

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. AAM-10-14-00001-EP

Filing No. 151

Filing Date: 2014-02-19

Effective Date: 2014-02-19

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

Proposed Action: Amendment of Part 139 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

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

Specific reasons underlying the finding of necessity: The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States, was first detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities detected infestations of this pest in other areas of Brooklyn as well as in and about Amityville, Queens, Manhattan and Staten Island. As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The quarantine

was later lifted in Islip, due to the eradication of the beetle in this area. The boundaries of those areas currently under quarantine are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to extend the existing quarantine area on Long Island to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington. This rule contains the needed modification.

The Asian Long Horned Beetle (ALB) is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (1/2 inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they over-winter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash), Cercidiphyllum japonicum (Katsura); Platanus (Plane tree, Sycamore); and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. To date, 18,530 infested trees have been removed. Chemical treatments are also used to suppress ALB populations with approximately 544,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the quarantine imposed by this rule has been determined to be the most effective means of preventing the further spread of the Asian Long Horned Beetle. This will help ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, the infestation does not spread beyond those areas via the movement of infested trees and materials.

Based on the facts and circumstances set forth above the Department has determined that the immediate adoption of this rule is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The specific reason for this finding is that the failure to immediately modify the quarantine area and restrict the movement of trees and materials from the areas of the State infested with Asian Long Horned Beetle could result in the spread of the pest beyond those areas and damage to the natural resources of the State and could result in a federal quarantine and quarantines by other states and foreign countries affecting the entire State. This would cause economic hardship to the nursery and forest products industries of the State. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare. Given the potential for the spread of the Asian Long Horned Beetle beyond the areas

currently infested and the detrimental consequences that would have, it appears that the rule modifying the quarantine area should be implemented on an emergency basis and without complying with the requirements of subdivision one of section 202 of the State Administrative Procedure Act, including the minimum periods therein for notice and comment.

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

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

Text of emergency/proposed rule: Subdivision (b) of section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed, and a new subdivision (b) is added to read as follows:

(b) *That area in the Villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, North Lindenhurst, East Farmingdale, Farmingdale, Bethpage, Old Bethpage, Melville, Massapequa, Massapequa Park, East Massapequa, Wyandanch and Wheatley Heights; in the Towns of Babylon, Oyster Bay and Huntington; in the Counties of Nassau and Suffolk and bounded by a line beginning at a point where West Main Street intersects the west shoreline of Carll's River, then west along West Main Street to its intersection with Route 109, then northwest along Route 109 to its junction with Little East Neck Road, continuing northwest along Little East Neck Road to its junction with Belmont Avenue, then north along Belmont Avenue to its intersection with Essex Street, then west and north on Essex Street to its junction with Mount Avenue, then northwest along Mount Avenue to its intersection with Straight Path, then northeast along Straight Path to its intersection with S. 18th Street, then north along S. 18th Street to the point it becomes N. 18th Street, then north along N. 18th Street to its intersection with Lee Avenue, then west along Lee Avenue to its intersection with Conklin Avenue, then north along Conklin Avenue to the point it becomes Bagatelle Road, then north along Bagatelle Road to its intersection with the south service road of the Long Island Expressway, following the south service road of the Long Island Expressway west to its intersection with Round Swamp Road, then south on Round Swamp Road to its junction with Bethpage Road, then crossing Bethpage Road and continuing southwest on Thomas Powell Blvd to its intersection with Merritt('s) Road, continuing south on Merritt('s) Road to its intersection with (Route 24) Hempstead Turnpike, then west along Hempstead Turnpike to its intersection with Hemlock Drive, then south along Hemlock Drive to its intersection with Cheryl Lane North, then east and south along Cheryl Lane North to its intersection with Boundary Avenue, then east on Boundary Avenue to its intersection with North Broadway, then south on North Broadway and Broadway to its junction with Hicksville Road then south along Hicksville Road to the point it becomes Division Avenue continuing south along Division Avenue to its intersection with South Oyster Bay, then east along the shoreline to Carll's River, then north along the west shoreline of Carll's River to the point of beginning.*

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 May 19, 2014.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the further spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in Brooklyn as well as locations in and about Amityville, Queens, Manhattan and Staten Island.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The quarantine was later lifted in Islip, due to the eradication of the beetle in this area. The boundaries of those areas currently under quarantine are described in 1 NYCRR section 139.2. On July 8, 2013, a homeowner in North Lindenhurst found an Asian Long Horned Beetle on her property. This prompted a survey of neighboring areas. As of December 1, 2013, 244 infested trees have been identified in a 50.7 square mile area. These observations of the beetle and the infested trees have resulted in the need to extend the existing quarantine area on Long Island to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington. This rule contains the needed modification.

The Asian Long Horned Beetle is a destructive wood-boring insect native to China, Japan, Korea and the Isle of Hainan. It can cause serious damage to healthy trees by boring into their heartwood and eventually killing them. The adult Asian Long Horned Beetle has a large body (1 to 1.5 inches in length) with very long antenna (1.3-2.5 times their body length). Its body is black with white spots and its antenna are black and white. Adult beetles emerge during the spring and summer months from large (1/2 inch in diameter) round holes anywhere on infested trees, including branches, trunks and exposed roots. They fly for two or three days, during which they feed and mate. To lay eggs, adult females chew depressions in the bark of host trees to lay eggs. One female can lay 35 to 90 eggs. The larvae bore into and feed on the interior of the trees, where they over-winter. The accumulation of coarse sawdust around the base of the infested tree where branches meet the main stem and where branches meet other branches, is evidence of the presence of the borer. One generation is produced each year. Nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Host hardwood materials at risk to attack and infestation include species of the following: Acer (Maple); Aesculus (Horse Chestnut), Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry), Fraxinus (Ash); Cercidiphyllum japonicum (Katsura); Platanus (Plane tree, Sycamore) and Sorbus (Mountain Ash).

Since the Asian Long Horned Beetle is not considered established in the United States, the risk of moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to the hardwood forests and street, yard, park and fruit trees of the State. Approximately 858 million susceptible trees above 5 inches in diameter involving 62 percent (18.6 million acres) of the State's forested land are at risk.

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. To date, 18,530 infested trees have been removed. Chemical treatments are also used to suppress ALB populations with approximately 544,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. Additionally, a heavily traveled highway passes through the new quarantine area and poses the potential for movement of live beetles and infested wood to other areas in New York State. As a result, the extension of the quarantine imposed by this rule has been determined to be the most effective means of preventing the further spread of the Asian Long Horned Beetle. This will help ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, the infestation does not spread beyond those areas via the movement of infested trees and materials.

The effective control of the Asian Long Horned Beetle within the limited areas of the State where this insect has been found is also important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

4. Costs:

- (a) Costs to the State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties:

The extension of the quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley and Huntington would affect approximately 94 nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area.

Nurseries exporting host material from the quarantine area established by this rule, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year with a total annual cost of less than \$1,000.

Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantine area established by this rule may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation:

None. The United States Department of Agriculture is dedicating 8.5-million dollars in funding to conduct surveys and remove infested trees.

(ii) It is anticipated that the Department will be able to administer the quarantine with existing staff.

5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½" or more in diameter of host species will require proper handling and disposal, i.e., chipping and/or incineration if such materials are to leave the quarantine area established by this rule. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from the quarantine area established by this rule will have to be accompanied by a state or federal phytosanitary certificate and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The only alternative considered was to not extend the quarantine. This alternative was rejected. The failure of the State to extend the existing quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington where the Asian Long Horned Beetle and infested trees have been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The amendment does not exceed any minimum standards for the same or similar subject areas. The United States Department of Agriculture will implement a parallel federal quarantine once New York State establishes its quarantine.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The small businesses affected by extending the quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington are the nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area. There are approximately 94 such businesses within that area.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the new quarantine area established by the rule will be required to obtain certificates and limited permits in order to ship regulated articles from those areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the rule, small businesses and local governments shipping regulated articles from the new quarantine area will require professional inspection services, which would be provided by the Department and the United States Department of Agriculture (USDA).

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the new quarantine area on Long Island, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the new quarantine areas may not move outside those areas due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same costs as other regulated parties.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. This is done by limiting the new quarantine area to only those parts of Long Island where the Asian Long Horned Beetle and infested trees have been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has had ongoing discussions with representatives of municipalities and various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of Asian Long Horned Beetle quarantines and the specific needs and benefits of this quarantine. The Department has also had extensive consultation with the USDA on the efficacy of such quarantines.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the new quarantine area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The rule extends the Asian Long Horned Beetle quarantine to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington.

The extension of the quarantine will affect approximately 94 regulated parties, all of whom are in rural areas.

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

All regulated parties in the new quarantine area established by the rule will be required to obtain certificates and limited permits in order to ship regulated articles from those areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the rule, regulated parties in rural areas shipping regulated articles from the new quarantine area will require professional inspection services, which would be provided by the Department and the United States Department of Agriculture (USDA).

3. Costs:

Nurseries exporting host material from the new quarantine area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there would be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments would be made pursuant to compliance agreements for which there is no charge.

Tree removal services will have to chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the new quarantine area may not move outside those areas due to the fact that it is not practical at this time to determine for certifications purposes that the material is free from infestation.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This is done by limiting the new quarantine area to only those parts of Long Island where the Asian Long Horned Beetle and infested trees have been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of the Asian Long Horned Beetle and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact in rural areas as much as is currently possible.

5. Rural area participation:

The Department has had ongoing discussions with representatives of municipalities and various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of Asian Long Horned Beetle quarantines and the specific needs and benefits of this quarantine. The Department has also had extensive consultation with the USDA on the efficacy of such quarantines.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The extension of the existing quarantine area to North Lindenhurst, Farmingdale, East Farmingdale, Bethpage, Old Bethpage, Melville, Wyandanch, Wheatley Heights and the Town of Huntington is designed to prevent the further spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian long horned beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and maple product industries.

Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small and as such, the rule should not have a substantial adverse impact on jobs and employment opportunities.

Action taken: Repeal of sections 100.7 and 100.95 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Beacon Correctional Facility, Bayview Correctional Facility.

Purpose: To remove reference to correctional facilities that are no longer in operation.

Text or summary was published in the December 24, 2013 issue of the Register, I.D. No. CCS-52-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Satisfaction of Education Requirements for Certification in the Classroom Teaching Service Through Individual Evaluation

I.D. No. EDU-10-14-00010-P

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

Proposed Action: Amendment of sections 80-3.3(a)(3)(iii) and 80-3.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)(b)

Subject: Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

Purpose: To discontinue the individual evaluation pathway for certain certificate titles and continue the individual evaluation pathway for all other certificate titles.

Text of proposed rule: 1. Subparagraph (iii) of paragraph (3) of subdivision (a) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, as follows:

(iii) The option to complete the education requirements for the certificates specified in subparagraphs (i) and (ii) of this paragraph through equivalent study, as determined by individual evaluation in accordance with the requirements of section 80-3.7 of this Subpart will continue to be available for individuals who hold an initial, professional, provisional or permanent certificate in the classroom teaching service. For candidates who do not already hold an initial, professional, provisional or permanent certificate in the classroom teaching service, this option will only be available to candidates who apply for a certificate in childhood education by February 1, 2007 or for candidates who apply for a certificate in early childhood education (birth-grade 2), generalist in middle childhood education (grades 5-9), English language arts (grades 5-9), English language arts (grades 7-12), literacy (birth-grade 6) and literacy grades (5-12) on or before April 30, 2014 and who upon application qualify for such certificate; or for candidates who apply for any other certificate in the classroom teaching service [and who upon application qualify for such certificate].

2. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

Section 80-3.7 Satisfaction of education requirements for certification in the classroom teaching service through individual evaluation.

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for a certificate in early childhood education (birth-grade 2), generalist in middle childhood education (grades 5-9), English language arts (grades 5-9), English language arts (grades 7-12), literacy (birth-grade 6) and literacy grades (5-12) on or before April 30, 2014 provided that upon application candidates qualify for such certificate. Candidates

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Beacon Correctional Facility, Bayview Correctional Facility

I.D. No. CCS-52-13-00003-A

Filing No. 153

Filing Date: 2014-02-21

Effective Date: 2014-03-12

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

who apply for any other certificate in the classroom teaching service [on or before April 30, 2014] may continue to meet the education requirements for classroom teaching certificates through individual evaluation [and who upon application candidates qualify for such certificate]. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under subclause (a)(3)(ii)(c)(3) of this section may continue to meet the education requirements for classroom teaching certificates through individual evaluation after May 1, 2014. The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

- (a) . . .
- (b) . . .
- (c) . . .

Text of 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 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Paragraph (b) of Subdivision (1) of the Education Law provides that no part of school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by eliminating the individual evaluation pathway for certain certificate titles where supply data reveals that there is an over-supply of teachers and maintaining this pathway for all other certificate titles.

3. NEEDS AND BENEFITS:

In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of coursework and field experience to the State Education Department for evaluation and issuance of the certificate. This pathway was originally established as a means to address teacher shortage areas, recognizing that there are individuals who have acquired the necessary content knowledge and skills needed to become a teacher in New York State.

The provision regarding individual evaluation included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service.

In 2008, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2009 to February 1, 2012. The individual evaluation pathway for childhood education certification was discontinued at that time because there was no shortage of childhood education teachers. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

In June 2011, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2012 to September 1, 2013. The purpose in establishing the extension to September 2013 was to coincide with the implementation of the new certification exams.

In January 2012, the Regents extended the implementation date of the new teacher certification examinations to May 1, 2014.

Thereafter, in January 2013, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from September 1, 2013 to May 1, 2014 to align with the new implementation date for the certification examinations.

Proposed Amendments

A review of the data we have regarding individual evaluation indicates that there is no longer evidence demonstrating a persistent teacher shortage in early childhood, generalist in middle childhood education, English Language Arts or Literacy. However, candidates continue to apply for these certificates through the individual evaluation pathway.

Based on available data from September 2010 through January 2014, below is a list of the percentages of initial certificates that were issued through individual evaluation in these certificate areas:

- 6% Early Childhood
- 7% Generalist in Middle Childhood Education
- 7% English Language Arts
- .2% Literacy

Based on available certification supply and demand data, the Department recommends ending the individual evaluation pathway for the above certificate titles. However, the Department recommends continuing the individual evaluation pathway for all other certificate titles. This individual evaluation pathway is essential for those seeking to obtain a CTE certificate. For the period September 2010 through January 2014, the Department conducted an individual evaluation for 680, or 80% of the CTE applications. In fact, this is the major pathway upon which new CTE teachers become certified.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on private regulated parties.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements for teachers and teaching assistants should be consistent across the State.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to end the individual evaluation pathway for candidates seeking a teaching certificate in the following

certificate titles where available certification supply and demand data shows an over- supply of teachers (early childhood, English language arts, generalist in middle childhood education and literacy). However, the proposed amendment continues the individual evaluation pathway for all other certificate titles. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect certified teachers that apply for a teaching certificate through the individual evaluation pathway in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

In 2003, the Board of Regents revised the certification requirements for teachers by creating a pathway for individual evaluation for candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of coursework and field experience to the State Education Department for evaluation and issuance of the certificate. This pathway was originally established as a means to address teacher shortage areas, recognizing that there are individuals who have acquired the necessary content knowledge and skills needed to become a teacher in New York State.

The provision regarding individual evaluation included a sunset date of February 1, 2007 for certificates in childhood education and February 1, 2009 for all other certificates in the classroom teaching service.

In 2008, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2009 to February 1, 2012. The individual evaluation pathway for childhood education certification was discontinued at that time because there was no shortage of childhood education teachers. The purpose in establishing these sunset dates was to allow the Department time to assess the continued need for the individual evaluation pathway, based on how many candidates use this pathway to become certified, particularly in subject areas where there are teacher shortages.

In June 2011, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from February 1, 2012 to September 1, 2013. The purpose in establishing the extension to September 2013 was to coincide with the implementation of the new certification exams.

In January 2012, the Regents extended the implementation date of the new teacher certification examinations to May 1, 2014.

Thereafter, in January 2013, the Regents extended the expiration date of the individual evaluation pathway for all classroom titles except childhood education from September 1, 2013 to May 1, 2014 to align with the new implementation date for the certification examinations.

Proposed Amendments

A review of the data we have regarding individual evaluation indicates that there is no longer evidence demonstrating a persistent teacher shortage in early childhood, generalist in middle childhood education, English Language Arts or Literacy. However, candidates continue to apply for these certificates through the individual evaluation pathway.

Based on available data from September 2010 through January 2014, below is a list of the percentages of initial certificates that were issued through individual evaluation in these certificate areas:

- 6% Early Childhood
- 7% Generalist in Middle Childhood Education
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Based on available certification supply and demand data, the Department recommends ending the individual evaluation pathway for the above certificate titles. However, the Department recommends continuing the individual evaluation pathway for all other certificate titles. This individual evaluation pathway is essential for those seeking to obtain a CTE certificate. For the period September 2010 through January 2014, the Department conducted an individual evaluation for 680, or 80% of the CTE applications. In fact, this is the major pathway upon which new CTE teachers become certified.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this

change for candidates who live or work in rural areas is warranted because the certification requirements for teachers and teaching assistants should be consistent across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The purpose of the proposed amendment is to end the individual evaluation pathway for certain certificate titles where available certification supply and demand data shows an over- supply of teachers in these certification titles (early childhood, English language arts, generalist in middle childhood education and literacy). However, the proposed amendment continues the individual evaluation pathway for all other certificate titles. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs

I.D. No. EDU-10-14-00013-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 52.21 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)(b)

Subject: Teacher Education Preparation Programs and Clinically Rich Graduate Level Teacher Preparation Pilot Programs.

Purpose: To provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met.

Text of proposed rule: 1. Subclause (2) of clause (c) of subparagraph (ii) of paragraph (2) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

(2) Field experiences, student teaching and practica.

(i) (A) All registered programs shall include at least 100 clock hours of field experiences related to coursework prior to student teaching or practica. The program shall include:

(I) at least two college-supervised student-teaching experiences of at least 20 school days each; *or*

(II) at least two college-supervised practica with individual students or groups of students of at least 20 school days each[.]; *or*

(III) at least one college-supervised student-teaching experience of at least 40 school days, provided that:

(1) the combination of field experience hours and days of student teaching meets or exceeds the specific requirements for the certificate title as described in paragraph (3) of this subdivision; and

(2) the combination of field experience hours and days of student teaching provides the full range of developmental levels required by the certificate title in paragraph (3) of this subdivision; and

(3) the mentoring teacher of record at the school or school district where the student teacher is placed holds a professional or permanent certificate in the certificate title or in a closely related area; and is designated by the school or district as a teacher mentor or coach or is rated effective or highly effective in their most recent annual professional performance review conducted pursuant to section 3012-c of the Education Law or holds a national board certificate. [This requirement] These requirements shall be met by student teaching, unless the specific requirements for the certificate title in paragraph (3) of this subdivision require practica.

(B) . . .

(ii) . . .

(iii) . . .

(iv) . . .

2. Subparagraphs (i) through (xvi) of paragraph (3) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

(i) Programs leading to initial certificates valid for teaching early childhood education (birth through grade 2).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on early childhood education and include, but need not be limited to:

(1) . . .
 (2) field experiences and [student teaching] *student-teaching* experiences with children in each of the three early childhood groups, pre-kindergarten, kindergarten, and grades 1 through 2, through the combined field experiences and [student teaching experience] student-teaching experience, and for programs with at least two student-teaching experiences, student teaching with at least two of these three groups. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or for candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students in early childhood, including experiences with each of the three early childhood groups.

(ii) . . .
 (iii) Programs leading to initial certificates valid for teaching middle childhood education (grades 5 through 9).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on middle childhood education and include, but need not be limited to:

(1) . . .
 (2) *student-teaching experiences in both middle childhood settings, grades 5 through 6 and 7 through 9 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences and student teaching in both middle childhood settings, grades 5 through 6 and grades 7 through 9.* The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or for candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the program shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with middle childhood students, including experiences in both middle childhood settings, grades 5 through 6 and grades 7 through 9.

(iv) Programs leading to initial certificates valid for teaching adolescence education (grades 7 through 12).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on adolescence education and include, but need not be limited to:

(1) . . .
 (2) *student-teaching experiences in both adolescence education settings, grades 7 through 9 and grades 10 through 12 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences and student teaching in both adolescence education settings, grades 7 through 9 and grades 10 through 12.* The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with students in adolescence, including experiences in both adolescence education settings, grades 7 through 9 and grades 10 through 12.

(v) Programs leading to initial certificates valid for teaching a special subject (all grades).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall include, but need not be limited to:

(1) . . .
 (2) *student-teaching experiences of the special subject in both settings, pre-kindergarten through grade 6 and grades 7 through 12 for programs with at least two twenty day student-teaching experiences; and for programs with one student-teaching experience, combined field experiences*

and student teaching of the special subject in both settings, pre-kindergarten through grade 6 and grades 7 through 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching with students in the special subject class, including experiences in both settings, pre-kindergarten through grade 6 and grades 7 through 12.

(vi) Programs leading to initial certificates valid for teaching students with disabilities in early childhood, childhood, middle childhood for programs registered prior to September 2, 2011, or adolescence.

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall include the preparation for meeting the pedagogical core requirement for the general teaching certificate at the same developmental level and shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with mild, moderate, severe, and multiple disabilities at the student developmental level of the certificate and include, but need not be limited to:

(1) . . .
 (2) field experiences and student-teaching *experiences* with students with disabilities across the age/grade range of the student developmental level of the certificate, through combined field experiences and [student teaching] *student-teaching experiences*, and for programs with at least two student-teaching experiences, student teaching in two settings as appropriate to the certificate: pre-K through kindergarten and grades 1 through 2; or grades 1 through 3 and grades 4 through 6; or grades 5 through 6 and grades 7 through 9 for programs registered prior to September 2, 2011; or grades 7 through 9 and grades 10 through 12. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least the equivalent of 50 clock hours of field experiences and at least 20 days of practica or student teaching with students with disabilities, including experiences across the age/grade range of the student developmental level of the certificate.

(vii) Programs leading to initial certificates valid for teaching students who are deaf or hard-of-hearing (all grades).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with disabilities as prescribed in subclause (vi)(b)(1) of this paragraph; and specialized knowledge, understanding and skills for teaching deaf or hard-of-hearing students that includes, but need not be limited to:

(1) . . .
 (2) field experiences, student teaching or practica with students who are deaf or hard-of-hearing, which includes experiences at each of the four developmental levels: early childhood, childhood, middle childhood, and adolescence, provided that *if a program has at least two student-teaching experiences*, student teaching shall include experiences at the early childhood or childhood level and also at the middle childhood or adolescence level. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students who are deaf or hard-of-hearing.

(viii) Programs leading to initial certificates valid for teaching students who are blind or visually impaired (all grades).

(a) . . .
 (b) Pedagogical core. In addition to meeting the general requirements prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on developing comprehensive knowledge, understanding, and skills for teaching students with disabilities, as prescribed in subclause (vi)(b)(1) of this paragraph; and specialized knowledge, understanding, and skills for teaching students who are blind or visually impaired that includes, but need not be limited to:

(1) . . .

(2) field experiences, student teaching or practica with students who are blind or visually impaired, which includes experiences at each of the four developmental levels: early childhood, childhood, middle childhood and adolescence, provided that *if a program has at least two student-teaching experiences*, student teaching shall include experiences at the early childhood or childhood level and also at the middle childhood or adolescence level. The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences and at least 20 days of practica or student teaching with students who are blind or visually impaired.

(ix) . . .

(x) . . .

(xi) . . .

(xii) Programs leading to initial certificates valid for teaching the career field of agriculture or business and marketing (all grades).

(a) . . .

(b) Pedagogical core. In addition to meeting the general requirements for the pedagogical core prescribed in clause (2)(ii)(c) of this subdivision, the pedagogical core shall focus on middle childhood and adolescence education and include but need not be limited to:

(1) . . .

(2) field experiences in both elementary and secondary schools and *student-teaching experiences at two different grade levels with at least one student-teaching experience in grades 10, 11 and/or 12 for programs with at least two student-teaching experiences. For programs with one student-teaching experience, combined field experiences and student teaching at two different grade levels with [at least] one [student teaching] student-teaching experience in grades 10, 11 and/or 12.* The time requirements for field experience, student teaching and practica of item (2)(ii)(c)(2)(i) of this subdivision shall not be applicable for candidates holding another classroom teaching certificate or candidates who are simultaneously preparing for another classroom teaching certificate and completing the full field experience, student teaching and practica requirement for that other certificate. In such instances, the programs shall require such candidates to complete at least 50 clock hours of field experiences, practica, or student teaching in the career field in grades 10, 11 and/or 12.

(xiii) . . .

(xiv) . . .

(xv) . . .

(xvi) . . .

(xvii) . . .

3. Subparagraph (ii) of paragraph (5) of subdivision (c) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

(ii) Limitations. The clinically rich graduate level teacher preparation pilot program shall end on [June 30, 2016] *October 1, 2016.*

Text of 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 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law authorizes the Department to fix the value of degrees, diplomas and certificates issued by institutions of other states or countries as presented for entrance to schools, colleges and the professions of the state.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Paragraph (b) of Subdivision (1) of the Education Law provides that no part of school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment will carry out the objectives of the above referenced statutes by providing teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

3. NEEDS AND BENEFITS:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the "traditional" teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner's Regulations, candidates in most teacher preparation programs are required to have two

separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.¹ These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner's Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.² In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.³

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)

- The mentoring teacher of record at the partnering school/district must hold a permanent or professional certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. The amendment will not impose additional costs on private regulated parties.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. On the contrary, it provides flexibility for teacher preparation programs and school districts to provide alternative student teaching placements for teacher candidates.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements and requirements for teacher education programs should be consistent across the State. Moreover, the proposed amendment provides more flexibility and is permissive in nature.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

¹ The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

² The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

³ See <http://www.highered.nysed.gov/ocue/aipr/register-te.html#waveir> for information on the Student Teaching Waiver process.

Regulatory Flexibility Analysis

a) Small Businesses:

1. Effect of rule:

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016. Some of these teacher preparation programs may be small businesses.

2. Compliance requirements:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program

in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the “traditional” teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner’s Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.¹ These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner’s Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher’s teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate’s “value proposition” in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner’s Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.² In December 2013, the Department implemented an application process for requesting Commissioner’s approval, simplifying and streamlining an institution’s ability to implement a single placement for its teacher candidates.³

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner’s Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)

- The mentoring teacher of record at the partnering school/district must hold a permanent or professional certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school’s/district’s approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. Professional services:

The proposed amendment does not require small businesses to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and does not impose any compliance costs on small businesses.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require institutions to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Small business participation:

The Department has shared the proposed amendment and sought input from the Rural Advisory Committee. These organizations have representatives from small businesses across the State.

b) Local Governments:

1. Effect of rules:

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education program if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016.

2. Compliance requirements:

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner’s Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner’s Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution’s program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the “traditional” teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner’s Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty

days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.⁴ These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner's Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)].

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher's teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate's "value proposition" in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner's Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.⁵ In December 2013, the Department implemented an application process for requesting Commissioner's approval, simplifying and streamlining an institution's ability to implement a single placement for its teacher candidates.⁶

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner's Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)

- The mentoring teacher of record at the partnering school/district must hold a permanent or professional certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school's/district's approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. Professional services:

The proposed amendment does not require schools or school districts to contract for additional professional services to comply.

4. Compliance costs:

The proposed amendment is permissive in nature and does not impose any additional compliance costs on local governments.

5. Economic and technological feasibility:

See above response to compliance costs. The proposed amendment would not require schools or school districts to secure special technology to comply.

6. Minimizing adverse impact:

As stated above, the proposed amendment is permissive in nature. It only applies to institutions that wish to participate in a graduate level clinically rich pilot program. Because of the nature of the proposed amendment, it is unnecessary to minimize adverse impacts on small businesses.

7. Local government participation:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

8. Initial review of rule (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the

State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy providing for a transition to the New York State Common Core Learning Standards (CCLS) adopted at the January 2011 Regents meeting. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

¹ The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

² The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

³ See <http://www.highered.nysed.gov/ocue/aipr/register-te.html#waveir> for information on the Student Teaching Waiver process.

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⁶ See <http://www.highered.nysed.gov/ocue/aipr/register-te.html#waveir> for information on the Student Teaching Waiver process.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect teacher candidates in all parts of the State and institutions offering clinically rich teacher education programs, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

Graduate Level Clinically Rich Teacher Preparation Pilot Programs

At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for offering graduate level clinically rich teacher preparation pilot programs. At the February 2010 meeting, the Board endorsed the plan to implement the pilot programs through a Request for Proposals (RFP) process. At its April 2010 Board of Regents meeting, the Higher Education Committee voted to amend Part 52.21(b) of the Commissioner's Regulations to adopt, as an emergency measure, regulations establishing graduate level clinically rich teacher preparation pilot programs.

Following submissions through the RFP process and a program quality review by a Board of Regents Blue Ribbon Panel, 11 institutions received approval during 2012 to implement 23 graduate level clinically rich teacher preparation pilot programs. As reported at the January 2014 Board of Regents meeting, the graduate level clinically rich teacher preparation pilot programs require intensive candidate mentoring, supervision and support through a collaborative partnership between the institutions offering the programs and the schools/districts where candidates are placed during their student teaching internships. These internships can be up to one year, considerably longer than the minimum of two 20-day placements currently required in Commissioner's Regulations for most certificate titles, and contain elements such as:

- integration of pedagogy with the internships/on-the-job training;
- rigorous curriculum linking teaching theory with research; and
- guided classroom practice pairing candidates with effective, trained mentors.

The pilot programs were registered to end either June 30, 2014 or August 31, 2014, depending on the institution's program proposal and to correspond with RTTT funding originally ending in 2014. The USDE, however, has extended the time that the Department may use RTTT funds for these programs to September 2015. As a result, the institutions with graduate level clinically rich teacher preparation pilot programs have expressed an interest in continuing their programs, even though there may be no additional RTTT funding after 2015. Accordingly, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs to October 1, 2016, to provide institutions that have their own funds the opportunity to continue offering the programs beyond the expiration of RTTT funding in 2015, and to allow another cohort of students to graduate from the programs by the 2016 deadline.

Five institutions have pilot programs that end on August 31, 2014, because they have activities in their programs over the summer. For example, the American Museum of Natural History includes a summer internship as part of its pilot program, and students complete the program in August and graduate from the program in September. Therefore, as part of the proposed amendment, the Department recommends extending the end date of the graduate level clinically rich teacher preparation pilot programs from June 30, 2016 to October 1, 2016. This extension will allow institutions offering pilot programs with summer activities sufficient time to begin a cohort in fall 2014 and have their candidates complete and graduate from the programs by October 1, 2016.

Institutions with graduate level clinically rich teacher preparation pilot programs that want to extend their programs beyond the extension date in the proposed amendment (October 1, 2016) will be required to register their programs through the “traditional” teacher preparation program registration process and must have their own degree-granting authority.

Additional Option for the Placement of Teacher Candidates

Currently, under Section 52.21 of the Commissioner’s Regulations, candidates in most teacher preparation programs are required to have two separate student teaching or practica placements for a minimum of twenty days each, in two different grade levels and/or developmental levels for the certificate sought, plus a minimum of 100 hours of field experience prior to the student teaching.¹ These regulations also provide for a waiver of the two 20-day student teaching placements if an institution prefers to have its teacher candidates do a single placement and can demonstrate an adequate plan that the alternate model will be successful. [see Commissioner’s Regulations Part 52.21(b)(2)(ii)(c)(2)(iii)]

With the implementation of the edTPA, the new State teacher performance assessment required for certification by teaching candidates completing programs on or after May 1, 2014 or for candidates who have applied for certification on or before April 30, 2014 but who have not completed all of the requirements for certification, a greater focus is placed on the student teaching component of the programs. The edTPA requires two video segments of the student teacher’s teaching practice to be submitted and scored. A number of New York State institutions have expressed concern that a 20-day student teaching placement may not provide teacher candidates sufficient time to develop their skills and videotape with sufficient frequency to capture exemplary teaching practice. The institutions contend that student teachers are often at the stage of greatest asset when they are required to re-establish themselves in a new classroom at a different developmental level (as required in Regulations under the two 20-day placements.) In an effort to increase a teacher candidate’s “value proposition” in P-12 classrooms, institutions and cooperating teachers are advocating lengthier teaching placements.

Commissioner’s Regulations currently allow the Commissioner to approve an alternate model of student teaching on a waiver basis. In response to institutional requests for alternate models, in October 2013 the Department issued criteria for evaluating institution requests for alternate student teaching models that included one longer student teaching placement.² In December 2013, the Department implemented an application process for requesting Commissioner’s approval, simplifying and streamlining an institution’s ability to implement a single placement for its teacher candidates.³

Given the interest of institutions in creating student teaching placements that are longer and that provide candidates with more opportunities for in-depth and clinically rich experiences, increasing their value in the P-12 classrooms, the Department recommends amending Commissioner’s Regulations to provide the option for a single teaching placement. To ensure that teacher candidates are provided with meaningful clinical experiences across the grade level of the certificate, the single teaching placement option must meet the following criteria:

- The field experience must equal or exceed the minimum hours currently required and the single student teaching placement must equal or exceed a minimum of 40 days of student teaching or practica. The combined field experience hours and days of student teaching or practica must provide candidates with the full range of the grades and developmental levels required by the certificate (e.g., a single student teaching placement and field experience in Early Childhood B-2 must be a minimum of 40 days of student teaching, a minimum of 100 hours of field experience, and cover three levels: PreK, K, and Grades 1-2.)

- The mentoring teacher of record at the partnering school/district must hold a permanent or professional certification in the area of the certificate sought or a closely related area, and meet one or more of the following criteria: designated by the district as a teacher mentor or coach, rated Effective or Highly-Effective under the school’s/district’s approved Annual Professional Performance Review (APPR) plan under Education Law Section 3012-c, or hold National Board Certification.

3. COSTS:

There are no additional costs imposed by the proposed amendment.

4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because the certification requirements for teachers should be consistent across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

¹ The two 20-day placement and field requirements do not apply to the Literacy B-6, Literacy 5-12, Career and Technical Subjects and Speech and Language Disabilities certificates.

² The criteria was developed with input from the field through visits across the state in 2013 by Commissioner King and Assistant Commissioner of Higher Education Wood-Garnett.

³ See <http://www.highered.nysed.gov/ocue/aipr/register-te.html#waveir> for information on the Student Teaching Waiver process.

Job Impact Statement

The purpose of the proposed amendment is to provide teaching candidates with the option of completing a single teaching placement instead of two 20 days placements in a registered teacher education programs if certain conditions are met and to extend the sunset date for the clinically rich teacher education pilot program from June 30, 2016 to October 1, 2016. The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

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

Filing No. 154

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

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

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

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

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

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

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRRA took effect on July 21, 2011, which is when the NRRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19,

2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, August 30, 2013, October 28, 2013, and December 26, 2013. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013.

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

Subject: Excess Line Placements Governing Standards.

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

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

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

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

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

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

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

Section 27.2 is not amended.

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

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

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

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

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

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

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

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

The Department amended Section 27.13 to clarify that the requirements

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

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

Section 27.15 is not amended.

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

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

Section 27.22 is not amended.

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

Section 27.24 is not amended.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-13-00002-P, Issue of July 17, 2013. The emergency rule will expire April 21, 2014.

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

Regulatory Impact Statement

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

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

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

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

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or

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

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

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRRA significantly changes the paradigm for excess (or “surplus”) line insurance placements in the United States. The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured’s home state and declares that only an insured’s home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

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

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

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

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

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

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

Although the NRRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213’s requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a national trade association representing the excess line industry ("excess line trade organization"), a national property/casualty insurance trade organization ("property/casualty trade organization"), a national insurance trade organization ("insurance trade organization"), the New York stamping office, an excess line insurer, an attorney that represents an insurance trade organization for insurers that comprise the London market ("counsel for the London market"), and an attorney who represents excess line insurers ("counsel for excess line insurers"), in response to the publication of its proposed rule in the New York State Register.

Comments on specific parts of the rule are discussed below.

11 NYCRR 27.1(q) ("Definition of Eligible")

Comment

The insurance trade organization commented that because the definition of "eligible" references satisfying the requirements of this rule, an unauthorized insurer's eligibility in New York is squarely implicated, contrary to the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). Accordingly, the organization urged the Department to delete this language.

Department's Response

The Department is considering whether to make any change in the context of adopting the permanent rule.

Proposed Amendment to 11 NYCRR 27.11 ("Prohibited Activities")

Comment

The property/casualty trade organization and insurance trade organization commented that the inclusion of language in the proposed rule prohibiting an insurer from providing coverage under certain circumstances is unnecessary, given the direction to the excess line brokers, and without authority. The organizations requested that the Department remove the language.

Department's Response

This comment applies to the proposed rule only, because the emergency rule does not contain this language. However, the Department does

not intend to remove the language when it adopts the proposed rule. Unauthorized insurers may engage only in certain limited acts in New York, including in the excess line market, and excess line policies are subject to certain New York laws and regulations. Unauthorized insurers can be and have been held accountable for violations of those laws. The language highlights and makes clear to insurers that they can be held responsible for acting in violation of Insurance Law section 1102 by doing an insurance business in New York without a license or by otherwise violating the Insurance Law.

Proposed Amendments to 11 NYCRR 27.13 ("Duty to Inquire")

Comment

With regard to the language in section 27.13(a)(1), which requires an excess line broker to obtain, review, and retain the financial statement filed by an alien unauthorized insurer with the National Association of Insurance Commissioners ("NAIC"), the excess line insurer commented that this information is available only to state insurance regulators and not excess line brokers. The insurer requested that the Department remove this requirement with respect to alien unauthorized insurers.

With regard to the language in section 27.13(a)(3) and (4), which require excess line brokers to obtain, review, and retain a copy of an unauthorized insurer's latest available report on examination, if any, issued by its home jurisdiction, and a certification from the insurer's home jurisdiction verifying that the insurer is authorized to write the kinds of insurance sought to be placed, the excess line insurer commented that non-U.S. regulators do not routinely provide this information to the public and excess line brokers therefore will not be able to fulfill this requirement with respect to alien unauthorized insurers. The insurer requested that the Department remove this requirement with respect to alien unauthorized insurers.

The New York stamping office stated that it will continue to seek the foregoing documents from insurers to relieve excess line brokers of the burden of seeking them and to relieve insurers of the burden of providing them to more than one party.

Counsel for excess line insurers suggested that the foregoing documentation be made available through the Department or an NAIC resource accessible at no charge by excess line brokers, because it would remove the need for and costs to insurers to provide the same information to multiple excess line brokers or to make filings with the New York stamping office as a repository.

Department's Response

The Department is considering whether to make any change in the context of adopting the permanent rule.

Comment

The property/casualty trade organization, excess line trade organization, and counsel for the London market commented that the duty to "obtain, review and retain" the stipulated list of documents and reports prior to the placement of coverage falls outside the criteria permitted by the NRRA. Counsel for the London market also commented that retaining this language will result in additional compliance and transaction costs, which ultimately will be passed on to consumers.

In addition, the property/casualty trade organization noted that the rule currently provides that, prior to placing business with an unauthorized insurer, an excess line broker must make inquiry sufficient to ascertain the insurer's financial stability and capacity adequate to its business. The organization commented that this requirement can impose significant challenges for the excess line broker and create a heightened standard of care and liability exposure. The property/casualty trade organization and excess line trade organization also stated that it imposes obligations beyond the NRRA eligibility provisions, while counsel for excess line insurers observed that the requirements appear contrary to the intent of the NRRA that the regulators and consumers of any state may rely on the solvency regulation and other oversight performed by an insurer's domiciliary regulator.

The organizations requested that the Department delete this language and amend the rule to clarify that the excess line broker may place business with any foreign excess line insurer that is authorized in its domiciliary state and maintains the minimum capital and surplus required by the New York Insurance Law or this rule.

Department's Response

While the NRRA generally prohibits a state from imposing eligibility requirements on, or establishing eligibility criteria for, a foreign excess line insurer, or prohibiting an excess line broker from placing excess line insurance with an alien excess line insurer listed with the NAIC's International Insurers Department ("IID"), requiring an excess line broker to obtain, review, and retain certain documents is neither an eligibility criterion imposed on a foreign insurer nor a prohibition against placing insurance with an alien insurer. Rather, these requirements expand upon Insurance Law section 2118(a)(1), which requires an excess line broker to use due care when selecting an excess line insurer from which to procure a policy.

As for resulting in additional compliance and transaction costs and creating a heightened standard of care and liability exposure, these requirements are longstanding and therefore should not impose any additional compliance or transaction costs or create a heightened standard of care or additional liability exposure.

Thus, the Department did not make any changes to the rule in light of this comment.

Comment

The excess line trade organization and counsel for excess line insurers commented that the requirement in section 27.13(g), which provides that an excess line broker must make inquiry sufficient to demonstrate that the insurer has complied with section 27.14 of the rule before placing business with an unauthorized insurer, is an eligibility requirement in New York contrary to the NRRA. The organization asked the Department to remove the language.

Department's Response

This comment applies to the proposed rule only, because the emergency rule does not contain this language. The Department is considering whether to make any change in the context of adopting the permanent rule.

Comment

The New York stamping office recommended that the Department seek to enhance the financial reporting requirements imposed by the NAIC's IID and to make the disclosure of the alien insurer financial information transparent to all participants in the marketplace.

Department's Response

The Department did not make any changes since this comment does not pertain to the rule.

Proposed Amendment to 11 NYCRR 27.14 ("Filings by Unauthorized Insurers")

Comment

The property/casualty trade organization, insurance trade organization, excess line trade organization, and counsel for the London market commented that the requirement that unauthorized insurers file individual policy details (the "EL-1 report") is an eligibility requirement in violation of the NRRA. The organizations urged the Department to remove this requirement.

Department's Response

This requirement is neither an eligibility criterion imposed on a foreign insurer nor a prohibition against placing insurance with an alien insurer, because requiring an insurer to file individual policy details does not prohibit an insurer from being eligible to write excess line insurance in New York or prohibit an excess line broker from placing excess line insurance with the insurer. In addition, this information is necessary because it is the only way for the Department to ensure that excess line brokers are reporting and paying the correct excess line tax.

Comment

The property/casualty trade organization commented that proposed section 27.14(a)(5), which requires an unauthorized insurer to file annually with the Superintendent such other information as the Superintendent may require, is too arbitrary and potentially damaging to the excess line marketplace given the requirements for this unknown information, and asked that the Department remove it.

Department's Response

The Department is considering whether to make any change in the context of adopting the permanent rule.

Comment

The insurance trade organization commented that the proposed language in section 27.14(b), which applies Insurance Law section 2121 regarding authorizing brokers to receive premium on behalf of insurers, is based on questionable authority. The organization asserts that the statutory authority cited for this language, Insurance Law section 2121, references insurance brokers and insurers and not excess lines brokers or unauthorized insurers. The organization requested that the Department delete this language.

Department's Response

This comment applies to the proposed rule only, because the emergency rule does not contain this language. This provision is intended to merely highlight and make clear the applicability of section 2121 to excess line transactions. Excess line brokers are merely a subset of insurance brokers. In order to be licensed as an excess line broker, a person must be licensed as an insurance broker first. In addition, Insurance Law section 2121 refers to insurers that deliver in this state an insurance contract to any insurance broker or any insured. This includes both authorized insurers and unauthorized insurers. Therefore, the Department does not intend to make this change in the proposed rule.

Trust Fund

Comment

Counsel for excess line insurers requested that the Department add a provision to the proposed rule expressly authorizing trustee banks to

terminate previously existing trust funds and release the monies in the trust funds to the insurer without Department approval or other requirement. Alternatively, counsel suggested that the Department establish and publish a formal process for releasing trust fund deposits as other states have.

Department's Response

As explained in Supplement No. 1 to Insurance Circular Letter No. 9 (2011), the NRRA does not void the obligations under a trust fund agreement entered into by an unauthorized foreign or alien insurer and a trustee prior to the NRRA's July 21, 2011 effective date. A trust fund agreement establishes the rights and responsibilities of the parties. It is a private agreement that, once established, provides for the protection of the beneficiary policyholders. While the NRRA prospectively preempts certain state laws as of July 21, 2011, it does not obviate a private agreement between parties entered into prior to that date. This rule cannot obviate a private agreement either. Therefore, the Department does not intend to make any changes to the proposed rule in light of this comment.

Department of Health

EMERGENCY RULE MAKING

NYS Medical Indemnity Fund

I.D. No. HLT-10-14-00011-E

Filing No. 155

Filing Date: 2014-02-25

Effective Date: 2014-02-25

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

Action taken: Amendment of Part 69 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

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

Specific reasons underlying the finding of necessity: These regulations are being promulgated on an emergency basis because of the need for the Fund to be operational as of October 1, 2011. Authority for emergency promulgation was specifically provided in section 111 of Article VII of the New York State 2011-2012 Budget.

Subject: NYS Medical Indemnity Fund.

Purpose: To provide the structure within which the NYS Medical Indemnity Fund will operate.

Substance of emergency rule: As required by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulations to provide the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. Included are (a) critical definitions such as "birth-related neurological injury" and "qualifying health care costs" for purposes of coverage, (b) what the application process for enrollment in the Fund will be, (c) what qualifying health care costs will require prior approval, (d) what the claims submission process will be, (e) what the review process will be for claims denials, (f) what the review process will be for prior approval denials, and (g) how and when the required actuarial calculations will be done.

The application process itself has been developed to be as streamlined as possible. Submission of (a) a completed application form, (b) a signed release form, (c) a certified copy of a judgment or court-ordered settlement that finds or deems the plaintiff to have sustained a birth-related neurological injury, (d) documentation regarding the specific nature and degree of the applicant's neurological injury or injuries at present, (e) copies of medical records that substantiate the allegation that the applicant sustained a "birth-related neurological injury," and (f) documentation of any other health insurance the applicant may have are required for actual enrollment in the Fund.

The parent or other authorized person must submit the name, address, and phone number of all providers providing care to the applicant at the time of enrollment for purposes of both claims processing and case management. To the extent that documents prepared for litigation and/or other health related purposes contain the required background information, such documentation may be submitted to meet these requirements as well, provided that this documentation still accurately describes the applicant's condition and treatment being provided.

Those expenses that will or can be covered as qualifying health care costs are defined very broadly. Prior approval is required only for very costly items, items that involve major construction, and/or out of the ordinary expenses. Such prior approval requirements are similar to the prior approval requirements of various Medicaid waiver programs and to commercial insurance prior approval requirements for certain items and/or services.

Reviews of denials of claims and denials of requests for prior approval will provide enrollees with full due process and prompt decisions. Enrollees are entitled to a conference with the Fund Administrator or his or her designee and a review, which will involve either a hearing before or a document review by a Department of Health hearing officer. In all reviews, the hearing officer will make a recommendation regarding the issue and the Commissioner or his designee will make the final determination. An expedited review procedure has also been developed for emergency situations.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 25, 2014.

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

Regulatory Impact Statement

Statutory Authority:

Title 4 of Article 29 of the Public Health Law (PHL) creates the New York State Medical Indemnity Fund (Fund) to provide a source of funding for all future qualifying health care costs of a plaintiff or claimant who sustained birth-related neurological injuries as the result of medical malpractice in order to reduce premium costs for medical malpractice insurance coverage.

Subdivision 3 of section 2999-h of the PHL sets forth a broad definition of “qualifying health care costs” for services and supplies provided to qualified plaintiffs and provides authority for the Commissioner of Health (Commissioner) to further define such qualifying health care costs in regulation.

Section 2999-i of the PHL requires the Superintendent of Insurance (Superintendent) to administer the Fund and the Commissioner of Taxation and Finance to be the custodian of the Fund for which a special account is created pursuant to section 99-t of the State Finance Law. Subdivision 2 of section 2999-i of the PHL authorizes the Superintendent to enter into a contract to administer the Fund (Administrator) and subdivision 6 requires the Superintendent to conduct actuarial calculations of the estimated liabilities of the Fund and suspend enrollment in the Fund if the estimated liabilities equal or exceed 80% of the Fund’s assets.

Section 2999-j of the PHL governs payments from the Fund and includes broad standards for the Fund enrollment process, payment of costs by collateral sources, rates to be paid to providers of qualifying health care services, prior authorization for certain services, and the claims processing requirements for reimbursement of qualifying health care costs. Subdivision 2 of section 2999-j of the PHL requires any applicable prior authorization requirements to be promulgated by the Commissioner in regulation and subdivision 4 of such section requires the Commissioner to define in regulation “the basis of one hundred percent of the usual and customary rates” to be paid for services provided by private physician practices and for all other services, any rates of payment to be paid on a basis other than Medicaid rates.

Lastly, subdivision 15 of section 2999-j of the PHL specifically states that the Commissioner, in consultation with the Superintendent, “shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title.”

Legislative Objectives:

The Legislature delegated the details of the Fund’s operation to the Department of Financial Services (DFS) and the Department of Health (DOH), the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund’s operations. These proposed regulations reflect the collaboration of both agencies in providing the administrative details of the manner in which the Fund will operate. Specifically, the regulations provide a clear process for enrollment of plaintiffs or claimants who sustained birth-related neurological injuries as the result of medical malpractice. And they create standards governing the qualifying health care costs to be paid by the Fund and the rates at which they will be paid, keeping in mind the two Legislative objectives of lifetime coverage for all current and future enrollees and reducing premium costs for medical malpractice insurance coverage.

Needs and Benefits:

These regulations are needed because Title 4 of Article 29 of the PHL provides only broad standards governing operation of the Fund, some of which include a specific requirement to further define criteria in regulation, and to provide the details necessary to make the Fund operationally successful for all parties, including qualified plaintiffs, Fund enrollees, providers of qualifying health care services, the Administrator, and the two agencies charged with operating the Fund. All parties will benefit from specific standards governing their respective roles regarding the Fund by providing: (1) a smooth application and enrollment process, including specific requirements for the actuarial calculations to be made by DFS and any ensuing suspension of enrollment in the Fund; (2) a clear concept of the qualifying health care costs for which the Fund will pay and their applicable rates of payment; (3) a step-by-step prior approval process required only for certain costly services, including environmental modifications, vehicle modifications, assistive technology, private duty nursing, transportation for medical care and services, treatment with a specialty drug, and experimental treatment; (4) a claims submission process that allows timely payment to providers; and (5) a fair review process if an enrollee’s claims or prior authorization requests are denied, including document based reviews and hearings conducted by DOH.

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with the Fund will be covered by applicable appropriations, as provided in subdivisions 3 through 5 of section 2999-i of the PHL. There are no costs imposed on local governments by these regulations.

Local Government Mandates:

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

Paperwork:

The proposed regulations impose paperwork requirements on regulated parties by requiring (1) a qualified applicant, person authorized to act on behalf of a qualified applicant, or certain defendants to submit an application and supporting documentation for a qualified applicant’s enrollment into the Fund; (2) an enrollee to submit electronic or manual claims for reimbursement of qualified health care services, documentation to support any prior approval request and payment thereof, a review request form for denial of a claim or prior approval request, and notice of a change in address; (3) DOH to issue a notice of hearing, if applicable; and (4) DFS to issue a notice of any suspension or reinstatement of enrollment into the Fund.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Although some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots and the Fund becomes the primary payer for dually enrolled individuals. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that any commercial insurer providing coverage to a qualified plaintiff is legally obligated to provide will not be covered by the Fund (except for copayments and/or deductibles) nor will the Fund cover any health care service, equipment, or other item that is potentially available through another State or Federal program (except Medicaid and Medicare) or similar program in another country, if applicable, such as the Early Intervention Program or as part of an Individualized Education Plan unless the parent or guardian can demonstrate that he or she has made a reasonable effort to obtain such service, equipment or item for the qualified plaintiff through the applicable program.

Alternatives:

DFS and DOH have considered multiple alternatives to the proposed regulatory requirements and have made recent changes to the Express Terms to reflect more reasonable approaches to certain situations enrollees might face. For example:

(1) In the case of divorced parents, the regulations used to allow environmental modifications only to the primary residence of a custodial parent. The agencies considered the limitation placed on a child’s ability to spend time at the home of the noncustodial parent and changed the Express Terms to allow environmental modifications to the primary residence of a noncustodial parent.

(2) When the Administrator received a request for approval of environmental modifications to a home that had yet to be built, the regulations had no process to allow for such approval. The agencies considered the benefit to families in having adaptations built in for their child making the home move-in ready on completion, in addition to the cost effectiveness

of environmental modifications made during construction, as opposed to after construction, and changed the Express Terms to provide an approval process for these types of requests.

(3) The prior approval process for assistive technology used to require 3 acceptable bids for every item requested. The agencies considered this process to be cumbersome for less costly items, especially when prices are readily available in catalogues or online, and changed the Express Terms to allow for the submission of 3 prices in lieu of 3 bids for items costing less than \$2500.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

The Fund was statutorily required to be operational by October 1, 2011.

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.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

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

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

NOTICE OF ADOPTION

Administration of Vitamin K to Newborn Infants

I.D. No. HLT-36-13-00002-A

Filing No. 156

Filing Date: 2014-02-25

Effective Date: 90 days after filing

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

Action taken: Amendment of section 12.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Administration of Vitamin K to Newborn Infants.

Purpose: Requires Vitamin K administration to newborn infants to be consistent w/2012 American Academy of Pediatrics' Policy Statement.

Text or summary was published in the September 4, 2013 issue of the Register, I.D. No. HLT-36-13-00002-P.

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

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

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. The public comment period for this regulation ended on October 21, 2013. The Department received a total of nine comments from representatives of the provider community including private medical practitioners, the Academy of Breastfeeding Medicine, and the University at Albany School of Public Health.

Eight of the nine comments were similar and positive, stating that the adoption of these regulations is an obvious benefit to mother-newborn bonding. Summarized below is the Department of Health's response to the one comment that was not supportive:

COMMENT: One commenter cited and enclosed an article from the AAP News December 2008; 29(12). This is a newsletter of the American Academy of Pediatrics (AAP), and not a peer-reviewed journal. The newsletter usually summarizes other publications or policies, though no

references are included. As the commenter pointed out, in this issue of AAP News, an article Creating protocols for transitional care of the healthy, term newborn, states:

Vitamin K – Within the first hour of delivery, give a single parental dose of natural vitamin K1 oxide (phytonadione) (0.5-1 mg) to prevent vitamin K-dependent hemorrhagic disease.

RESPONSE: The purpose of the proposed regulation change is to make it consistent with the more recent policy statement, issued in 2012, by the American Academy of Pediatrics (AAP): Policy Statement: Breastfeeding and the Use of Human Milk. Pediatrics 2012; 129:e827. (accessed 12/13/2012 at: pediatrics.aappublications.org/content/129/3/e827.full.html). This statement specifically recommends a delay in administration of intramuscular vitamin K until after the first feeding is completed, but within 6 hours of birth," and a delay in routine procedures (weighing, measuring, bathing, blood tests, vaccines, and eye prophylaxis) until after the first feeding is completed.

The more recent AAP Policy Statement recommendations (2012) should take precedence over the earlier AAP News article (2008).

Public Service Commission

EMERGENCY/PROPOSED

RULE MAKING

NO HEARING(S) SCHEDULED

NYSEG to Increase Gas Leakage Surveys, Customer Notice; All Gas Utilities to do Risk Assessments and Collaborate on Education

I.D. No. PSC-10-14-00002-EP

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Proposed Action: The Public Service Commission adopted an order requiring the New York State Gas & Electric Corporation (NYSEG) to complete the replacement of certain gas facilities in the Town and Village of Horseheads, New York, by August 2014, and requiring all New York gas distribution utilities to take certain measures to assess risks associated with their underground gas facilities, to collaborate to improve customer awareness about the necessity of reporting gas odors, and to better educate local governments on the importance of following the Public Service Commission's gas excavation rules.

Statutory authority: Public Service Law, sections 65 and 66

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis under Public Service Law §§ 65 and 66 after a Department of Public Service Staff (DPS Staff) investigation concluded that the possibility exists that underground gas facilities throughout New York State may have been damaged by subsequent third-party excavations. Specifically, the Public Service Commission is requiring New York State Gas & Electric Corporation (NYSEG) to complete, by August 2014, the replacement of certain gas facilities in Horseheads, New York, that may have been affected by third-party excavation. An analysis of NYSEG's gas services following a natural gas explosion that occurred on January 26, 2011, in Horseheads, New York, revealed the possibility that situations similar to those that caused the January 26, 2011 explosion exist elsewhere in the area. The Commission, therefore, is requiring NYSEG to take certain measures, including (1) conducting continuous gas leakage surveys in the Town and Village of Horseheads until planned facility replacements are complete; (2) performing a risk assessment of all gas facilities in its service territory; (3) providing individual notice to customers in the areas of the remaining gas facilities in need of replacement; (4) increasing customer awareness of the need to report gas odors in other at-risk areas; and (5) assessing the benefits of hiring an outside expert to assist and advise NYSEG on improvements it can make to its public education program.

Similar problems may exist in other gas utility service territories. Therefore, the PSC is requiring all gas utilities to (1) conduct risk assessments of their distribution systems to ascertain whether conditions exist similar to those found in Horseheads, New York (i.e. proximity to utilities

installed after the gas facilities; areas showing clusters of leakage reports); (2) make certain that records of excavations and leakage reports are accurate; (3) make such records readily available for DPS Staff review; (4) make and retain audio recordings of all telephone calls reporting gas odors; and (5) collaborate with other gas utilities to develop statewide "best practices" for continuing public education on the importance of reporting gas odors and to improve education efforts directed to local governments on the importance of following the Commission's gas safety rules during excavations.

Subject: NYSEG to increase gas leakage surveys, customer notice; all gas utilities to do risk assessments and collaborate on education.

Purpose: To safeguard gas facilities in New York State and to educate the public about reporting natural gas odors.

Substance of emergency/proposed rule: The Commission, on February 20, 2014, adopted an order directing New York State Gas & Electric Corporation (NYSEG) to:

1. Conduct continuous leakage surveys in the Town and Village of Horseheads until the remaining, unmitigated, gas service replacements in the Town and Village are completed;
2. Perform a risk assessment of its entire distribution system to determine if conditions similar to those found in Horseheads are present or are likely to exist elsewhere;
3. Target outreach and education to customers in at-risk areas, including, but not limited to, the customers served there and all buildings adjacent to these customers;
4. Provide customers in the areas that have not yet been mitigated in Horseheads, New York, separate, individual, notice that is not included with bills that reinforces the need to call NYSEG in the event they smell gas;
5. Assess the benefits of hiring an outside expert to assist and advise the Company on improvements to its public information program and measuring effectiveness of the program.

The Commission is ordering all New York State gas distribution utilities to:

1. Conduct risk assessments of their gas distribution systems, which will include reviewing company records produced after gas facilities have been exposed by third-party excavation, examining leakage reports in these areas, and to ensure this data is accurate.
2. Make and retain an audio recording of natural gas odor calls.
3. Collaborate with all other gas utilities to develop "best practices" for continuing public education on reporting natural gas odors and to improve education for local governments on the importance of following the Commission's rules for safe excavation practices.

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 May 20, 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.

(11-G-0565EP1)

NOTICE OF ADOPTION

Directing Improvements to New York State's Retail Energy Markets Serving Residential and Small Non-Residential Customers

I.D. No. PSC-45-12-00009-A

Filing Date: 2014-02-25

Effective Date: 2014-02-25

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

Action taken: On 2/20/14, the PSC adopted an order taking actions to improve the residential and small non-residential retail access markets.

Statutory authority: Public Service Law, section 66(1)

Subject: Directing improvements to New York State's retail energy markets serving residential and small non-residential customers.

Purpose: To direct improvements to New York State's retail energy markets serving residential and small non-residential customers.

Substance of final rule: The Commission, on February 20, 2014, adopted an order taking actions to improve the residential and small non-residential retail access markets in New York State, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-M-0476SA1)

NOTICE OF ADOPTION

Approving a Tax Refund to be Allocated Between Customers and Shareholders

I.D. No. PSC-51-12-00006-A

Filing Date: 2014-02-24

Effective Date: 2014-02-24

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

Action taken: On 2/20/14, the PSC adopted the terms of a joint proposal allocating a tax refund of about \$2.17 million received by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) from the NYS Department of Taxation & Finance.

Statutory authority: Public Service Law, sections 2, 5, 65 and 113(2)

Subject: Approving a tax refund to be allocated between customers and shareholders.

Purpose: To approving a tax refund to be allocated between customers and shareholders.

Substance of final rule: The Commission, on February 20, 2014, adopted the terms of a joint proposal that would allocate between customers and shareholders, a state sales tax refund of about \$2.7 million obtained by Niagara Mohawk Power Corporation d/b/a National Grid from the New York State Department of Taxation and Finance, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-M-0447SA1)

NOTICE OF ADOPTION

Approving Exclusions in Consolidated Edison Company of New York, Inc.'s 2012 Reliability Performance Report

I.D. No. PSC-18-13-00010-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order accepting the exclusions contained in Consolidated Edison Company of New York, Inc.'s Report on 2012 Performance under the Electric Service Reliability Performance Mechanism.

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

Subject: Approving exclusions in Consolidated Edison Company of New York, Inc.'s 2012 Reliability Performance Report.

Purpose: To approve exclusions in Consolidated Edison Company of New York, Inc.'s 2012 Reliability Performance Report.

Substance of final rule: The Commission, on February 20, 2014, adopted an order accepting the exclusions requested in Consolidated Edison Company of New York, Inc.'s Report on 2012 Performance under Electric Service Reliability Performance Mechanism, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(09-E-0428SA6)

NOTICE OF ADOPTION

Denying Terpening's Petition Regarding National Grid's Practices and Waiver of Certain Fees

I.D. No. PSC-26-13-00008-A

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order denying the petition of Terpening Trucking Company, Inc. (Terpening) to waive fees associated with disconnection of electric service.

Statutory authority: Public Service Law, section 65

Subject: Denying Terpening's petition regarding National Grid's practices and waiver of certain fees.

Purpose: To deny Terpening's petition regarding National Grid's practices and waiver of certain fees.

Substance of final rule: The Commission, on February 20, 2014, adopted an order denying the petition of Terpening Trucking Company, Inc. to waive fees and allowed National Grid to charge the company for the cost of removing the electric distribution facilities, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0239SA1)

NOTICE OF ADOPTION

Allowing KEDLI's Tariff Amendments to Go Into Effect

I.D. No. PSC-28-13-00018-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) amendments to PSC No. 1—Gas, to go into effect.

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

Subject: Allowing KEDLI's tariff amendments to go into effect.

Purpose: To allow KEDLI's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing KeySpan Gas East Corporation d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 1—Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0274SA1)

NOTICE OF ADOPTION

Allowing KEDNY's Tariff Amendments to Go Into Effect

I.D. No. PSC-28-13-00019-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) amendments to PSC No. 12—Gas, to go into effect.

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

Subject: Allowing KEDNY's tariff amendments to go into effect.

Purpose: To allow KEDNY's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing The Brooklyn Union Gas Company d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 12—Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0275SA1)

NOTICE OF ADOPTION

Allowing NMPC's Tariff Amendments to Go Into Effect

I.D. No. PSC-28-13-00020-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) amendments to PSC No. 219 — Gas, to go into effect.

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

Subject: Allowing NMPC's tariff amendments to go into effect.

Purpose: To allow NMPC's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted

an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 219 — Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0276SA1)

NOTICE OF ADOPTION

Authorizing Con Edison to Implement Its Electric Rate Plan

I.D. No. PSC-29-13-00018-A

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. (Con Edison) to implement its electric rate plan.

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

Subject: Authorizing Con Edison to implement its electric rate plan.

Purpose: To authorize Con Edison to implement its electric rate plan.

Substance of final rule: The Commission, on February 20, 2014, adopted the terms of a joint proposal, with modifications, regarding Consolidated Edison Company of New York, Inc.'s electric rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0030SA2)

NOTICE OF ADOPTION

Authorizing Con Edison to Implement Its Gas Rate Plan

I.D. No. PSC-29-13-00019-A

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. (Con Edison) to implement its gas rate plan.

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

Subject: Authorizing Con Edison to implement its gas rate plan.

Purpose: To authorize Con Edison to implement its gas rate plan.

Substance of final rule: The Commission, on February 20, 2014, adopted the terms of a joint proposal, with modifications, regarding Consolidated Edison Company of New York, Inc.'s gas rate plan, subject to the terms and conditions set forth in the order.

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

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

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

Assessment of Public Comment

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

(13-G-0031SA2)

NOTICE OF ADOPTION

Authorizing Con Edison to Implement Its Steam Rate Plan

I.D. No. PSC-29-13-00021-A

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order authorizing Consolidated Edison Company of New York, Inc. (Con Edison) to implement its steam rate plan.

Statutory authority: Public Service Law, sections 5, 79 and 80

Subject: Authorizing Con Edison to implement its steam rate plan.

Purpose: To authorize Con Edison to implement its steam rate plan.

Substance of final rule: The Commission, on February 20, 2014, adopted the terms of a joint proposal, with modifications, regarding Consolidated Edison Company of New York, Inc.'s steam rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-S-0032SA2)

NOTICE OF ADOPTION

Granting the Joint Petition of UWW and Port Chester

I.D. No. PSC-32-13-00011-A

Filing Date: 2014-02-25

Effective Date: 2014-02-25

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

Action taken: On 2/20/14, the PSC adopted an order granting a joint petition authorizing United Water Westchester, Inc. (UWW) and Village of Port Chester (Port Chester) to use utility assets and customer usage information for non-regulated purpose.

Statutory authority: Public Service Law, sections 8 and 17

Subject: Granting the joint petition of UWW and Port Chester.

Purpose: To grant the joint petition of UWW and Port Chester.

Substance of final rule: The Commission, on February 20, 2014, adopted an order granting the joint petition of United Water Westchester, Inc. and Village of Port Chester to use utility assets to calculate, bill and collect sewer system charges for the Port Chester Sewer District, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-W-0312SA1)

NOTICE OF ADOPTION**Granting the Enclave a Limited Waiver of National Grid's Rules for Retaining a Letter of Credit Deposit for Construction Costs**

I.D. No. PSC-42-13-00011-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order granting The Enclave at Malta, LLC (the Enclave) a limited waiver of Niagara Mohawk d/b/a National Grid's (National Grid) tariff rule 16.6 in PSC 220.

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

Subject: Granting the Enclave a limited waiver of National Grid's rules for retaining a letter of credit deposit for construction costs.

Purpose: To grant the Enclave a limited waiver of National Grid's rules for retaining a letter of credit deposit for construction costs.

Substance of final rule: The Commission, on February 20, 2014, adopted an order granting The Enclave at Malta, LLC a limited waiver of Niagara Mohawk Power Corporation d/b/a National Grid's requirements for retaining a letter of credit deposit on the costs of construction utility facilities, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-G-0443SA1)

NOTICE OF ADOPTION**Resolving Con Edison's Petition for Rehearing**

I.D. No. PSC-42-13-00012-A

Filing Date: 2014-02-21

Effective Date: 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order resolving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition for rehearing seeking authority to recover certain PJM Open Access Transmission Tariff charges.

Statutory authority: Public Service Law, sections 5, 22, 66(1), (2), (9), (12)(a), 72-a and 113

Subject: Resolving Con Edison's petition for rehearing.

Purpose: To resolve Con Edison's petition for rehearing.

Substance of final rule: The Commission, on February 20, 2014, adopted an order resolving Consolidated Edison Company of New York, Inc.'s (Con Edison) petition for rehearing seeking authority to recover certain PJM Open Access Transmission Tariff charges by allowing Con Edison to recover such costs incurred after the expiration of the 2010 Electric Rate Plan, and by allocating the cost recovery between the NYPA class and the standard service classes, subject to the terms and conditions set forth in the order.

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

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-E-0428SA7)

NOTICE OF ADOPTION**Allowing KEDLI's Tariff Amendments to Go Into Effect**

I.D. No. PSC-43-13-00014-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) amendments to PSC No. 1—Gas, to go into effect.

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

Subject: Allowing KEDLI's tariff amendments to go into effect.

Purpose: To allow KEDLI's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing KeySpan Gas East Corporation d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 1—Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(13-G-0274SA2)

NOTICE OF ADOPTION**Allowing KEDNY's Tariff Amendments to Go Into Effect**

I.D. No. PSC-43-13-00017-A

Filing Date: 2014-02-20

Effective Date: 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) amendments to PSC No. 12 — Gas, to go into effect.

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

Subject: Allowing KEDNY's tariff amendments to go into effect.

Purpose: To allow KEDNY's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing The Brooklyn Union Gas Company d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 12 — Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0275SA2)

NOTICE OF ADOPTION**Allowing NMPC's Tariff Amendments to Go Into Effect****I.D. No.** PSC-43-13-00018-A**Filing Date:** 2014-02-20**Effective Date:** 2014-02-20

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

Action taken: On 2/20/14, the PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) amendments to PSC No. 219 — Gas, to go into effect.

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

Subject: Allowing NMPC's tariff amendments to go into effect.

Purpose: To allow NMPC's tariff amendments to go into effect.

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendments to revise the method of gas supplier, pipeline transporter and storage provider refunds to customers, contained in its tariff schedule, PSC No. 219 — Gas, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0276SA2)

NOTICE OF ADOPTION**Approving a Tax Refund to be Allocated between Customers and Shareholders****I.D. No.** PSC-44-13-00006-A**Filing Date:** 2014-02-21**Effective Date:** 2014-02-21

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

Action taken: On 2/20/14, the PSC adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Edison) to allocate between customers and shareholders a \$140 million property tax refund.

Statutory authority: Public Service Law, section 113(2)

Subject: Approving a tax refund to be allocated between customers and shareholders.

Purpose: To approve a tax refund to be allocated between customers and shareholders.

Substance of final rule: The Commission, on February 20, 2014, adopted an order to apportion a \$140 million property tax refund with 14% being allocated to Consolidated Edison Company of New York, Inc. (Con Edison) as an incentive to achieve property tax reductions and 86% being allocated to benefit Con Edison's electric and steam ratepayers, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-M-0376SA1)

NOTICE OF ADOPTION**Approving Central Hudson's Waiver Requests****I.D. No.** PSC-48-13-00003-A**Filing Date:** 2014-02-25**Effective Date:** 2014-02-25

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

Action taken: On 2/20/14, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) waiver requests of certain regulatory requirements.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Approving Central Hudson's waiver requests.

Purpose: To approve Central Hudson's waiver requests.

Substance of final rule: The Commission, on February 20, 2014, adopted an order approving Central Hudson Gas & Electric Corporation's request to waive certain requirements for the content of an application for authority to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-T-0469SA1)

NOTICE OF ADOPTION**Allowing Niagara Mohawk's Tariff Amendments to Go Into Effect****I.D. No.** PSC-49-13-00007-A**Filing Date:** 2014-02-24**Effective Date:** 2014-02-24

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

Action taken: On 2/20/14, 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(12)

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

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

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's tariff amendments contained in its tariff schedule, PSC No. 220 — Electricity, to add clarifying language to the underground residential distribution provisions, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0516SA1)

NOTICE OF ADOPTION

Allowing Central Hudson's Tariff Amendments to Go Into Effect

I.D. No. PSC-50-13-00006-A

Filing Date: 2014-02-24

Effective Date: 2014-02-24

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

Action taken: On 2/20/14, the PSC adopted an order allowing Central Hudson Gas & Electric Corporation's (Central Hudson) amendments to PSC No. 12 — Gas, to go into effect.

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

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

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

Substance of final rule: The Commission, on February 20, 2014, adopted an order allowing Central Hudson Gas & Electric Corporation's tariff amendments contained in its tariff schedule, PSC No. 12 — Gas, to revise the Service Classification No. 11 Firm Transportation – Core Maximum Daily Quantity Provision, to go into effect, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-G-0531SA1)

NOTICE OF ADOPTION

Approving NYSRC's Installed Reserve Margin for the 2014-2015 Capability Year

I.D. No. PSC-52-13-00010-A

Filing Date: 2014-02-24

Effective Date: 2014-02-24

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

Action taken: On 2/20/14, the PSC adopted an order approving an Installed Reserve Margin of 17.0% by the New York Reliability Council (NYSRC) for the Capability Year beginning May 1, 2014 and ending April 30, 2015.

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

Subject: Approving NYSRC's Installed Reserve Margin for the 2014-2015 Capability Year.

Purpose: To approve NYSRC's Installed Reserve Margin for the 2014-2015 Capability Year.

Substance of final rule: The Commission, on February 20, 2014, adopted an order approving an Installed Reserve Margin of 17.0% for the New York Control Area for the Capability Year beginning May 1, 2014 and ending April 30, 2015, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-E-0088SA8)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Retail Access Program Collaborative Report

I.D. No. PSC-10-14-00005-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the proposed recommendations from the Retail Access Program Collaborative Report filed by The Brooklyn Union Gas Company and KeySpan Gas East Corporation.

Statutory authority: Public Service Law, section 66

Subject: Retail Access Program Collaborative Report.

Purpose: To approve or reject, in whole or in part, the proposed recommendations from the Retail Access Program Collaborative Report.

Substance of proposed rule: The Commission is considering whether to grant, deny or clarify, in whole or in part, the recommendations in the Retail Access Program Collaborative filed by The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation regarding the: (a) Expansion of Portfolio Assets to Energy Service Companies (ESCOs); (b) Proposed Allocation of Assets; (c) ESCO Delivery Requirements; (d) Nominations; (e) Peaking Supply; (f) Balancing; and (g) Customer Profile.

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.

(06-G-1185SP14)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Actions to Facilitate the Availability of ESCO Value-Added Offerings, ESCO Eligibility and ESCO Compliance

I.D. No. PSC-10-14-00006-P

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

Proposed Action: The Commission is considering taking actions to facilitate the availability of ESCO value-added product and service offerings. The Commission is also considering changes to ESCO eligibility and to ensure ESCO compliance with Commission requirements.

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

Subject: Actions to facilitate the availability of ESCO value-added offerings, ESCO eligibility and ESCO compliance.

Purpose: To facilitate ESCO value-added offerings and to make changes to ESCO eligibility and to ensure ESCO compliance.

Substance of proposed rule: On February 25, 2014, the Public Service Commission issued an Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets in Cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. Among other things, that Order posed a number of questions designed to identify additional actions that could facilitate the development of value-added product and service offerings for residential and small non-residential electric and natural gas customers. The Order also raised additional questions regarding changes to ESCO eligibility and to ensure ESCO compliance with Commission requirements. The Commission directed the Secretary to issue a notice seeking comment on these questions. That Notice was issued on February 25, 2014. The Commission is considering whether to take actions to facil-

itate the development of value-added products and service offerings for residential and small non-residential electric and natural gas customers, as well as make changes to its ESCO eligibility process and to ensure ESCO compliance with Commission requirements. The Commission may also address related matters.

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

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

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

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

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

(12-M-0476SP2)

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

Increase of Gas Transportation Rate Credit

I.D. No. PSC-10-14-00007-P

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

Proposed Action: The Commission is considering whether to approve or reject, in whole or in part, Central Hudson Gas and Electric Corporation's request to increase the unit rate credit provided to the United States Military Academy for use of its gas distribution system.

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

Subject: Increase of gas transportation rate credit.

Purpose: To increase the unit rate credit provided for the transportation of natural gas.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, Central Hudson Gas and Electric Corporation's (the Company) request to increase the unit rate credit provided by the Company to the United States Military Academy at West Point (USMA) for its use of the USMA natural gas distribution system. The Company also seeks authority to defer for future recovery the lost delivery revenues associated with the USMA.

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-G-0062SP1)

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

Whether and the Extent to Which NYSEG's Purchase and Use of Compressed Natural Gas (CNG) Is Subject to 16 NYCRR Part 255

I.D. No. PSC-10-14-00008-P

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

Proposed Action: The Public Service Commission will decide whether to grant, deny, or modify New York State Gas & Electric Corporation's (NYSEG) Petition for Declaratory Ruling.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Whether and the extent to which NYSEG's purchase and use of Compressed Natural Gas (CNG) is subject to 16 NYCRR Part 255.

Purpose: To determine the application of 16 NYCRR Part 255 to a utility's purchase and use of CNG.

Substance of proposed rule: The Commission is considering whether to grant, deny, or modify the request for a Declaratory Ruling from New York State Gas & Electric Corporation (NYSEG) that 16 NYCRR Part 255 does not apply to NYSEG's purchase of Compressed Natural Gas (CNG) from a third-party CNG supplier and that 16 NYCRR Part 255 does apply to NYSEG's provision of that CNG to its customers. The Commission shall consider all related matters contained in the filing.

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-G-0019SP1)

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

Water Rates and Charges

I.D. No. PSC-10-14-00009-P

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

Proposed Action: The Public Service Commission is considering a tariff filing by West Valley Crystal Water Company, Inc., requesting approval to increase its annual revenues by approximately \$119,435 or 171.3% in P.S.C. No. 3—Water, to become effective July 1, 2014.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by approximately \$119,435 or 171.3%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by West Valley Crystal Water Company, Inc. (Company), requesting approval to increase its annual revenues by approximately \$119,435 or 171.3% to P.S.C. No. 3—Water. The Company is also requesting to change from semi-annual billing to quarterly billing. The proposed filing has an effective date of July 1, 2014.

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

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

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

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

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

(14-W-0070SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Real Estate Broker Record Retention

I.D. No. DOS-10-14-00004-P

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

Proposed Action: Amendment of section 175.23 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k(1)

Subject: Real estate broker record retention.

Purpose: To update an existing regulation which requires real estate brokers to retain certain business records.

Text of proposed rule: § 175.23 Records of transactions to be maintained

(a) Each licensed broker shall keep and maintain for a period of three years, *paper and/or electronic* records of each transaction effected through his or her office concerning the sale [or mortgage] of one- to four-family dwellings. *In some transactions, the broker may not be provided a copy of the document required. In such instances, the broker will not be found to have violated this regulation if said document is not kept and maintained. Records to be kept and maintained shall contain:*

(1) the names and addresses of the seller[,] and the buyer, [mortgagee, if any,] (2) the broker prepared purchase contract or binder, or if the purchase contract is not prepared by the broker, then the purchase price [and resale price, if any,] and the amount of deposit (if collected by broker) [paid on contract], (3) the amount of commission paid to broker, (4) [or g] the gross profit realized by the broker if purchased by him or her for resale, [expenses of procuring the mortgage loan, if any, the net commission or net profit realized by the broker showing the disposition of all payments made by the broker. In lieu thereof each broker shall keep and maintain, in connection with each such transaction a copy of (1) contract of sale, (2) commission agreement, (3) closing statement, (4) statement showing disposition of proceeds of mortgage loan.] (5) any document required under Article 12-A of the Real Property Law and (6) the listing agreement or commission agreement or buyer-broker agreement.

(b) Each licensed broker engaged in the business of soliciting and granting mortgage loans to purchasers of one to four family dwellings shall keep and maintain for a period of three years, a record of the name of the applicant, the amount of the mortgage loan, the closing statement with the disposition of the mortgage proceeds, a copy of the verification of employment and financial status of the applicant, a copy of the inspection and compliance report with the Baker Law requirements of FHA with the name of the inspector. Such records shall be available to the Department of State at all times upon request.]

Text of proposed rule and any required statements and analyses may be obtained from: Whitney Clark, NYS Department of State, Office of Counsel, 1 Commerce Plaza, 99 Washington Avenue, Albany NY 12231, (518) 473-2728, email: whitney.clark@dos.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

RPL § 442-k(1) authorizes the New York State Department of State to promulgate regulations regarding records of transactions to be maintained by real estate brokers. To fulfill this purpose, the Department of State has issued rules and regulations which are found at Part 175 of Title 19 NYCRR and is proposing this rule.

2. Legislative objectives:

Article 12-A of the Real Property Law protects consumers by ensuring competency of real estate brokers and salespeople. In addition to the licensing requirement imposed by Article 12-A of the Real Property Law, the statute imposes professional education, examination and other requirements. 19 NYCRR 175.23 was adopted pursuant to Real Property Law section 442-k(1) which authorizes the Department of State to promulgate regulations regarding records of transactions to be maintained by real estate brokers. This regulation furthers the legislative objective of consumer protection by ensuring the real estate brokers retain necessary transaction records.

3. Needs and benefits:

19 NYCRR 175.23 currently requires real estate brokers to retain certain transaction records for a period of three years. The Department of State has received complaints from the industry that the regulation no longer accurately reflects transaction records which real estate brokers create, use or are given access. The Department of State has also received numerous inquiries regarding whether transaction records may be retained electronically. To provide necessary clarification and update 19 NYCRR 175.23 to better reflect transaction records which must be retained, the Department of State is proposing the instant rule.

The rule would permit real estate brokers to retain records electronically and create a "safe harbor" provision whereby real estate brokers would not be sanctioned by the Department of State for violating the regulation if they were not provided with a copy of the document as part of the transaction. Insofar as brokers who participate in residential mortgage transactions are also regulated by the Department of Financial Services and required by that agency to retain certain business records, the existing Department of State requirement is being eliminated. Finally, the rule is being amended to better reflect records commonly retained in real estate broker files.

4. Costs:

a. Costs to regulated parties:

Because real estate brokers are already required to retain certain transaction records for a period of three years, the Department of State does not anticipate that the proposed rule will impose any new costs upon real estate brokers.

b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to implement the rule. Existing staff will handle answering questions about the new recordkeeping requirements and existing enforcement staff will investigate and enforce compliance with the proposed rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

19 NYCRR 175.23 currently requires real estate brokers to retain certain transaction records for a period of three years. The proposed rule will continue this requirement while making amendments to the existing regulation to better reflect transactions records which real estate brokers create, use and have access to and have the ability to retain.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

In preparing this proposed rule making, the Department of State worked closely with the New York State Board of Real Estate to consider alternatives. The Department of State contemplated not proposing the instant rule making. It was determined, however, that the existing regulation no longer accurately reflects records which brokers create, use and have access to, and duplicate recordkeeping regulations of other state agencies. The Department of State also considered making the rule effective immediately upon adoption yet ultimately determined that a delayed effective date would provide adequate time to notify and educate licensees about the new requirements and afford the Department of State sufficient time to modify its existing procedures so as to implement and enforce the rule.

9. Federal standards:

There are no federal standards requiring real estate brokers to retain transaction records.

10. Compliance schedule:

The rule will be effective 90 days following publication of the Notice of Adoption in the State Register. adoption to afford sufficient time to notify and educate licensees on the new recordkeeping requirements.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to licensed real estate brokers. The Department of State (the "Department") currently licenses 52,403 real estate brokers, many of whom operate small businesses.

The rule does not apply to local governments.

2. Compliance requirements:

19 NYCRR 175.23 currently requires real estate brokers to retain certain transaction records for a period of three years. The proposed rule making amends this regulation to better reflect transaction records which real estate brokers create, use and have access to and that should be retained as a record of the transaction.

3. Professional services:

Real estate brokers will not need to rely on professional services to comply with the requirements of the proposed rule. The records required to be retained by the rule are standard transaction records which real estate brokers use, create or are given access to as part of a real estate transaction.

4. Compliance costs:

Because real estate brokers are already required to retain certain transaction records for a period of three years, the Department of State does not anticipate that the proposed rule making will impose any new costs upon real estate brokers.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with the proposed rule. 19 NYCRR 175.23 already imposes a record keeping requirement on real estate brokers. The proposed rule making amends the regulation to better reflect records which brokers create, use and have access to and should retain as a record of the transaction. As such, the requirements imposed by the proposed rule making will not significantly increase the costs of doing business.

It will also be technologically feasible for small businesses to comply with the proposed rule. Real estate brokers, including those working for small businesses, will not have to rely on special technology to conform their business practices with the requirements of the proposed rule.

6. Minimizing adverse economic impact:

The Department of State has not identified any adverse economic impact of this rule.

19 NYCRR 175.23 already imposes a record keeping requirement on real estate brokers. The proposed rule making amends the regulation to better reflect records which brokers create, use and have access to and should retain as a record of the transaction. As such, there should be no cost associated with retaining the records. The proposed rule making clarifies that records may also be retained in electronic form. As such, the storage costs associated with the record retention requirement should be minimal.

7. Small business participation:

Prior to proposing the rule, the Department of State published a copy of the proposed text on its website. No comments were received. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to small businesses. Additional comments will be received and entertained by the Department during the formal public comment period indicated in this Notice of Proposed Rule Making.

8. Compliance:

The rule will be effective ninety (90) days following adoption.

9. Cure period:

The Department of State is not providing for a cure period prior to enforcement of these regulations. The proposed rule will be effective ninety (90) days following publication of the Notice of Adoption in the State Register. Prior to proposing this rule, the Department notified regulated parties about the new requirements. As such, licensees have been given adequate notice of the proposed regulation and sufficient time within which to amend their businesses practices so as to comply with the requirements of the proposed rule.

Rural Area Flexibility Analysis

1. Effect of the rule:

The rule will apply to licensed real estate brokers. The Department of State currently licenses 52,403 real estate brokers, some of whom work in rural areas.

2. Compliance requirements:

19 NYCRR 175.23 currently requires real estate brokers to retain certain transaction records for a period of three years. The proposed rule making amends this regulation to better reflect transaction records real estate brokers create, use and have access to and that should be retained as a record of the transaction.

3. Professional services:

Real estate brokers will not need to rely on professional services to comply with the requirements of the proposed rule. The records required to be retained by the rule are standard transaction records which real estate brokers either create or are given access to as part of a real estate transaction.

4. Compliance costs:

Because real estate brokers are already required to retain certain transaction records for a period of three years, the Department of State does not anticipate that the proposed rule will impose any new costs upon real estate brokers.

5. Minimizing adverse economic impacts:

The Department of State has not identified any adverse economic impact of this rule.

19 NYCRR 175.23 already imposes a record keeping requirement on real estate brokers. The proposed rule making amends the regulation to better reflect records brokers create, use and have access to and that they should retain as a record of the transaction. As such, there should be no cost associated with retaining the records. The proposed rule making clarifies that records may also be retained in electronic form. As such, the stor-

age costs associated with the record retention requirement should be minimal.

6. Rural area participation:

Prior to proposing the rule, the Department of State published a copy of the proposed text on its website. No comments were received. The Department of State will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to appraisers located in rural areas. Additional comments will be received and entertained by the Department.

Job Impact Statement

1. Impact of the rule:

The rule will impact real estate brokers.

The Department of State has not identified any adverse impact of this rule on jobs and employment opportunities. 19 NYCRR 175.23 currently requires real estate brokers to retain certain transaction records for a period of three years. The proposed rule making merely amends the regulation to better reflect records real estate brokers create, use and have access to and clarifies that transaction records may be retained electronically.

2. Categories and numbers affected:

The rule will apply to licensed real estate brokers. Currently, the Department of State (the "Department") licenses 52,403 real estate brokers.

3. Regions of adverse impact:

The Department has not identified any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities. Real estate brokers work in all areas of the state. However, the compliance requirements imposed by the rule are minor and should not result in job loss or the inhibition of job creation in any region.

4. Minimizing adverse impact:

The Department has not identified any adverse impacts of this rule on employment or employment opportunities. The compliance requirements of the rule are minimal and should not result in a loss of jobs or impede the creation of new employment opportunities. The proposed rule making also clarifies that transaction records may be retained electronically, thereby potentially reducing expenses associated with storing transaction records.

So as to provide adequate time for licensees to bring themselves into compliance with the rule requirements, the Department of State will not make it effective until ninety days following publication of the Notice of Adoption in the State Register.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Campus Traffic Regulations

I.D. No. SUN-10-14-00003-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 566 of Title 8 NYCRR.

Statutory authority: Education Law, sections 360(1) and 362

Subject: Campus traffic regulations.

Purpose: Modification of existing campus traffic and parking regulations.

Text of proposed rule: PART 566

STATE UNIVERSITY AT BINGHAMTON

§ 566.0 Traffic regulations on State-operated campuses.

(a) The New York State Education Law authorizes the State University to adopt and make applicable to its campuses any and all provisions of the Vehicle and Traffic Law. Further, the university may develop its own rules to cover special campus circumstances.

(b) [The new legislation provides that] Any violations of any [such] statute or rule shall be punishable as provided in the adopted provisions. That is, a campus-created rule might be administered by the institution itself. Violations of provisions of the Vehicle and Traffic Law made applicable to the campus would be adjudicated by the magistrates' court having territorial jurisdiction over the campus and/or personal jurisdiction over the defendant.

§ 566.1 University regulations.

Subdivision 1 (c) of section 362 of the Education Law empowers the university to develop its own rules regarding traffic and parking not incon-

sistent with the Vehicle and Traffic Law. These may include the assessment of an administrative fine upon the owner or operator of vehicles for each infraction *and may result in the ban of parking privileges on campus.* Violation of university regulations is prejudicial to the common interest of all who operate motor vehicles on the campus and may result in fines or in the loss of parking privileges *on campus.* These rules and regulations replace all prior orders which established traffic regulations on the grounds of State University of New York at Binghamton, Town of Vestal, Broome County.

§ 566.2 Application of regulations.

The rules and regulations adopted and promulgated by the State University at Binghamton council and set forth in this Part are effective throughout the year, from September 1st to August 31st, including all recess and intersession periods. They apply to students, employees, faculty and staff of the university, and all other persons who operate or park or whose vehicles are operated or parked at any time on the grounds of the university, including visitors, officers and employees of other agencies whose vehicles are operated and parked regularly on the grounds of the university. The Vehicle and Traffic Law shall apply upon such premises notwithstanding any references in such law to public highways, streets, roads or sidewalks. No person shall drive a vehicle on university streets, roads or highways at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, but in no event shall a person drive a vehicle in excess of 20 miles per hour unless a different speed is authorized and indicated by the university.

§ 566.3 Campus registration of motor vehicles.

(a) No vehicle may be operated or parked on the grounds of the university without a valid State registration and without displaying a current campus vehicle registration permit, as provided in this section, and upon payment of an annual vehicle registration fee as approved by the [chancellor or his designee] university, unless the vehicle is not subject to such regulations.

(b) Prerequisites for registration.

(1) The applicant must be legally qualified to operate a motor vehicle in New York State.

(2) The vehicle must be registered and inspected in New York State or in some other state or jurisdiction that qualifies it for legal operation in the State of New York.

(3) The owner of the vehicle must be covered by effective public liability insurance in accordance with the minimum amounts required by New York State law. Such insurance must cover any liability incurred while the vehicle is driven either by the registrant or by someone with the registrant's explicit or implicit permission.

(4) There must be no unpaid university-imposed parking or traffic fines outstanding against the applicant or the vehicle to be registered.

(c) An applicant may register only a vehicle belonging to him or to a member of his immediate family. The term belonging shall mean owning or operating a vehicle for one's own benefit.

(d) If anyone who has registered a vehicle acquires an additional or different vehicle, he must register it within 48 hours of its acquisition. If a new license plate number is obtained for any vehicle, the [Public Safety] Parking Services Office must be notified within five days of the new license plate number being displayed.

(e) Vehicle registration permits must be permanently and entirely affixed and displayed when they are issued and as the university indicates. The person to whom a permit is issued is responsible for any parking violations of the vehicle. Taping and other temporary adhesion is not permitted. If the vehicle is sold or if student and/or employee status within the university is terminated, it is the owner's responsibility to remove the permit.

(f) Faculty and staff vehicles. Upon completion of the vehicle registration form and payment of the required fees, a vehicle registration permit is issued to faculty members and employees of the university, including but not limited to the affiliates of the Research Foundation, SUNY Foundation and those companies contracted to provide food, bookstore, vending and child care services who have fulfilled the conditions set forth in this subdivision. *Parking fees, as approved by the university, shall be charged for motor vehicles parked within designated lots, consistent with applicable collective bargaining agreements and in accordance with guidelines established by the university. Such guidelines shall provide that the determination of the amount of the fee be based substantially on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by Binghamton University.*

(g) Student vehicles. All students are required to register motor vehicles annually with the university and must do so within the time designated for

academic registration at the beginning of the fall term. Students who enter the university at the beginning of the spring or summer term must obtain a campus vehicle registration permit upon entering. Students who re-enter the university after a period of absence must obtain a campus vehicle registration permit upon re-entering. Students who do not own, maintain or operate motor vehicles that must be registered for a campus vehicle registration permit at one of these times, but who later acquire a vehicle or otherwise become subject to campus registration requirements, must complete their vehicle registration within 48 hours after becoming so subject. Freshmen who reside in university residence halls are not permitted to register or park a vehicle on campus *without permission given by the Parking Services Director.*

(h) *Any honorably discharged veteran in attendance as a student at the university shall be exempt from parking fees. Registration fees still apply. He/she must be enrolled in courses for the current semester and present a DD-214.*

(i) Temporary registration permits, not to exceed three times per year [three-day registration permits] may be obtained [24 hours a day] at the [Public Safety] Parking Services Office, Information Booth or University Police Department dispatch office [free of charge].

(j) Fees. Vehicle registration permits will be provided only after the appropriate fee, as approved by the [Chancellor or designee] university, has been paid. This fee is applicable to all permits issued during the year September 1st to August 31st by the [University Traffic Bureau] Parking Services Office. There will be [is] a fee for any replacement permit.

§ 566.4 Visitors.

(a) A visitor is any individual other than a student, an employee of SUNY- Binghamton, the Research Foundation, or [the] SUNY Foundation; or

(b) [t]Those companies contracted to provide food, bookstore, vending and child care services *and who operate their vehicles on a regular basis, must obtain service, registration and parking permits.*

[(b)] (c) Representatives of business firms and service companies who operate their vehicles on campus on a regular basis must obtain service, registration and parking permits.

[(c)] (d) No cars will be allowed to enter the campus between the hours of 12 midnight and 5 a.m. without a current campus vehicle registration permit and/or parking permit. A permit may be picked up at the information booth on Bartle Drive between 12 midnight and 5 a.m.

[(d)] (e) Visitor parking may be restricted to specific lots as determined by the [chancellor or designee] university. Any visitor who parks a vehicle on campus must make proper reimbursement to the university at a rate as approved by the chief administrative officer or designee.

§ 566.5 Parking regulations.

(a) Vehicles may be parked on the campus only when displaying a current university parking permit, as provided in these rules and regulations and on payment of a university parking fee, approved as to amount, by [the Chancellor, or a designee] university, unless the vehicle is not subject to such regulations and, if parked, is in a paid lot, at parking meters or in the parking garage.

(b) No vehicle shall be abandoned on any portion of the grounds or properties of the university.

(c) Vehicular living quarters shall not be parked on any grounds or properties of the university at any time without the permission of the [Director of Public Safety] Parking Services Director or a designee.

(d) Parking in the following places is prohibited at all times: on a sidewalk or crosswalk, on the grass or lawn, in front of a driveway, doorway or steps, within an intersection, on the roadway side of any vehicle which is stopped or parked at the edge or curb of a street or roadway whether it is parallel or at an angle to the curb or edge, in all areas which are marked restricted, and in all service driveways, loading zones and associated turn-around areas unless special arrangement has been made through the [Public Safety] Parking Services Office. Parking is prohibited outside the confines of any specifically lined or designated space in the parking lot. Parking is not permitted at any area designated by yellow curbs and/or yellow diagonal hash marks on the pavement. Also, no person shall park his vehicle on the grounds of the university in such a manner as to interfere with the use of a fire hydrant, fire lane designated by yellow curb and/or permanent markings, or other emergency zone, create any other hazard, or unreasonably interfere with the free and proper use of the roadway.

(e) University parking permits must be displayed as the university indicates in vehicles parked on campus. The person to whom a parking permit is issued is responsible for any parking violations attributed to the parking permit. There is a fee for any replacement parking permit. Ownership of the parking permit is not transferable.

(f) Special parking zones.

[(1) Library service area. This lot is reserved at all times.]

[(2)] (1) Infirmary lot. This lot is reserved at all times for emergency vehicles, patients and physicians employed by the health service.

[(2[3]) Visitors' and Event parking. Visitor/Event parking may be restricted to specific lots as determined by the [chief administrative officer] Parking Services Director or designee.

[(3[4]) Motorcycle and moped parking. *Motorcycle parking is designated by clear signage and located in various lots on campus.* [The sidewalk on the northeast side of the University Union facing the quadrangle, designated areas in loading dock of the Engineering Building and Administration Building, and a section in front of Gym West have been set aside for motorcycle and moped parking.]

[(4[5]) A special paid parking lot is located south of the Main Library and West Drive. No person may park a vehicle in the paid lot without making proper reimbursement to the university at a rate as approved by the [Chancellor, or designee] university.

(i) [The lot,] *This is a snow lot, there is no parking 1:00 a.m. to 6:00 a.m.* [is open 7:30 a.m. to 12 midnight Monday through Sunday. No parking 12 midnight to 7:30 a.m. Monday through Sunday, all year]

[(6[5]) The [Administration, Fine Arts East and West lots, Gym East lot and parking garage may be reserved for patrons after 5 p.m. on the evenings of the Fine Arts performances] *following lots are reserved for commuters only Monday through Friday, 6:00 a.m. to 5:00 p.m. No overnight parking in these lots 1:00 a.m. to 6:00 a.m. daily: Lot B, C, D, E, F3, L, O3, O4, P, Q1, Q2, U and UDC Lot.*

(i) UDC lot is restricted to those attending University Downtown Center classes or research area only.

[(6[7]) The following parking lots are *snow removal lots. No parking 1:00 a.m. to 6:00 a.m. November 15-March 30: Lot A, B, C,D, E, F, F1, F2, F3 G, J, K, L, MO, M2, M3, M4, M5, O3, O4, P, Q1, Q2, U, V, Y2, Z, Ad Circle, Paid Lot and Library Tower.* [reserved for commuters only Monday through Friday, 6 a.m. to 5 p.m. No overnight parking in these lots 1 a.m. to 6 a.m. daily: Rafuse, Fine Arts East, Fine Arts West, Cleveland, College-in-the- Woods North, College-in-the-Woods East, Delaware Hall, Johnson-O'Connor, Gym East, Digman Hall.]

[(8[7]) The following parking lots are [snow removal lots. No parking 1 a.m. to 6 a.m. November 15-March 30: Administration, Rafuse, Fine Arts East, Fine Arts West, Lecture Hall, Cleveland, College-in-the-Woods North, College-in-the-Woods East, Delaware Hall, Johnson-O'Connor, Gym East, Gym West, Bunn Hill Access, West Access (north of walkway barrier), Digman Hall, Decker School of Nursing, Infirmary, Paid Visitors Lot and Library Tower.] *overnight lots. Parking is allowed overnight all year round. Lots H, I, M1, N, O1, O2, R, S1, S2, S3, T1, X, Y1, Y3, Y4, Y5, ZZ north, ZZ south and Garage.*

[(9) Administration Circle. This circle will be open for paid metered parking Monday through Friday, 7 a.m. to 5 p.m. This circle must be vacated by all vehicles between 2 a.m. and 7 a.m.]

[(8[10]) Disability parking policy.

(i) Special parking is available on campus for people with impaired mobility. Parking spaces reserved for this purpose are designated by the international access symbol painted on the ground, and/or signage labeled "disability parking." To apply for disability parking authorization on campus, an individual must contact the Services for Students with Disabilities (SSD) Office. A medical form will then be mailed from this office to the physician familiar with the applicant's condition. The SSD coordinator will review the returned medical form, in consultation with the Medical Director of the University Health Service, and approve or deny the application. Individuals whose applications are approved will receive a special permit when registering their vehicle with the [Traffic] Parking Services Office.

(ii) Short-term disabled parking permits are available from the Services for Students with Disabilities Office only.

(iii) [SUNY] Binghamton University has a two-tiered disability parking system. Individuals judged to have severe mobility handicaps are granted authorization to park in specifically designated disability parking areas at the very center of campus. Individuals judged to have moderate mobility handicaps are granted authorization to park in other nearby areas reserved for disability parking. Wheelchair spaces, clearly marked by signage are, of course, reserved only for individuals using wheelchairs.

(iv) Vehicles not displaying the appropriate *disabled* permit will be ticketed and/or towed at the owner's expense.

[(9[11]) The parking garage is located between *Couper Administration Building* and Fine Arts buildings. No person may park a vehicle in the garage without making proper reimbursement to the university as approved by the [Chancellor, or designee] university. Annual, fall, spring

and summer garage parking permits are available at [University Traffic] Parking Services Office, *Couper Administration Building, G-42, from 9:00 a.m. to 4:00 p.m. and the Information Booth, Bartle Drive, from 7:30 a.m. to 7:00 p.m. Monday-Thursday and 7:30 a.m. to 3:30 p.m. Friday* at a fee as approved by the [Chancellor, or designee] university.

[(10) *Electric vehicle charging is available for a fee only when the vehicle is properly registered to park on campus, and only at university authorized charging stations. Unauthorized charging using any other Binghamton University electric outlet is prohibited.*

(g) Fees. University parking fees as approved by the [Chancellor, or designee] university, shall be charged for motor vehicles parked within designated lots, consistent with applicable collective bargaining agreements and in accordance with guidelines established by the [Chancellor or designee] university. Such guidelines shall provide that the determination of the amount of the fee be substantially based on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by the State University at Binghamton.

(h) A complete list of campus rules and regulations consistent with the Vehicle and Traffic Law relating to parking, vehicular and pedestrian traffic, and safety is on file with the Office of the Secretary of State, the office of the clerk of the Town of Vestal, and in the office of the [Director of Public Safety] Parking Services Director. The list may be reviewed within the normal business hours of these offices.

§ 566.6 Motorcycles, mopeds, motorscooters, motorbikes [and snowmobiles].

(a) Registration. All such vehicles must be registered in the same way as is any other motor vehicle, see section 566.3 of this Part, and they are subject to the same restrictions.

(b) Licensing. The law concerning motorcycles includes motorbikes and motorscooters and provides that any New York State driver's license--whether new or renewal--issued after October 1, 1964, must have a special motorcycle endorsement if the driver operates a motorcycle or class A moped, and a valid driver's license if a class B or C moped.

(c) Enforcement. Anyone driving a motorcycle who does not have a motorcycle endorsement on their license or a class B or C moped with a valid driver's license may be arrested as an unlicensed driver. Anyone who allows the use of their motorcycle by a driver who does not have a motorcycle endorsement may be arrested for permitting unlicensed operation of the vehicle. Snowmobiles and all-terrain vehicles may not be operated on university grounds without specific permission from the [Public Safety Office] University Police Department.

§ 566.7 Enforcement and penalties.

(a) A complaint regarding any violation of the Vehicle and Traffic Law, or any traffic ordinance applicable on such premises shall be processed in accordance with the requirements of applicable law and campus rules and regulations. A violation of any section of the Vehicle and Traffic Law shall be a misdemeanor or traffic infraction as designated in such law, and shall be punishable as therein provided. Such laws adopted by State University of New York above shall be enforced in any court having jurisdiction.

(b) Violations of campus vehicle registration permits. [and university parking permit requirements.]

(1) Violations of the provisions of the university rules and regulations relating to the display of current vehicle registration permits and university parking permits which lead to a summons are subject to the following schedules of fines and penalties *as approved by the university*:

(i) No current, appropriately displayed campus vehicle registration permit [.....\$15.]

The first ticket issued for this violation will be waived if the vehicle is registered at the [Public Safety] Parking Services Office within five calendar days of issuance of the ticket.

(ii) [No current, appropriately displayed university parking permit.....\$15.]

[The first ticket issued for this violation will be waived if a parking permit is purchased at the Public Safety Office within five calendar days of issuance of the ticket.]

[(iii)] Vehicle may be towed away at owner's expense. (If a vehicle is towed to another location on Campus, a currently valid driver's license and insurance card must be checked by the [Public Safety] Parking Services Office or University Police Department before vehicle may be claimed.)

(2) Tampering with, fraudulent use of, or counterfeiting of campus vehicle registration permits [and/or parking permits,] or any other unauthorized use of permits, or obtaining a permit by giving false information:

(i) The university may rescind campus vehicle [registration permit and/or parking permit] privileges in accordance with SUNY Board of Trustees policy.

(ii) Individuals may be subject to university disciplinary action and/or arrest.

(iii) A fine in an amount approved by the [Chancellor or designee] university may be levied in conformity with section 560.3 of this Title.

(3) Those entering the campus confines between the hours of 12 midnight and 5 a.m. without a current campus vehicle registration permit [and/or parking permit] may be subject to prosecution for trespass.

(c)[d] Violations of *traffic and parking regulations* [. Violations of the provisions of this Part relating to the parking of vehicles on the grounds of the university (except violations of the New York Vehicle and Traffic Law which apply to parking) which lead to a complaint issued by the Public Safety Office and returnable as specified on the complaint, are subject to the following schedule of] fines and penalties *approved by the university and violator's vehicle may be towed or immobilized at the owner's expense.*

(1) Parking in a tow-away zone \$15

(2) Parking in a fire safety zone \$15

(3) Parking in a disabled zone \$40

(4) Parking on the grass \$15

(5) Overtime parking \$10

(6) Parking in a restricted area \$10

(7) All other violations \$10

(d) Vehicles illegally parked may be towed at owner's expense or immobilized.]

(e) Unpaid fines. The university may withhold unpaid fines from employees' pay-checks. *Parking privileges may be revoked for non-payment of outstanding fines. Unpaid fines shall be deducted from employee paychecks.* [and/or revoke parking privileges.] All unpaid and unappealed student parking violations are entered on a delinquency list eight calendar days after issuance. Grades, transcripts, and permission to register in courses may be withheld until fines are paid. All other violators may have parking privileges revoked. In all cases, a vehicular wheel [immobilized] immobilizer may be applied to render the vehicle inoperable. The wheel immobilizer will not be removed until unpaid violations and a service charge in an amount as determined by the [Chancellor or designee] university are paid.

(f) Enforcement and appeals.

(1) A complaint regarding any violation of a campus rule shall be in writing, reciting the time and place of the violation and the title, number of substance of the applicable rule.

(i) The complaint must be subscribed by the person witnessing the violation and served upon the violator or attached to the vehicle involved.

(ii) The complaint shall indicate the amount of the fine assessable for the violation, and advise that if the person charged does not dispute the violation, fines [must be] *not* paid within [seven] 30 days of receipt of violation [at the Traffic Office, G-8, in the Administration Building] *are subject to doubling.*

(iii) The complaint recites that an appeal on a disputed violation may be requested, in writing, within 30 days after service of the charges by obtaining an appeals form from the [Traffic] *Parking Services Office*, G-8, *Couper Administration Building*, or such other place as may be designated by the council. Written appeals of parking ticket(s) submitted in person to the [Public Safety] *Parking Services Office* within eight calendar days of ticket issuance will not be placed on the delinquency list unless they are disapproved by the Parking Appeals Board.

(iv) The complainant shall recite that should the alleged violator fail to appear at the time fixed for the hearing or should no hearing be requested within a 30-day period prescribed by the college council in subparagraph (iii) of this paragraph, the complaint is proved and shall warrant such action as may then be appropriate.

(2) The [chief administrative officer] *Vice President for Administration* shall designate a hearing officer or board not to exceed three persons to hear complaints for violation of campus traffic and parking regulations enforceable on campus. Such hearing officer or board shall not be bound by the rules of evidence, but may hear or receive any testimony or evidence directly relevant and material to the issues presented.

(3) At the conclusion of the hearing or not later than five days thereafter, such hearing officer or board shall file a report. A notice of the decision shall be promptly transmitted to the violator. The report shall include:

(i) T[he name and address of the alleged violator;

(ii) [the] *The* time and place when the complaint was issued;

(iii) [the] *The* campus rule violated;

(iv) [a] *A* concise statement of the facts established on the hearing based upon the testimony or other evidence offered;

(v) [the] *The* time and place of the hearing;

(vi) [the] *The* names of all witnesses;

(vii) [each] *Each* adjournment, stating upon whose application and to what time and place it was made;

(viii) [the] *The* decision (guilty or not guilty) approved or disapproved of the hearing officer or board.

(g) Freshmen who reside in university residence halls and who illegally park a vehicle on campus may be fined in an amount approved by the university [Chancellor or designee in conformity with section 560.3 of this Title].

§ 566.8 Appeals.

(a) Parking appeals must be made in writing to the parking appeals board within 30 days of the notice of violation; after that time appeals are not accepted. Forms may be obtained for this purpose at the [Public Safety] *Parking Services Office*. A notice of the decision of the parking appeals board is transmitted to the appellant.

(b) Towing appeals[.] u[U]pon request and only through personal appearance before the parking appeals board. Request must be made to the [Traffic] *Parking Services Office* within 30 days of the tow.

(c) At the conclusion of the hearing on a written appeal, a personal appeal may be arranged by calling the [Traffic] *Parking Services Office*. A personal appeal must be arranged within seven days of receipt of the written appeal adjudication.

(d) After the final adjudication of the hearing officer or hearing board, names are taken off the delinquency list if the finding is in favor of the appellant.

§ 566.9 Regulatory signs and pedestrian crosswalks.

(a) The maximum speed limit at which vehicles may proceed on or along all roadways on the grounds of the State University of New York is 20 MPH, unless a different speed is authorized and indicated by the university.

(b) *Vehicles approaching crosswalks must yield right-of-way. Vehicles must stop while pedestrians are in the crosswalk.*

(c) Northbound traffic on the Bunn Hill Access Road to the university must stop and yield the right-of-way to any traffic on Bunn Hill Road before entering that highway.

(d) [c] Westbound traffic on the West Access Road must stop and yield the right-of-way to any traffic on Bunn Hill Road before entering that highway.

(e [d] The following intersections on the grounds of the university are STOP intersections] *All posted traffic control signs require motorist compliance.*

[Intersection of With stop sign on Entrance from

1. East Drive East Access Road South

2. West Drive Drive to Physical Science Building Southeast

3. West Drive Driveway to Science Building Northeast

4. Bartle Drive Drive to Gymnasium East East

5. West Access Road Bunn Hill Road East

6. Bunn Hill Access Road Gymnasium West Drive East

7. Bunn Hill Access Road Service Drive to Central Heating Plant Southwest

8. Bunn Hill Road Bunn Hill Access Road North

9. West Drive Driveway to Library Annex North

10. Intersection of northbound lane, western side Lot M1 Westbound lane in Lot M1 immediately south of wooden barrier East

11. Entrance lane southeast side M1 Southbound lane east side Lot M1 North

12. Southbound lane western side Lot M1 Exit lane from Lot X West

13. West Connector Road Exit lane southeast side Lot M1 West

14. West Drive Exit lane Lot C South

15. Bartle Drive Exit lane from Lot D/Garage West

16. Entrance to Parking Garage Exit lane from Lot D West

17. West Access Road South exit lane from Lot M1 North

18. East Access Drive and northwest exit of Lot P North curb at northwest exit Northwest

(e) The following intersections on the university grounds are YIELD intersections:

Intersection of With yield sign on Entrance from

1. West Access Road West Access Road Spur North

2. West Drive West Access Road South

3. West Drive Southerly spur of Bunn Hill Access Road North

4. West Drive Northerly spur of Bunn Hill Access Road West

5. Connector Road West Access Road West

6. West Drive Westerly spur of Gymnasium West Drive North

7. Bartle Drive Drive to Fine Arts Building Southwest

8. Bartle Drive Circle Bartle Drive South

9. Bartle Drive Circle West Drive West

10. Bartle Drive Circle Bartle Drive Northeast

11. West Drive Northerly spur of Bunn Hill Access Road East
12. East Access Road South Connector Road South
13. Bartle Drive East Drive East
14. East Access Road North Drive to the parking lot east of East Access Road East
15. Northwestern corner of Lot M4 Exit lane from Lot Z North
16. Lot J Exit lane from Lot K South
17. Gymnasium West Drive Easterly spur of Gym West Drive South]

(f) Standing is not permitted on or along both sides of all highways on university grounds except for *established* bus stops. [established in subdivision (h) of this section.

(g) No stopping is allowed, except buses, at the following locations:

(1) On the south side of East Drive from a point 190+- feet east of the intersection of West Drive at West Access Road easterly 50+- feet there from.

(2) On the north side of the roadway adjacent to Gymnasium West from a point 150 feet west of West Drive westerly 50+- feet there from.

(3) On the north side of Bunn Hill Access Road from a point beginning at the easterly curb line of the service area driveway easterly 50+- feet there from.

(4) On the south side of Bunn Hill Access Road from a point beginning at the easterly curb line extended of the service area driveway westerly 50+- feet there from.

(5) On the north side of West Drive from a point beginning at the westerly curb line of the parking area driveway adjacent to Building 47 westerly 50+- feet there from.

(6) On the south side of West Drive from a point beginning at the westerly curb line of the service driveway to Building 4 westerly 50+- feet there from.

(7) On the east side of East Access Road from a point beginning at the southerly curb line of the driveway to Building 27 southerly 50+- feet therefrom.

(h) The following roadways are for one-way traffic:

(1) Southerly exit from the parking lot west of East Access Road for traffic proceeding in an easterly direction only.

(2) Northerly spur between West Drive and the roadway adjacent to Gymnasium West for traffic proceeding in a westerly direction only.

(3) The traffic circle at the intersection of Bartle Drive and West Drive for traffic proceeding in a counterclockwise direction only.

(4) Westerly spur between Bartle Drive and West Drive for traffic proceeding in a southwesterly direction only.

(5) West Drive between the westerly spur from Bartle Drive and the traffic circle for traffic proceeding in an easterly direction only.

(6) Easterly exit from the parking lot located on the southerly side of West Drive, opposite student center, for traffic proceeding in a northerly direction only.

(7) Bartle Drive Loop, located south of the Couper Administration Building, for traffic proceeding in a counterclockwise direction only.

(8) Northerly exit from the parking lot north of West Access Road for traffic proceeding in a westerly direction only.

(9) Northerly entrance to the parking lot west of East Access Road for traffic proceeding in a westerly direction only.

(10) Westerly entrance to parking lot south of West Drive opposite the student center for traffic proceeding in a southerly direction only.

(11) West Access Road Spur between West Access Road and West Drive for traffic proceeding in a southerly direction only.

(12) Northwesterly entrance to parking lot located west of Bunn Hill Access Road for traffic proceeding in a southerly direction only.

(13) Northerly entrance to service drive to Newing College, opposite parking lot located on East Drive, for traffic proceeding in a southeasterly direction only.]

Text of proposed rule and any required statements and analyses may be obtained from: Barbara W. Scarlett, Associate Counsel, SUNY Binghamton (Binghamton University), PO Box 6000, Binghamton, NY 13902-6000,(607) 777-4438, email: scarlett@binghamton.edu

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

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

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

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