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 April 27, 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) 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0026SP1)

### NOTICE OF ADOPTION

#### **Approval of Petition of Park View Fifth Avenue Associates, LLC to Submeter Electricity at 1280 Fifth Avenue, New York, NY**

**I.D. No.** PSC-40-13-00004-A

**Filing Date:** 2014-01-23

**Effective Date:** 2014-01-23

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

**Action taken:** On 1/16/14, the PSC adopted an order approving the petition of Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

**Subject:** Approval of petition of Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY.

**Purpose:** To approve the petition of Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order approving the petition of Park View Fifth Avenue Associates, LLC to submeter electricity at 1280 Fifth Avenue, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0093SA1)

**NOTICE OF ADOPTION**

**Allowing Central Hudson's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00026-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing Central Hudson Gas and Electric Corporation's (Central Hudson) amendments to PSC No. 15 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing Central Hudson's tariff amendments to go in to effect.

**Purpose:** To allow Central Hudson's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing Central Hudson Gas and Electric Corporation's (Central Hudson) tariff amendments contained in its tariff schedule, PSC No. 15 – Electricity, to go into effect, and directed Central Hudson to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0421SA1)

**NOTICE OF ADOPTION**

**Allowing Con Edison's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00027-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) amendments to PSC No. 10 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing Con Edison's tariff amendments to go in to effect.

**Purpose:** To allow Con Edison's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments contained in its tariff schedule, PSC No. 10 – Electricity, to go into effect, and directed Con Edison to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25

cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(13-E-0422SA1)

**NOTICE OF ADOPTION**

**Allowing NYSEG's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00028-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing New York State Electric & Gas Corporation's (NYSEG) amendments to PSC No. 120 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing NYSEG's tariff amendments to go in to effect.

**Purpose:** To allow NYSEG's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing New York State Electric & Gas Corporation's (NYSEG) tariff amendments contained in its tariff schedule, PSC No. 120 – Electricity, to go into effect, and directed NYSEG to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-E-0423SA1)

**NOTICE OF ADOPTION**

**Allowing Niagara Mohawk's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00029-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) amendments to PSC No. 220 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing Niagara Mohawk's tariff amendments to go in to effect.

**Purpose:** To allow Niagara Mohawk's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) tariff amendments contained in its tariff schedule, PSC No. 220 – Electricity, to go into effect, and directed Niagara Mohawk to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0424SA1)

**NOTICE OF ADOPTION****Allowing O&R's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00030-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing Orange and Rockland Utilities, Inc.'s (O&R) amendments to PSC No. 3 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing O&R's tariff amendments to go in to effect.

**Purpose:** To allow O&R's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments contained in its tariff schedule, PSC No. 3 - Electricity, to go into effect, and directed O&R to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0426SA1)

**NOTICE OF ADOPTION****Allowing RG&E's Tariff Amendments to Go in to Effect**

**I.D. No.** PSC-45-13-00031-A

**Filing Date:** 2014-01-22

**Effective Date:** 2014-01-22

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

**Action taken:** On 1/16/14, the PSC adopted an order allowing Rochester Gas and Electric Corporation (RG&E) amendments to PSC No. 19 - Electricity, to go into effect.

**Statutory authority:** Public Service Law, section 66-j

**Subject:** Allowing RG&E's tariff amendments to go in to effect.

**Purpose:** To allow RG&E's tariff amendments to go in to effect.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order allowing Rochester Gas and Electric Corporation's (RG&E) tariff amendments contained in its tariff schedule, PSC No. 19 - Electricity, to go into effect, and directed RG&E to file a revised Standardized Interconnection Requirements document, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-E-0425SA1)

**NOTICE OF ADOPTION****Approval of Petition of Stellar 83 Court, LLC to Submeter Electricity at 83-87 Court St, 15-17 Chenango St & 16 Commercial Alley**

**I.D. No.** PSC-47-13-00008-A

**Filing Date:** 2014-01-23

**Effective Date:** 2014-01-23

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

**Action taken:** On 1/16/14, the PSC adopted an order approving the petition of Stellar 83 Court, LLC to submeter electricity at 83-87 Court Street, 15-17 Chenango Street and 16 Commercial Alley, Binghamton, located in the territory of New York State Electric & Gas Corp.

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

**Subject:** Approval of petition of Stellar 83 Court, LLC to submeter electricity at 83-87 Court St, 15-17 Chenango St and 16 Commercial Alley.

**Purpose:** To approve the petition of Stellar 83 Court, LLC to submeter electricity at 83-87 Court Street, et al.

**Substance of final rule:** The Commission, on January 16, 2014, adopted an order approving the petition of Stellar 83 Court, LLC to submeter electricity at 83-87 Court Street, 15-17 Chenango Street and 16 Commercial Alley, Binghamton, NY, located in the territory of New York State Electric and Gas Corporation, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(13-E-0489SA1)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Petition for Submetering of Electricity**

**I.D. No.** PSC-06-14-00006-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 Fort Place Cooperative, Inc., to submeter electricity at 50 Fort Place, Staten Island, 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 Fort Place Cooperative, Inc., to submeter electricity at 50 Fort Place, Staten Island, 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 Fort Place Cooperative, Inc., to submeter electricity at 50 Fort Place, Staten Island, New York, located in the territory of Consolidated Edison of New York, 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](mailto:Deborah.Swatling@dps.ny.gov)

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

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

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

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

(14-E-0009SP1)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-06-14-00007-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 Hanover Court Mutual Housing Corp., to submeter electricity at 92-31 57th Avenue, Elmhurst, 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 Hanover Court Mutual Housing Corp., to submeter electricity at 92-31 57th Ave., Elmhurst, 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 Hanover Court Mutual Housing Corp., to submeter electricity at 92-31 57th Avenue, Elmhurst, New York, located in the territory of Consolidated Edison of New York, 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-0010SP1)

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

**Approval of the Transfer of Ownership Interests in New Athens Generating Company LLC**

**I.D. No.** PSC-06-14-00008-P

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

**Proposed Action:** The Commission is considering a petition from MACH Gen LLC requesting the approval of the transfer of ownership interests in New Athens Generating Company LLC and its 962 MW generation facility located in the Town of Athens.

**Statutory authority:** Public Service Law, sections 5(1)(b) and 70

**Subject:** Approval of the transfer of ownership interests in New Athens Generating Company LLC.

**Purpose:** Consideration of approval of the transfer of ownership interests in New Athens Generating Company LLC.

**Substance of proposed rule:** The Public Service Commission is considering a petition filed on January 16, 2013 by MACH Gen LLC (MACH Gen) requesting the approval of the transfer, to MACH Gen Holdings LLC (MACH GHL), of ownership interests in New Athens Generating Company LLC (New Athens), the owner, in turn, of the New Athens Fa-

cility, an approximately 962 MW (summer rating) gas-fired electric generation facility located in the Town of Athens. MACH GHL will be owned by various financial institutions and investors that currently hold second lien interests in the New Athens Facility. MACH Gen also asks that the lightened ratemaking regulation that currently adheres to the owners of the New Athens Facility be continued in the hands of the new owner. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: 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-0022SP1)