RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Specie of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-23-14-00001-A
Filing No. 722
Filing Date: 2014-08-20
Effective Date: 2014-09-03

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

Action taken: Amendment of section 141.2 of Title 1 NYCRR.

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

Subject: Specie of ash trees, parts thereof and products and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To extend the emerald ash borer quarantine to prevent the further spread of the beetle to other areas.

Text or summary was published in the June 11, 2014 issue of the Register, I.D. No. AAM-23-14-00001-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

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

Assessment of Public Comment

The agency received no public comment.

Department of Audit and Control

NOTICE OF ADOPTION

Use of SCPA Section 1310 Affidavits for the Collection of Abandoned Funds with the Office of Unclaimed Funds

I.D. No. AAC-19-14-00011-A
Filing No. 721
Filing Date: 2014-08-19
Effective Date: 2014-09-03

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

Action taken: Addition of Part 130 to Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Use of SCPA section 1310 Affidavits for the collection of abandoned funds with the Office of Unclaimed Funds.

Purpose: To set forth the situtations when SCPA section 1310 affidavits will be accepted for the claim of abandoned funds.

Text or summary was published in the May 14, 2014 issue of the Register, I.D. No. AAC-19-14-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Department of Audit and Control, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Creation of Administrative Process for Determinations of Erroneous Payments of Abandoned Funds

I.D. No. AAC-25-14-00009-A
Filing No. 720
Filing Date: 2014-08-19
Effective Date: 2014-09-03

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

Action taken: Addition of Part 131 to Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Creation of administrative process for determinations of erroneous payments of abandoned funds.

Purpose: To afford due process when a payment of abandoned funds is determined to have been in error for various reasons.

Text or summary was published in the June 25, 2014 issue of the Register, I.D. No. AAC-25-14-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Department of Audit and Control, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Empire State Film Production Tax Credit Program

I.D. No. EDV-06-14-00003-RP

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

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

Statutory authority: L. 2004, ch. 60

Subject: Empire State Film Production Tax Credit Program.

Purpose: Updating the Empire State Film Production Tax Credit Program regulations.

Substance of revised rule: This rulemaking amends Part 170 of 5 NYCRR as follows:

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

2) Several changes to the definitions of Section 170.2 have been made. The definition of "certificate of tax credit" adds language mandating the certificate include the allocation year of tax credit earned and a disclaimer that such tax credit will not be claimed before the later of either the taxable year the production of the qualified film was completed or the taxable year immediately following the allocation year for which the film was allocated the credit. The definition of "production costs" has been amended to clarify that "licensing or rights associated with the production of a qualified film" are not included within the scope of the definition. The definition of "third party verification" has been added to define the process by which an authorized applicant may voluntarily have its final application review by a qualified certified public accountant in accordance with agreed upon procedures.

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

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

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

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

6) A new Section 170.7 has been added to allow the Department to accept, as part of a final application, a third party verification by a qualified certified public accountant of an authorized applicant's final application.

7) Section 170.9 has been revised to clarify (i) that an appeal may be taken only from denial of a final application or disagreement over the amount awarded by the Department and (ii) that a failure to request an appeal within 30 days of denial or issuance of disputed amount of tax credit will be deemed a waiver of applicant's right to appeal.

8) A new Section 170.10 has been added to address the sharing of information regarding credits applied for and claimed between the Department and the Department of Taxation and Finance.

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

10) A new Section 170.12 (derived from the statute) has been added requiring the Department to file a biennial report with the Director of the Budget and the chairmen of the Assembly Ways and Means Committee and the Senate Finance Committee within 15 days after the close of the applicable calendar year.

The full text of the emergency rule is available at the Department's website at www.esd.ny.gov.

Revised rule compared with proposed rule: Substantial revisions were made in sections 170.2(w), (ah) and 170.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Thomas Regan, New York State Department of Economic Development, 625 Broadway, Albany, NY 12207, (518) 292-5123, email: tregan@esd.ny.gov

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

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

Revised Regulatory Impact Statement

STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

The proposed amendments to Part 170 are in accord with the public policy objectives the Legislature sought to advance by creating the Empire State Film Production Tax Credit Program (the "Program"). The Program creates an incentive to bring strategically targeted aspects of the industry to New York State as opposed to other competitive markets such as Louisiana, Ontario, and Vancouver. It is the public policy of the State to offer a tax credit that will help draw film and television production—and the economic activity it generates—to the State. The revisions to Part 170 help to further such objectives by updating the application process for the Program, clarifying portions of the Program through the creation of various definitions, and describing the credit allocation process itself.

NEEDS AND BENEFITS:

The revisions to Part 170 are necessary to properly update the administration of the Program and ensure that the regulations conform to the statutory changes made to the Program since 2004. The revisions clarify the law's requirements related to facilities and qualifying productions, update definitions and processes to reflect changes to the industry and the law, and further define necessary administrative procedures. Several new definitions have been added to Section 170.2, including the terms "allocation year"; "end credit requirements"; "level one qualified production"; "level two qualified production"; "qualified certified public accountant"; "qualified independent film production company"; "relocated television production"; and "third party verification." Administrative changes of note include: (1) adding a provision to Section 170.4(a)(1) that requires an authorized applicant to submit an initial application before the start of principal photography; (2) clarifying in Section 170.4(a)(2) that the interview with the Department after submission of the initial application is discretionary, not mandatory; (3) requiring in Sections 170.6(a)(1) and 170.6(b)(1) that both the initial and final applications must be complete rather than substantially complete; (4) removing the requirement in current Section 170.4(a)(5) that applications shall be reviewed in the order they are received; (5) clarifying in Section 170.5 that the Department shall allocate the amount of credits for each calendar year based upon the date of approval of a complete final application rather than on an applicant's effective date; (6) adding a requirement in Sections 170.6(a)(11) and 170.6(b)(9) that applicants acknowledge the support of the Program by satisfying the end credit requirements in Section 170.2(i); and (7) adding a new Section 170.7 to allow the Department to accept third party verifications of authorized applicants' final applications.

Section 170.8 is revised to make clear (i) that an appeal may only be

taken from denial of a final application or disagreement over the amount awarded by the Department and (ii) that a failure to request an appeal within 30 days of denial or issuance of disputed amount of tax credit will be deemed a waiver of applicant's right to appeal.

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

COSTS:

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

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

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

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

LOCAL GOVERNMENT MANDATES:

None.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Regulatory Flexibility Analysis for small business and local governments. The changes made represent clarification of issues that do not impact the statement.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Rural Area Flexibility Analysis. The changes made represent clarification of issues that do not impact the statement.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of Job Impact Survey. The changes made represent clarification of issues that do not impact the statement.

Assessment of Public Comment

Purpose

Comment: What is the purpose of providing that a "sole proprietor" of a partnership may be allowed a credit?

Answer: Including "sole proprietor" reflects that, pursuant to Tax Law § 24(a)(1), sole proprietors of qualified film production companies are eligible to receive a credit under the Empire State Film Production Tax Credit Program ("Film Program").

Definitions

Comment: The definition of "qualified film" should not exclude the filming of live theatrical performances. Another comment recommended that the enumerated recordings which shall not constitute a qualified film should list the filming of a "live theatrical performance" separately from documentary films.

Answer: The New York State Department of Economic Development ("Department") has determined that the recording of live theatrical productions does not adequately promote the programmatic goals of increasing investment and job creation in the film production industry to warrant such productions receiving Film Program tax benefits. The Department believes that, because recordings of live theatrical productions document actual events, namely specific productions of theatrical performances as they occur in theatrical venues, they are appropriately defined as documentary films.

Comment: Under the definition of "pre-production," wages paid to line producers should not be excluded as qualified pre-production costs.

Answer: The Department has determined that line producers, in light of their role in developing budgets and hiring key crew members, are producers. Accordingly, the wages of line producers are not "production costs" per Tax Law § 24(b)(2) and shall not constitute qualified pre-production costs.

Comment: What is the purpose of changing the word "shall" to "may" in various provisions of the regulations; e.g., defining the information that "may" be included in certificates issued by the Department as opposed to information that "shall" be included in such certificates?

Answer: Changing "shall" to "may" allows the Department to omit information from certificates of tax credit that would be superfluous. Another instance of "shall" being changed to "may" was the initial application interview provided for at 5 NYCRR § 170.4(a)(2). Eliminating the requirement for an interview will make the application process more efficient.

Comment: Is there a definition of "consumer viewing?"

Answer: No.

Comment: What is an "individual" under the definition of "qualified independent film production company?"

Answer: An "individual" is any film production company owned by a single person. This change reflect Tax L. § 24(b)(7).

Comment: The definition of "qualified film production facility" should be expanded to include any New York facility that "enables a qualified production company to produce a qualified film in whole or in part."

Answer: Expanding the definition of "qualified film production facility" to include any facility that "enables a qualified production company to produce a qualified film in whole or in part" would not comport with Tax Law § 24(b)(5) which establishes specific criteria defining qualified film production facilities.

Comment: The definition of "qualified film production company" should be amended to clarify that the definition only applies to the portion of the film being produced in New York.

Answer: The definition as promulgated already reflects Tax Law § 24(b)(6).

Comment: The definition of "television series" should include programs with a running time of at least 20 minutes rather than 30 minutes.

Answer: Not required by statute.

Armories

Comment: Are there any substantive changes to the use of armories?

Answer: No. Language added to the regulations pertaining to armories mirrors the existing statutory requirements under Tax Law § 24.

Application Process

Comment: The regulations should include a provision providing for inspection of film production records by third-party auditors.

Answer: The regulations have been amended to allow for voluntary review of an approved applicant's final application, in accordance with agreed upon procedures, by a qualified certified public accountant.

Education Department

EMERGENCY RULE MAKING

Mathematics Graduation Requirements

I.D. No. EDU-22-14-00008-E
Filing No. 718
Filing Date: 2014-08-18
Effective Date: 2014-08-18

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

Action taken: Amendment of section 100.5(g)(1)(ii) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: At their April 2014 meeting, the Board of Regents amended section 100.5(g) of the Commissioner's Regulations, effective May 14, 2014, to allow for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and meet the mathematics requirement for graduation by passing either examination.

The proposed amendment is needed to make technical changes to correct the numbering of the paragraph, subparagraph and clauses of the amendment adopted at the April 2014 meeting. The April regulation inadvertently omitted the extensive renumbering of section 100.5(g) that occurred when separate amendments were made to sections 100.5 and 100.18 in February 2014. Among the changes was to renumber section 100.5(g)(2)(i) and (ii) to 100.5(g)(1)(ii)(a) and (b), relating to the mathematics requirements for a diploma.

In addition, the proposed amendment eliminates redundant language and otherwise clarifies that the April amendment is applicable to students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter. The April amendment inadvertently placed the Geometry examination provision in section 100.5(g)(ii)(b) instead of in 100.5(g)(ii)(a).

The proposed amendment was adopted as an emergency action at the May 19, 2014 Regents meeting, effective May 20, 2014. Because the Board of Regents meets at monthly intervals, and does not meet during the month of August, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on June 4, 2014 and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the September 15-16, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be October 1, 2014, the date a Notice of Adoption would be published in the State Register. However, the May emergency rule will expire on August 17, 2014, 90 days after its filing with the Department of State on May 20, 2014.

Emergency action is necessary for the preservation of the general welfare to prevent any potential confusion and misinterpretation regarding the provisions of the regulation, and to otherwise ensure that the proposed rule adopted by emergency action at the May Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the September 15-16, 2014 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Mathematics graduation requirements.

Purpose: To make technical corrections and clarify the text of the regulation.

Text of emergency rule: Subparagraph (ii) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective August 18, 2014, as follows:

(ii) Mathematics.

(a) Students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter shall meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing a commencement level Regents Examination in mathematics that measures the Common Core Learning Standards, or an approved alternative pursuant to section 100.2(f) of this Part; provided that*:*

(1) for the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Integrated Algebra in addition to the Regents Examination in Algebra I (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination*; and*

(2) for the June 2015, August 2015 and January 2016 administrations only, students receiving Geometry (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination.

(b) Students who first began or will complete an Integrated Algebra, Geometry, or Algebra 2/Trigonometry course prior to September 2013 shall meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing the corresponding commencement level Regents Examinations in mathematics or an approved alternative pursuant to section 100.2(f) of this Part [; provided that:

(1) for the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Integrated Algebra in addition to the Regents Examination in Algebra I (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination; and

(2) for the June 2015, August 2015 and January 2016 administrations only, students receiving Geometry (Common Core) instruction may, at the discretion of the applicable school district, take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common Core), and may meet the mathematics requirement for graduation in clause 100.5(a)(5)(i)(b) of this section by passing either examination].

(c) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-22-14-00008-EP, Issue of June 4, 2014. The emergency rule will expire October 16, 2014.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State education department to alter the subjects of required instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

At their April 2014 meeting, the Board of Regents amended section 100.5(g) of the Commissioner's Regulations, effective May 14, 2014, to allow for a limited time and at the discretion of the applicable school district, students receiving Geometry (Common Core) instruction to take the Regents Examination in Geometry aligned to the 2005 Learning Standards in addition to the Regents Examination in Geometry (Common

Core), and meet the mathematics requirement for graduation by passing either examination.

The proposed amendment is needed to make technical changes to correct the numbering of the paragraph, subparagraph and clauses of the amendment adopted at the April 2014 meeting. The April regulation inadvertently omitted the extensive renumbering of section 100.5(g) that occurred when separate amendments were made to sections 100.5 and 100.18 in February 2014. Among the changes was to renumber section 100.5(g)(2)(i) and (ii) to 100.5(g)(1)(ii)(a) and (b), relating to the mathematics requirements for a diploma.

In addition, the proposed amendment eliminates redundant language and otherwise clarifies that the April amendment is applicable to students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any costs to the State, school districts, charter schools or the State Education Department. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

6. PAPERWORK:

The proposed amendment does not impose any additional recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any costs or technological requirements on school districts or charter schools. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

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 and to charter schools.

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 imposes no compliance requirements or costs on regulated parties, but merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation. 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.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment does not impose any additional compliance requirements upon local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on local governments. The proposed amendment merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment imposes no compliance requirements or costs on regulated parties, but merely makes technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarifies the text of the regulation. 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.

Job Impact Statement
The proposed amendment is necessary to make technical corrections to the numbering of paragraphs, subparagraphs and clauses, and clarify the text of the regulation. The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Definition of ''Nonattainment Area''

I.D. No. ENV-21-14-00001-A
Filing No. 717
Filing Date: 2014-08-18
Effective Date: 30 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 200.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Definition of ''nonattainment area''.

Purpose: In response to a finding of attainment by EPA, the removal of the areas designated as ''nonattainment'' for the PM2.5 NAAQS.

Text or summary was published in the May 28, 2014 issue of the Register, I.D. No. ENV-21-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Scott Griffin, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany NY 12233-3251, (518) 402-8396, email: dar.sips@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration, and a Coastal Assessment Form have been prepared and are on file.

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

Assessment of Public Comment
The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-E
Filing No. 713
Filing Date: 2014-08-15
Effective Date: 2014-08-15

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 ("NRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA 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 NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA 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, December 26, 2013, February 21, 2014, April 21, 2014, and June 19, 2014. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013. The proposed regulation has been revised, and the revised proposal was published in the State Register on July 9, 2014.

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

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

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

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

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

Section 27.2 is not amended.

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

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

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the pro-

ducing 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-RP, Issue of July 9, 2014. The emergency rule will expire October 13, 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 "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

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

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

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

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

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

Under the new NRRA 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 NRRA. The NRRA 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 NRRA. The NRRA 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 NRRA 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 NRRA 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 NRRA. 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 NRRA.

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

NOTICE OF ADOPTION

Statewide Planning and Research Cooperative System (SPARCS)

I.D. No. HLT-35-13-00004-A
Filing No. 719
Filing Date: 2014-08-18
Effective Date: 2014-09-03

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

Action taken: Amendment of section 400.18 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2816

Subject: Statewide Planning and Research Cooperative System (SPARCS).

Purpose: Delete obsolete language, realign to current practice, add new provisions, including mandated outpatient clinic data collection.

Text or summary was published in the August 28, 2013 issue of the Register, I.D. No. HLT-35-13-00004-P.

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

Revised rule making(s) were previously published in the State Register on June 11, 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

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Statewide Health Information Network for New York (SHIN-NY)

I.D. No. HLT-35-14-00002-P

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

Proposed Action: Addition of Part 300 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206(1), (18-a)(b), 2800, 2803, 2816, 3600, 3612, 4000, 4010, 4400, 4403, 4700 and 4712

Subject: Statewide Health Information Network for New York (SHIN-NY).

Purpose: To promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for NY.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): Public Health Law § 206(18-a)(d) gives the Department broad authority to promulgate regulations, consistent with federal law and policies, that govern the Statewide Health Information Network for New York (SHIN NY).

This regulation codifies certain requirements that have already been incorporated into grant contracts between the Department and grantees under Phases 1, 5, 10, 17 and 22 of the Health Care Efficiency and Affordability Law for New Yorkers (HEAL NY) Capital Grant Program. Under HEAL NY, the Department has provided over $400 million for health information technology ("health IT") projects. Grantees include: a Not-for-Profit corporation called New York eHealth Collaborative, Inc. ("NYeC"), which is currently New York's State-designated entity to promote health IT; and a number of Regional Health Information Organizations (RHIOs), which facilitate interoperability among the disparate electronic health record systems that contain patient information.

Under this regulation, certain policies that have already been incorporated into the HEAL NY grant contracts will continue to be updated under a statewide collaboration process that results in SHIN-NY Policy Standards. An organization such as NYeC will be the State designated entity. Existing RHIOs and other such health information exchange organizations may apply to become qualified health IT entities (QEs). To become a QE and to maintain that designation, an organization must adhere to policies, such as the SHIN-NY Policy Standards, that enable widespread interoperability among disparate health information systems, including electronic health records, personal health records and public health information systems, while protecting privacy and security.

This regulation makes clear that, consistent with 42 USC § 17938, QEs may make it possible, without patient authorization, to make patient information available among disparate health care providers so long as the QEs enter into and adhere to participation agreements with their participants that comply with federal requirements under HIPAA and 42 CFR Part 2 for business associates and qualified service organizations. This regulation creates a general rule that a written authorization is required to access patient information made available through the QEs. When an emergency condition exists, however, and a health care provider is authorized to provide treatment without the consent of the patient, the health care providers may also "break the glass" and access information as needed to provide such treatment. This regulation incorporates legal requirements related to disclosure of patient information without consent, as well as laws that specifically authorize disclosure of patient information for health care purposes, including public health and health oversight purposes, without the type of written, signed authorization that contains all of the elements that would be required for a health care provider to get permission to disclose patient information to a third party for purposes other than health care.

This regulation establishes the structure for the SHIN-NY after the HEAL NY program winds down and the State loses the ability to enforce requirements solely through grant contracts. The Department will continue to partner with a state designated entity, whose functions are set out. In order to participate in the SHIN-NY, health information exchange organizations will need to be certified under a QE certification process and satisfy certification requirements on an ongoing basis under the procedures established by this regulation.

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

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

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

Summary of Regulatory Impact Statement
Statutory Authority:

Public Health Law Section 206(18-a)(d) authorizes the Commissioner of Health to make rules and regulations to promote the development of a self-sufficient Statewide Health Information Network for NY (SHIN-NY) to enable widespread, non-duplicative interoperability among disparate health information systems, including electronic health records (EHRs), personal health records (PHRs) and public health information systems while protecting privacy and security. Part G of Chapter 57 of the Laws of 2006 established the "office of Health e-Links" to implement health information technology across the state.

Purpose of Regulation:

This regulation will formalize and update the current governance structure and process for operation of the SHIN-NY in order to advance health information technology adoption and use on a statewide basis for the public good.

- The Department of Health (DOH) would enter into a contract to establish a state-designated entity (SDE) that manages development and operation of the SHIN-NY.
- DOH and the SDE, utilizing the statewide collaboration process, would develop and adopt policies to regulate health information exchange using the SHIN-NY.
- The policies would be implemented by Qualified health IT Entities (QEs) (including RHIOs) through participation agreements with providers and patient consent. The policies also comply with federal and State laws, including the very strict laws regarding the confidentiality of alcohol and drug abuse treatment records under 42 CFR Part 2, confidential HIV-related information under PHL Article 27-F and mental health records under Mental Hygiene Law Article 33.
- The regulations would allow for the exchange of health information about minors of any age in a way that complies with current state and federal laws and regulations related to minor consented services.
- DOH would create a certification process for QEs/RHIOs that ensures standard criteria are met for providing services to its members and that the number of QEs is sufficient to provide access to health information exchange services statewide.
- A financial commitment is necessary to ensure the development and operation of the SHIN-NY. As part of the State's 2014/15 budget, the SHIN-NY was appropriated $55 million via the Covered Lives Assessment. Additionally, via an Implementation Advance Planning Document Update (IAPD-U) approved from the Centers for Medicare and

Medicaid Services (CMS), matching funding for ongoing and planned health information exchange (HIE) projects and Federal Financial Participation (FFP) will provide approximately $31 million to be utilized to support the achievement of the goals and objectives established for the SHIN-NY. A sustainability plan for the continued development and operation of the SHIN-NY shall be developed and submitted to the Department for its approval.

Benefits of Regulation:

The regulation is intended to support the triple aim of improving the patient care experience (including quality and cost), improving the health of populations, and reducing the per capita cost of health care through the broad adoption of health information exchange by:

- increasing patient record availability on a statewide basis;
- establishing the core set of health information exchange (HIE) services that provide clinical and administrative value to the healthcare system and are available to all providers and all patients in New York State;
- reducing barriers for EHR integration with HIE services;
- establishing a mechanism for state and local public health and health oversight activities through a more streamlined and timely process;
- expanding the use of EHRs, which should improve health care for underserved populations in the state, including rural areas.

Through its agreement with DOH, the state designated entity is responsible for implementing the key components of the state strategy and business plan specified by the Department which includes:

- increasing adoption of the SHIN-NY by hospitals, physician practices, clinics and long-term care facilities with patient consent for sharing personal health information in a secure, protected manner;
- increasing utilization of the SHIN-NY for public health and health oversight activities including disaster preparedness and response;
- engaging health plans to connect to the SHIN-NY; and
- managing operating costs.

State and Local Cost:

To date, the development of the SHIN-NY and expansion of EHR adoption has been funded through a combination of federal and state funds distributed through grant programs, as well as private contributions from participating health plans, providers and other stakeholders. Currently, over 170 hospitals and over 8200 primary care providers qualify for "meaningful use" incentives under Medicaid and Medicare. In addition, through HEAL NY funding, it is expected that over 7800 primary and specialty care providers were supported to have adopted EHRs and be connected to the SHIN-NY by the end of 2013. Over 70% of hospitals in New York State participate in RHIOs, and over 50% of Federally Qualified Health Centers (FQHCs). In order to ensure that New York continues to reap the value of its health IT investments, it is critical to identify ongoing and sustainable funding for its key HIE infrastructure – the SHIN-NY.

Investment in the operation of the SHIN-NY will also generate a substantial return through the elimination of wasted expenditures and promoting better quality health care at a lower cost. Three studies conducted in Rochester by the Health Information Technology Evaluation Collaborative (HITEC), an academic research consortium with contracts with the State Department of Health to perform evaluation activities for the HEAL NY Program identified improved quality and reduction in duplicative testing and in readmission rates for a two year study period for events in 2009-2010. Use of the Rochester RHIO by five Emergency Departments (EDs) resulted in 6 averted admissions per 100 patients who came to the ED, resulting in $9 million projected savings annually across the adult community. Extrapolating the cost savings across the state would result in an annual savings of $52 million. During the same study period, image exchange use through the Rochester RHIO within 90 days following an initial imaging procedure reduced the probability of repeat imaging by 35%. Finally, use of the Rochester RHIO after hospital discharge resulted in a 55% reduction in readmission within 30 days. These highly significant findings with important financial implications further demonstrate the value of the SHIN-NY.

An 18-month study in the Buffalo region looked at the number of multiple CT scans ordered for the same body part, for the same patient, over a six-month period. During the period 2,763 CT scans were deemed to be potentially unnecessary, duplicative tests. 90% of the potentially duplicative tests were ordered by physicians who never or infrequently access the local health information exchange. By local calculations, that amounts to a potential additional cost of $1.3 million over a six-month period for one test in one region of the state.

It is estimated that operating support for the State's Health Information Exchange Network will require an annual commitment of approximately $70 million for technical operations, development, member services and statewide policy work.

Costs to Regulated Entities:

The proposed regulation will require that health care facilities defined in PHL Section 18, and practitioners in the private practice of medicine that utilize certified EHRs, connect to the SHIN-NY. In New York State there are 228 general hospitals, 1198 hospital extension clinics, 1239 diagnostic and treatment centers, and 635 nursing homes. There are also 139 certified home health agencies (CHHAs), 97 long term home health care programs (LTHHCP), 19 hospices and 1164 licensed home care services agencies (LHCSAs).

Average interface costs for hospitals are $75,000 while interface costs for physician practices vary but generally average $5000 – 10,000 per practice. Interface costs for other types of facilities, such as nursing homes, home care agencies and hospice would fall in between physician practices and hospitals, depending on the size and complexity. Some RHIOs have established this functionality for their participants, and therefore, there are reduced associated interface costs for their participants, which include physician practices. In other areas, health plans have absorbed the interface costs for their network providers because they see the value of having their physicians connected to the SHIN-NY. Only health care providers, regulated by the Department of Health, using certified EHR technology need to comply with these requirements. Currently, adoption of certified EHR technology for health care facilities outside of hospitals and FQHCs is low because they are not eligible to receive meaningful use incentive payments.

The regulation is being put forth as a "public good" model, that is, a certain set of baseline services, both technical and administrative, will be made available to all providers within New York State, at no charge. The basic technical services will include; patient record look-up, secure messaging, consent management, notifications and alerts, identity management and security, provider and public health clinical viewer, public health integration and results delivery.

Local Government Mandates:

The State Enterprise Health Information Exchange as part of the SHIN-NY is designed to streamline how providers interact with the many public health information systems that currently exist, to decrease reporting burdens, promote bidirectional information exchange, and advance public health priorities. Article 28 facilities operated by local governments will be required to comply with these regulations in the same manner as other Article 28 facilities. Should local health departments need to make expenditures to comply with the regulatory requirements, they have opportunities to request funding through Article 6 Local Assistance Grant Program, and possibly other sources.

Paperwork:

Entities that wish to become QEs will need to submit an application for review by DOH to determine if the criteria outlined in the regulation have been met as well as meeting other criteria as may be required under the QE certification process. Any entity seeking certification as a QE, regardless the entity's organizational structure, origin or type, will be subject to the full certification process. This certification process incorporates criteria that fall into four broad categories including; Organizational Characteristics, Operational Requirements, Policies and Procedures and Technical Requirements. QEs would be subject to either biennial or triennial recertification, depending on their level of scoring and would also be subject to ongoing monitoring and enforcement activities between full certifications. This all being done to ensure that patient information is made available to all providers participating in a patient's care in a secure and confidential manner.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

Because state funding for health IT infrastructure was provided through the HEAL NY program, the State Department of Health believed the best way to facilitate a standardized process for this purpose was through a formal public private partnership. Our private partner, through a contract with DOH, facilitated the statewide collaboration process of a governance and policy framework to allow health information sharing among disparate providers to improve quality, improve efficiency and reduce costs of health care on a statewide basis while ensuring the privacy and security of patient information.

Governor David A. Paterson designated the New York eHealth Collaborative as the state designated entity, and as such was able to receive federal funding for health information exchange activities. Based upon the state and federal funding, and the development of statewide policies through a statewide collaboration process, the logical next step was to develop regulations based on this framework. Since health IT is quickly evolving and the marketplace is rapidly changing with regard to new tools and services available, the implementation of regulations before now would have required amendments based on current knowledge.

While other states have different models for health information exchange, and NY considered the approaches and models used in other states through its statewide collaborative process, based on the size, complexity and diversity of New York and the resources that were available, the State Department of Health determined that the current model

was the best approach. The State Department of Health shall convene and consider the recommendations of the workgroup established by Public Health Law § 206(18-a)(b), and if the State Department of Health acts in a manner inconsistent with the recommendations of the workgroup, it shall provide the reasons therefor.

Federal Standards:

This rule aligns with current federal laws and regulations governing the adoption of interoperable exchange of health information and meaningful use requirements under the HITECH provisions of ARRA. State laws regarding the disclosure of personal health information to health care providers are more stringent than the federal standards for HIPAA.

Compliance Schedule:

Since RHIOs or QEs are largely operational in NYS and the majority of hospitals and federally qualified health centers are already participants, and the number of physicians practices participating continues to grow and the infrastructure for the SHIN-NY is already in development, the estimated time period needed for regulated persons or entities to achieve compliance with the rule has been staggered. One year from the time the rule becomes effective the RHIOs/Qes need to be fully compliant with the certification requirements and provide the basic technical and administrative services defined. Two years from the time the rule becomes effective health care facilities, utilizing certified health record technology must connect to the SHIN-NY through a QE and allow private and secure bi-directional access to patient information by other QE Participants authorized by law to access such patient information.

Regulatory Flexibility Analysis

The proposed rule will not have a substantial adverse impact on small businesses or local governments. Small businesses such as physician practices, that are not regulated by the Department, that adopt certified electronic record technology in order to qualify for meaningful use incentives, would not be required to exchange patient health information among disparate providers to facilitate care coordination and appropriate follow up. Although this exchange is encouraged, it is strictly optional for the group of practitioners. However, connection to the SHIN-NY will in fact facilitate these providers achievement of meaningful use requirements and eligibility to receive either Medicaid or Medicare Meaningful Use incentive payments. For local government agencies that report information to the state, the use of the SHIN-NY would be beneficial from an efficiency and cost perspective. Additionally, accessing the SHIN-NY to perform required local health department surveillance and case investigation activities has actually been documented to result in increased efficiency and decreased costs for the local health department.

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 required.

Rural Area Flexibility Analysis

The proposed rule will not have a direct adverse impact on rural areas. Operation of the SHIN-NY and expanded use of certified EHR technology should improve health care, increase efficiency, reduce duplicative testing and reduce overall costs for underserved populations in the state, including rural areas.

Job Impact Statement

The proposed rule should not have any adverse impact on jobs and employment opportunities, but in fact have the reverse effect. The development and operation of the SHIN-NY will most likely result in opportunities for the development of new applications of health IT tools and services, such as the Accelerator Program launched by the New York eHealth Collaborative to support Medicaid Health Homes, and may result in new health IT jobs in New York State. It has been estimated that the SHIN-NY, and related initiatives that use the data from the SHIN-NY has the potential to create 1,500 health technology jobs across New York State over the next five years.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

HCBS Community Transition Services

I.D. No. PDD-35-14-00003-P

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

Proposed Action: Amendment of sections 635-10.4 and 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09 and 16.00

Subject: HCBS Community Transition Services.

Purpose: To implement a new HCBS waiver service.

Text of proposed rule: • Section 635-10.4 is amended by the addition of a new subdivision (i) as follows:

(i) Community Transition Services (CTS).

(1) CTS is a one-time service that funds non-recurring residential set-up expenses for an individual who is moving:

(i) from:

(a) an OPWDD operated or certified residential setting, including a family care home;

(b) a State funded private residential school, or State operated residential school; or

(c) a Medicaid funded institutional placement;

(ii) to a non-certified community living arrangement within New York State where the individual will be responsible for his or her own living expenses.

Note: CTS is not available to an individual who is moving into any type of State certified or State licensed residential setting.

(2) CTS allowable expenses are those expenses that are specific to the establishment of a residence, and include:

(i) furniture;

(ii) window treatments (curtains, blinds, etc.), rugs, and lighting (lamps, bulbs, etc.);

(iii) food preparation items (small kitchen appliances, cookware, dishes, etc.);

(iv) bed and bath linens;

(v) set-up fees and utility deposits (telephone, electricity, heating, water, etc.);

(vi) pre-occupancy services necessary for the person's health and safety (e.g., pest eradication, allergen control, or cleaning before occupancy);

(vii) moving expenses;

(viii) the security deposit for a residential lease; and

(ix) other expenses prior approved by OPWDD.

(3) CTS allowable expenses must be incurred within ninety days before and ninety days after the date the individual moves into the qualifying non-certified living arrangement.

(4) Recurring expenses are not CTS allowable expenses. These expenses include, but are not limited to:

(i) monthly rental or mortgage expenses;

(ii) regular (monthly, quarterly, etc.) utility charges;

(iii) regular (monthly, quarterly, etc.) cable, telephone, or internet expenses;

(iv) food; and

(v) hygiene supplies.

(5) Expenses for items that solely provide diversion or recreation, such as televisions, computers, stereos, DVD players, and video games, are not CTS allowable expenses.

• Section 635-10.5 is amended by the addition of a new subdivision (ae) as follows:

(ae) Community Transition Services.

(1) Community Transition Services (CTS) provides a once in a lifetime payment for residential set up expenses. CTS can only be provided by a Non-State provider agency that is approved by OPWDD to provide Fiscal Intermediary (FI) services. Payment for CTS will be made to the approved FI services provider.

(2) CTS is administered by the FI services provider. The FI services provider must:

(i) retain receipts to support allowable expenditures; and

(ii) bill for allowable expenditures in $10 increments.

(3) Payment to the FI for CTS requires authorization from OPWDD. The authorization will be based on the following criteria:

(i) the individual's choice of CTS must be documented in his or her Individualized Service Plan (ISP) in the format specified by OPWDD; and

(ii) the individual must be enrolled in the Home and Community Based Services (HCBS) Waiver.

(4) CTS expenses must be allowable in accordance with the provisions of subdivision 635-10.4(i) of this Subpart.

(5) The unit of service for CTS is a cumulative one-time expenditure.

(6) Effective November 1, 2014, the CTS payment for each individual will be the lesser of:

(i) the total of CTS allowable expenses, rounded down to the nearest $10; or

(ii) $3,000.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.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.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD's has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and provision of services and facilities pursuant to the NYS Mental Hygiene Law Section 16.00.

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 16.00 of the Mental Hygiene Law. The proposed amendments establish standards for the provision and funding of Community Transition Services (CTS) under the Home and Community-Based Services (HCBS) waiver.

3. Needs and Benefits: The purpose of CTS is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses. This service supports OPWDD's commitment to the federal Centers for Medicare and Medicaid Services to move people receiving services from institutional settings and other certified settings into the most integrated community settings, by providing a once in a lifetime reimbursement for allowable expenses, such as the purchase of furniture or other household goods needed to establish a home.

OPWDD certified or operated residential facilities, residential schools, and Medicaid funded institutional settings are required to furnish, equip, and maintain the facilities to meet the needs of the individuals who live there. Most individuals who reside in these settings do not own household goods and do not have sufficient personal funds to purchase them or to afford other expenses such as utility deposits or moving expenses.

The proposed regulations outline requirements pertaining to the provision and funding of this new service.

OPWDD considers CTS a valuable support for independent living, consistent with implementation of Governor Andrew M. Cuomo's New York State Olmstead Plan for community integration of individuals with developmental disabilities.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

CTS will result in some costs for the State in its role as paying for Medicaid. OPWDD expects that during the first year (2014 - 2015), the service will be provided to approximately 109 individuals who resided in OPWDD operated or certified facilities and will cost up to $3000 for each individual receiving CTS (a total of $327,000). OPWDD also expects that approximately 40 individuals who resided in other qualifying residential or institutional settings will receive CTS (an additional total of $121, 000) during the first year. OPWDD expects that during the second year (2015-2016), the service will be provided to approximately 206 individuals, at a similar fee. OPWDD is not able to quantify additional costs during subsequent years There will also be limited additional costs for Fiscal Intermediary (FI) services to administer CTS for individuals who receive CTS, but do not otherwise use FI services to self-direct their services.

OPWDD expects some overall long term savings in that CTS, as a support for independent living, will contribute to successfully moving individuals from more costly Medicaid funded institutional, residential school, and certified group living environments to less costly non-certified independent living environments with a variety of Medicaid funded and non-Medicaid funded services and supports. However, OPWDD cannot quantify the expected savings.

The regulations will not have any fiscal impact on local governments as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

OPWDD will not incur costs as a provider of services, because CTS will not be provided by OPWDD.

b. Costs to private regulated parties:

CTS will be provided by Non-State provider agencies that are approved to provide Fiscal Intermediary (FI) services. CTS will be administered through the FI and will result in no costs to the provider agencies beyond those incurred by the FI. The FI will be paid a fee for the FI services. The maximum $3000 CTS reimbursement is a pass through.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: There is some paperwork associated with this service. The proposed regulations require providers to retain documentation, including receipts for allowable expenditures. In addition, payment for Community Transition Services requires prior authorization from OPWDD based on criteria, including documentation of the individual's choice of the services in his or her Individualized Service Plan (ISP). This paperwork will be completed through the provider agency's FI services.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: Alternatives: OPWDD only considered one significant alternative to the proposed amendments. This alternative was excluding security deposits from reimbursable costs. OPWDD rejected this alternative for two reasons. First, when OPWDD described the CTS service to the federal Centers for Medicare and Medicaid Services for inclusion in the HCBS waiver, reimbursing security deposits was an important element of the service design. Second, reimbursing security deposits will remove an obstacle faced by individuals who are moving from institutions to community settings.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the proposed regulations effective November 15, 2014. Provider agencies that opt to offer CTS will need to become familiar with the service delivery, documentation, and billing requirements in advance of providing the service, and any individual interested in receiving the service will need to work with his or her service coordinator to add the service to his or her ISP. OPWDD plans to provide all necessary information and guidance to providers regarding the new requirements with enough lead time that they can begin to provide the new service on November 15, 2014. In addition, if providers are not ready to provide the service on November 15, 2014, providers can opt to begin the provision of the new service at a later date.

Regulatory Flexibility Analysis

1. Effect on Small Business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses. OPWDD anticipates that some of these agencies will opt to provide the new Community Transition Services (CTS) established in the proposed regulation; however, OPWDD is unable to estimate the number of agencies that will opt to provide the new service and that will be subject to the proposed regulations.

The proposed regulations have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that the proposed regulations will not have any negative effects on small business providers of CTS.

The proposed regulations establish standards for the provision and funding of CTS under the Home and Community-Based Services (HCBS) waiver. The purpose of CTS is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school

programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses.

2. Compliance Requirements: CTS can only be provided by Non-State provider agencies that are approved to provide Fiscal Intermediary (FI) services. The proposed regulations will impose compliance requirements on agencies that opt to provide CTS and FI services. These provider agencies will be responsible to ensure that individuals receiving services meet eligibility requirements; that expenses are allowable and are incurred within the required timeframe; and that appropriate documentation is retained to support allowed expenses.

OPWDD considers that the compliance requirements are necessary to ensure the proper use of federal and state public funds and considers that they are not burdensome for small business providers of CTS and FI services.

The amendments will have no effect on local governments.

3. Professional Services: There are no additional professional services required as a result of these proposed regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance Costs: CTS will be administered through the FI and will result in no costs to the provider agencies beyond those incurred by the FI. The FI will be paid a fee for the FI services. The maximum $3000 CTS reimbursement is a pass through.

5. Economic and Technological Feasibility: The proposed regulations do not impose the use of any new technological processes on regulated parties.

6. Minimizing Adverse Impact: The purpose of CTS is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses. OPWDD considers CTS a valuable support for independent living, consistent with implementation of Governor Andrew M. Cuomo's New York State Olmstead Plan for community integration of individuals with developmental disabilities. The proposed regulations outline requirements pertaining to the provision and funding of this new service. Providers will be fully reimbursed for CTS allowable expenses made by or on behalf of the individual receiving services. The administration of CTS, such as billing and retaining documentation of expenses, will be provided through the provider agencies' FI services. The FI will be paid a fee for the FI services. The maximum $3000 CTS reimbursement is a pass through.

OPWDD reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). OPWDD considered including the administration of CTS and a set minimum amount of allowable expenses in the once in a lifetime fee for CTS, but OPWDD determined that the administration of the service through an agency's FI services and establishment of a maximum once in a lifetime fee would be less burdensome on provider agencies.

7. Small Business Participation: OPWDD met with representatives of provider agencies to discuss HCBS Waiver services, including CTS, during March 2014. These representatives included the New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers that have fewer than 100 employees. OPWDD is planning to adopt the proposed regulations effective November 15, 2014. OPWDD plans to provide all necessary information and guidance to providers, including small business provider agencies, regarding the new requirements with enough lead time that they can begin to provide the new service on November 15, 2014. In addition, if providers are not ready to provide the service on November 15, 2014, providers can opt to begin the provision of the new service at a later date.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The proposed regulations do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The proposed regulations have been reviewed by OPWDD in light of their impact on rural areas. OPWDD has determined that the proposed regulations will not have any negative effects on rural area providers of CTS.

The proposed regulations establish standards for the provision and funding of CTS under the Home and Community-Based Services (HCBS) waiver. The purpose of CTS is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses.

2. Compliance requirements: CTS can only be provided by Non-State provider agencies that are approved to provide Fiscal Intermediary (FI) services. The proposed regulations will impose compliance requirements on agencies that opt to provide CTS and FI services. These provider agencies will be responsible to ensure that individuals receiving services meet eligibility requirements; that expenses are allowable and are incurred within the required timeframe; and that appropriate documentation is retained to support allowed expenses.

OPWDD considers that the compliance requirements are necessary to ensure the proper use of federal and state public funds and considers that they are not burdensome for rural area providers of CTS and FI services.

3. Professional services: There are no additional professional services required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: CTS will be administered through the FI and will result in no costs to the provider agencies beyond those incurred by the FI. The FI will be paid a fee for the FI services. The maximum $3000 CTS reimbursement is a pass through.

5. Minimizing adverse economic impact: The purpose of CTS is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses. OPWDD considers CTS a valuable support for independent living, consistent with implementation of Governor Andrew M. Cuomo's New York State Olmstead Plan for community integration of individuals with developmental disabilities. The proposed regulations outline requirements pertaining to the provision and funding of this new service. Providers will be fully reimbursed for CTS allowable expenses made by or on behalf of the individual receiving services. The administration of CTS, such as billing and retaining documentation of expenses, will be provided through the provider agencies' FI services. The FI will be paid a fee for the FI services. The maximum $3000 CTS reimbursement is a pass through.

OPWDD reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). OPWDD considered including the administration of CTS and a set minimum amount of allowable expenses in the once in a lifetime fee for CTS, but OPWDD determined that the administration of the service through an agency's FI services and establishment of a maximum once in a lifetime fee would be less burdensome on provider agencies.

6. Participation of public and private interests in rural areas: OPWDD met with representatives of provider agencies to discuss HCBS Waiver services, including CTS, during March 2014. These representatives included the New York State Association of Community and Residential Agencies (NYSACRA), which represents some rural area provider agencies. OPWDD is planning to adopt the proposed regulations effective November 15, 2014. OPWDD plans to provide all necessary information and guidance to providers regarding the new requirements with enough lead time that they can begin to provide the new service on November 15, 2014. In addition, if providers are not ready to provide the service on November 15, 2014, providers can opt to begin the provision of the new service at a later date.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The purpose of Community Transition Services (CTS) is to fund residential set up expenses for individuals with developmental disabilities who are moving out of OPWDD certified or operated residential facilities, residential school programs, or Medicaid funded institutional placements and into non-certified community living arrangements where the individuals will be responsible for their own living expenses. CTS can be provided only once in a lifetime to an individual receiving services.

CTS will be provided by Non-State provider agencies that are approved to provide Fiscal Intermediary (FI) services. CTS will be administered through the FI services and OPWDD expects that those administration duties will be absorbed by existing FI staffing arrangements.

Therefore, the proposed regulations will not have any substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approving the Association As Temporary Operator of Scott Acres Water Company, Inc. and a Rate Increase

I.D. No. PSC-05-14-00014-A
Filing Date: 2014-08-15
Effective Date: 2014-08-15

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

Action taken: On 8/14/14, the PSC approved a petition by the Scott Acres Water Users Association, Inc. (Association) to be appointed as Temporary Operator of the Scott Acres Water Company, Inc. and to charge a monthly flat rate of $60.00 to be billed in advance.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-b(1), 89-c(1), (10) and 112-a

Subject: Approving the Association as Temporary Operator of Scott Acres Water Company, Inc. and a rate increase.

Purpose: To approve the Association as Temporary Operator of Scott Acres Water Company, Inc. and a rate increase.

Substance of final rule: The Commission, on August 14, 2014, adopted an order approving the petition of Scott Acres Water Users Association, Inc. for Temporary Operator of the Scott Acres Water Company, Inc. and to charge a monthly flat rate of $60.00 to be billed in advance, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-W-0007SA1)

NOTICE OF ADOPTION

Allowing Revisions to the Method of Bill Proration Contained in PSC 8 — Gas, to Go into Effect

I.D. No. PSC-15-14-00008-A
Filing Date: 2014-08-14
Effective Date: 2014-08-14

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

Action taken: On 8/14/14, the PSC allowed a tariff filing by National Fuel Gas Distribution Corporation to revise the method of bill proration in conformance with its proposed Customer Information System in PSC 8 — Gas, to go into effect.

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

Subject: Allowing revisions to the method of bill proration contained in PSC 8 — Gas, to go into effect.

Purpose: To allow revisions to the method of bill proration contained in PSC 8 — Gas, to go into effect.

Substance of final rule: The Commission, on August 14, 2014, adopted an order allowing a tariff filing by National Fuel Gas Distribution Corporation, to revise the method of bill proration in conformance with its proposed Customer Information System, contained in PSC No. 8 — 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.
(14-G-0107SA1)

NOTICE OF ADOPTION

Allowing Revisions to Service Classification No. 7 — Seasonal Off-Peak Services Contained in PSC 12 — Gas, to Go into Effect

I.D. No. PSC-16-14-00011-A
Filing Date: 2014-08-14
Effective Date: 2014-08-14

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

Action taken: On 8/14/14, the PSC allowed a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY to revise Service Classification No. 7 — Seasonal Off-Peak Services contained in PSC 12 — Gas, to go into effect.

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

Subject: Allowing revisions to Service Classification No. 7 — Seasonal Off-Peak Services contained in PSC 12 — Gas, to go into effect.

Purpose: To allow revisions to Service Classification No. 7 — Seasonal Off-Peak Services contained in PSC 12 — Gas, to go into effect.

Substance of final rule: The Commission, on August 14, 2014, allowed a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY, to revise Service Classification No. 7 — Seasonal Off-Peak Service contained in PSC No. 12— Gas, to remove the offer of gas service during the winter months to customers, to go into effect.

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

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

Assessment of Public Comment
An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(14-G-0119SA1)

NOTICE OF ADOPTION

Allowing Revisions to Rider P — Purchases of Installed Capacity Contained in PSC 10 — Electricity, to Go into Effect

I.D. No. PSC-19-14-00016-A
Filing Date: 2014-08-14
Effective Date: 2014-08-14

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

Action taken: On 8/14/14, the PSC allowed a tariff filing by Consolidated Edison Company of New York, Inc. proposing revisions to Rider P — Purchases of Installed Capacity in PSC 10 — Electricity, to go into effect.

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

Subject: Allowing revisions to Rider P — Purchases of Installed Capacity contained in PSC 10 — Electricity, to go into effect.

Purpose: To allow revisions to Rider P — Purchases of Installed Capacity contained in PSC 10 — Electricity, to go into effect.

Substance of final rule: The Commission, on August 14, 2014, adopted an order allowing a tariff filing by Consolidated Edison Company of New York, Inc. to revise Rider P — Purchases of Installed Capacity contained in PSC No. 10 — Electricity, to go into effect.

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

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

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

Assessment of Public Comment

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

(14-E-0144SA1)

NOTICE OF ADOPTION

Denying Hamilton's Request for Rehearing, and Granting Reconsideration

I.D. No. PSC-23-14-00005-A

Filing Date: 2014-08-18

Effective Date: 2014-08-18

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

Action taken: On 8/14/14, the PSC denied the Village of Hamilton Municipal Utilities Commission's (Hamilton) request for rehearing, and granted reconsideration.

Statutory authority: Public Service Law, sections 22, 65 and 66

Subject: Denying Hamilton's request for rehearing, and granting reconsideration.

Purpose: To deny Hamilton's request for rehearing and grant reconsideration.

Substance of final rule: The Commission, on August 14, 2014, denied the Village of Hamilton Municipal Utilities Commission's request for rehearing on the limited issue of commercial customer rates due to both a mistake in fact and new circumstances, but granted reconsideration, 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-0584SA2)

NOTICE OF ADOPTION

Authorizing Greentree to Institute a Surcharge for Costs Incurred to Make Emergency Capital Repairs

I.D. No. PSC-23-14-00007-A

Filing Date: 2014-08-18

Effective Date: 2014-08-18

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

Action taken: On 8/14/14, the PSC approved a petition by Greentree Water Company, Inc. (Greentree) to institute a surcharge to recover costs incurred as a result of well equipment replacement and repairs.

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

Subject: Authorizing Greentree to institute a surcharge for costs incurred to make emergency capital repairs.

Purpose: To authorize Greentree to institute a surcharge for costs incurred to make emergency capital repairs.

Substance of final rule: The Commission, on August 14, 2014, adopted an order authorizing Greentree Water Company, Inc. to institute a surcharge to recover costs for emergency expenses for the replacement of a deep well pump and to the repair of the system's second well pit, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-W-0155SA1)

NOTICE OF ADOPTION

Approving Regulatory Requirements for Transfers and Financings, Review of Transfer and Approval of a Financing

I.D. No. PSC-25-14-00013-A

Filing Date: 2014-08-15

Effective Date: 2014-08-15

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

Action taken: On 8/14/14, the PSC addressed a petition from Bayonne Energy Center LLC (BEC) by establishing regulatory requirements for transfers and financings, allowing a transfer to proceed without further review, and approving a financing.

Statutory authority: Public Service Law, sections 69 and 70

Subject: Approving regulatory requirements for transfers and financings, review of transfer and approval of a financing.

Purpose: To approve regulatory requirements for transfers and financings, review of a transfer and approval of a financing.

Substance of final rule: The Commission, on August 14, 2014, adopted an order addressing a petition from Bayonne Energy Center LLC (BEC) by establishing regulatory requirements for transfers and financings, allowing a transfer to proceed without further review, and approving a financing. The Commission decided Public Service Law §§ 69 and 70 would adhere to BEC's transfers and financings, to approve a financing in an amount of no more than $720 million, and that it would not review further a transfer of ownership interests in parent companies upstream from BEC, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0195SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of a Proposed Electricity Generation Facility Located in the Town of Brookhaven, NY

I.D. No. PSC-35-14-00004-P

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

Proposed Action: The Commission is considering a petition filed by Caithness Long Island II, LLC., requesting an order that its new generation facility to be located in the Town of Brookhaven, NY will be regulated lightly.

Statutory authority: Public Service Law, sections 2(2-a), (13), 5(1)(b), 64-69, 69-a, 70, 71, 72, 72-a, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY.

Purpose: To consider regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Caithness Long Island II, LLC. on July 1, 2014, requesting an order providing that the petitioner's proposed electric generation facility, a new dual fuel, combined cycle facility, sized as 752 MW, in Yaphank, Town of Brookhaven, New York, will be regulated under a lightened regulatory regime consistent with that imposed on competitive wholesale generators. The petitioner is also requesting the issuance of a Certificate of Public Convenience and Necessity pursuant to Public Service Law § 68, to develop, operate and own the facility. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-E-0250SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Sensus IConA Electric Meter

I.D. No. PSC-35-14-00005-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, deny or modify, in whole or in part, a petition filed by Sensus Incorporated for approval to use the Sensus iConA electric meter.

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

Subject: Whether to permit the use of the Sensus iConA electric meter.

Purpose: Pursuant to 16 NYCRR Parts 92 and 93, Commission approval is necessary to permit the use of the Sensus iConA electric meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Sensus Incorporated on July 17, 2014 for approval of the use of the Sensus iConA electric meter as required by Public Service Law § 67 and 16 NYCRR Parts 92 and 93. The Commission may also consider other related matters.

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

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

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

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

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

(14-E-0304SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-35-14-00006-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Village of Castile to make various changes to the rates, charges, rules and regulations contained in P.S.C. No. 1—Electricity.

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

Subject: Minor electric rate filing.

Purpose: For approval to increase annual revenues by about $135,554 or 27.8%.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, the August 11, 2014 tariff filing by the Village of Castile. The tariff revisions would increase the Village of Castile's electric revenues by about $135,554 or 27.8%. The monthly bill of a residential customer using about 1,356 kilowatt-hours of energy will increase from $70.53 to $88.42 or 25.4%. The monthly bill for a non-demand metered General Service customer using approximately 842 kilowatt-hours will increase from $52.14 to $66.93 or 28.4%. The Village of Castile also proposes to increase the monthly service charge for Service Classification (SC) No. 1 – Residential customers from $1.79 to $5.00 and for SC No. 2 – Small Commercial customers from $2.04 to $5.00. The amendments have an effective date of December 1, 2014. The Commission may also consider other related matters.

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

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

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

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

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

(14-E-0358SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minor Electric Rate Filing

I.D. No. PSC-35-14-00007-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Village of Little Valley to make various changes to the rates, charges, rules and regulations contained in P.S.C. No. 1—Electricity.

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

Subject: Minor electric rate filing.

Purpose: For approval to increase annual revenues by about $299,577 or 21%.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the Village of Little Valley to increase their electric revenues by about $299,577 or 21%. The proposed amendments have an effective date of December 1, 2014. The Commission may also consider other related matters.

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

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

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

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

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

(14-E-0363SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Approve, Modify or Reject in Whole or in Part an Increase in Annual Revenues of Approximately $264,166 or 25%

I.D. No. PSC-35-14-00008-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 is considering a tariff filing by Fishers Island Water Works Corporation to increase its annual revenues by approximately $264,166, or 25%, to become effective January 1, 2015.

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

Subject: Whether to approve, modify or reject in whole or in part an increase in annual revenues of approximately $264,166 or 25%.

Purpose: Whether to approve, modify or reject in whole or in part an increase in annual revenues of approximately $264,166 or 25%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Fishers Island Water Works Corporation to amend its tariff P.S.C. No. 2 – Water, to increase its annual revenues by approximately $264,166, or 25%. The tariff amendments have an effective date of January 1, 2015. The Commission may consider any related matters.

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

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

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

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

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

(14-W-0322SP1)

Department of Transportation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of Commercial Motor Carriers Operating in New York State

I.D. No. TRN-35-14-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 154-1.1(f), 154-2.2(e), 720.12(a), 820.14 and 855.2; repeal of section 721.6 and Part 845; and addition of new section 721.6 and new Part 845 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(12), (18), 14-f(1)(a), 138(2), 140(2); and Vehicle and Traffic Law, arts. 19-A and 19-B

Subject: Regulation of commercial motor carriers operating in New York State.

Purpose: The rules incorporate Title 49 CFR provisions pursuant to regulation of commercial motor carriers operating in New York State.

Text of proposed rule: 17 NYCRR section 154-1.1(f) is amended to read as follows:

(f) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, *Parts 178 to 199, Parts 200 to 299 and Parts 300 to 399,* revised as of October 1, *2013* [1990], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001,* [162 Washington Avenue, Albany, NY 12231,] at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or *Central Permit Office, 50 Wolf Road,* [Traffic and Safety Division, State Office Campus, Building 5,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at *many* [may] public libraries and bar association libraries.

17 NYCRR section 154-2.1(e) is amended to read as follows:

(e) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Subpart have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, *Parts 178 to 199, Parts 200 to 299 and Parts 300 to 399,* revised as of October 1, *2013* [1990], published by the Office of the Federal Register, National Archives and Records Administration as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001,* [162 Washington Avenue, Albany, NY 12231,] at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or *Central Permit Office, 50 Wolf Road,* [Traffic and Safety Division, State Office Campus, Building 5,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at *many* [may] public libraries and bar association libraries.

17 NYCRR section 720.12(a) is amended to read as follows:

17 NYCRR 720.12 Incorporation by reference.

(a) [Incorporation by certain Federal regulation by reference.] The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book[let]s entitled*:* Code of Federal Regulations, Title 49, Parts 100 to *177* [185], [parts 200 to 399 (NYSDOS File No. 943, File Date June 23, 1997, Tracking No. CFR-95-10) and parts 400 to 999 (NYSDOS File No. 1701, File Date September 1, 1998, Tracking No. CFR-97-5) revised as of October 1, 1997,] *Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999*, revised as of October 1, *2013* [1997], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, *One Commerce Plaza, 99 Washington Avenue,* [41 State Street,] Albany, NY 12231-*0001*, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 *Wolf Road*, [State Office Campus,] Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-*0001*. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR section 721.6 is repealed.

A new section 17 NYCRR 721.6 is added to read as follows:

17 NYCRR 721.6. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR section 820.14 is amended to read as follows:

17 NYCRR section 820.14. Incorporation by reference.

The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, Parts 200 to 299, Parts 300 to 399, revised as of October 1, *2013* [2003], published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, *One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001,* [41 State Street, Albany, NY 12231] at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR Part 845 is repealed.

A new 17 NYCRR Part 845 is added to read as follows:

Section 845.0. Applicability.

(a) The rules and regulations in this part are applicable to equipment operated by or for, but not owned by authorized carriers of property and of household goods in intrastate, interstate and foreign commerce subject to the provisions of Articles 6, 8 and 9 of the Transportation Law.

(b) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the book entitled: Code of Federal Regulations, Title 49, Parts 300 to 399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

The title of 17 NYCRR Part 855 is amended to read as follows: INSURANCE REQUIREMENTS FOR MOTOR CARRIERS *OF PROPERTY* [AND BROKERS]

17 NYCRR section 855.2 is amended to read as follows:

Section 855.2. *Minimum levels of financial responsibility for interstate motor carriers of property.* [Brokers.]

Incorporation by reference. The Commissioner of Transportation adopts Part 387 of Title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of property operating motor vehicle in interstate and foreign commerce and motor carriers transporting hazardous materials, hazardous substances, or hazardous wastes in interstate, intrastate, or foreign commerce. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 185, Parts 186 to 199, Parts 200 to 299 and Parts 300-399, revised as of October 1, 2013, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Central Permit Office, 50 Wolf Road, Albany, NY 12232. They may also be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0001. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries. [Every broker shall secure and maintain and file with this commissioner a corporate bond or policy of insurance in a company authorized to do business in this State by the Superintendent of Insurance, conditioned to insure financial responsibility and the supplying of authorized transportation in accordance with contracts, agreements or arrangements therefore. The bond or policy shall have a minimum liability of $10,000.]

Text of proposed rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, 50 Wolf Road, 6th Floor, Albany, NY 12232, (518) 457-2411, email: david.winans@dot.ny.gov

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

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

Consensus Rule Making Determination

Agency consensus determination per SAPA section 202(1)(b)(i).

The New York State Department of Transportation (NYSDOT) engages in commercial motor vehicle enforcement activities under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP provides federal financial assistance to states in order to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles. The Federal Motor Carrier Safety Administration (FMCSA), the federal oversight agency, sets the conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the federal motor carrier safety regulations and federal hazardous material regulations for both interstate and intrastate motor carriers and drivers. The FMCSA has adopted standards for commercial motor vehicles and drivers that apply to any vehicle being operated in interstate commerce. These regulations, which appear in Title 49 of the Code of Federal Regulations (CFR), have been incorporated by reference into the NYSDOT regulations in Title 17 NYCRR.

Updates to Title 49 CFR regulations are published in new editions released on the first day of October in each year. Over the years, changes have been made to these regulations; while many of the safety standards remain unchanged, there have been additions, deletions and amendments. In addition, since the last time the Title 49 CFR regulations were incorporated by reference into Title 17 NYCRR, some of the part numbers of the federal regulations have changed. Finally, the addresses for the state agencies referenced in the NYSDOT regulations (Department of State (NYSDOS) and Transportation) have changed.

NYSDOT has determined that no person is likely to object to the amendment of 17 NYCRR parts as herein proposed, as the purpose of the rulemaking is to update the edition of Title 49 CFR regulations which are incorporated by reference into Title 17 NYCRR to 10/1/2013, update addresses of state agencies, and correct some minor typographical errors. This rulemaking does not represent a change in NYSDOT policy or practice.

Job Impact Statement

1. Nature of impact: The proposed rule changes are being advanced for the purpose of updating the code of federal regulations (CFR) incorporated into Title 17 NYCRR regulations. The rule changes are not expected to have a resultant impact on jobs, because the associated New York State Department of Transportation (NYSDOT) enforcement activity will be consistent with past practice. Upon the filing of a notice of adoption pending expiration of the 45 day public comment period, the material incorporated by reference into Title 17 NYCRR from Title 49 CFR will be the CFR edition dated 10/1/2013. The CFR Parts in question have been renumbered and amended since last incorporated by reference in Title 17 NYCRR, and the present re-incorporation is necessary to include under Title 17 NYCRR the current provisions of federal regulations which have historically been enforced by NYSDOT Motor Carrier Investigations personnel.

2. Categories and numbers affected: NYSDOT participates in motor carrier enforcement with police agencies, and on its own initiative, performs inspections of vehicles and drivers and motor carrier compliance reviews. These reviews and inspections are performed using the standards that are found in the CFR regulations historically incorporated by reference in 17 NYCRR. Neither the frequency of inspections nor the basis for NYSDOT enforcement action is expected to change in any way.

3. Regions of adverse impact: Inspections and reviews are conducted pursuant to Department policy and there is no variance in the methodology across regions. No adverse impact on jobs in any particular region or regions is anticipated.

4. Minimizing adverse impact: The purpose of performing motor carrier enforcement activities is the advancement of public safety through verification of compliance with state law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.