

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.

State Board of Elections

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Independent Expenditure Committee Disclosure

I.D. No. SBE-16-15-00019-EP

Filing No. 258

Filing Date: 2015-04-07

Effective Date: 2015-04-07

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

Proposed Action: Repeal of section 6200.10; and addition of new section 6200.10 to Title 9 NYCRR.

Statutory authority: Election Law, section 14-107(7); L. 2014, ch. 55

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

Specific reasons underlying the finding of necessity: The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the June 1, 2014 effective date.

The General Government Budget Bill (Chapter 55 of the laws of 2014) created the new independent expenditure disclosure requirements.

Subject: Independent Expenditure Committee Disclosure.

Purpose: To set forth the requirements for Independent Expenditure Committees to disclose financial activity.

Substance of emergency/proposed rule (Full text is posted at the following State website: NY State Board of Elections): Chapter 55 of the Laws of 2014 increased the disclosure and reporting requirements for independent expenditure committees. The purpose of this regulation is to set forth the requirements to achieve compliance of reporting and disclosure requirements by Independent Expenditure Committees.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 5, 2015.

Text of rule and any required statements and analyses may be obtained from: Cheryl Couser, New York State Board of Elections, 40 N Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: cheryl.couser@elections.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Chapter 55 of the Laws of 2014.

2. Legislative objectives: The SFY 2014-2015 New York State Budget set forth new requirements for the increased disclosure of Independent Expenditure activity.

3. Needs and benefits: The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

Chapter 55 of the Laws of 2014 set forth definitions on what an independent expenditure is and how they are to be disclosed in order to promote public transparency of political activity. The effective date of this law was June 1, 2014.

4. Costs: Regulated parties should incur minimal costs for additional compliance requirements. Those entities that engage in certain independent expenditure activities have been required to register and report with the New York State Board of Elections. Chapter 55 of the Laws of 2014 requires an increased level of record keeping and reporting.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This rule requires Committees to make additional electronic disclosures for any contribution received over \$1,000 or any expenditure made over \$5,000 within certain set time frames. This could include 24 hour disclosures of activity or weekly disclosure of such activity.

In addition, for any Independent Expenditure communication which cost more than \$1,000 in the aggregate are required to include attribution on the communication. Such attribution would include the name of the person who paid for the Independent Expenditure and a statement that the communication was not expressly authorized or requested by any candidate or by any candidate's political committee or its agents.

Lastly, a copy of all political communications paid for by an Independent Expenditure Committee must be submitted to the NYSBOE.

7. Duplication: The Federal Elections Commission and the New York City Campaign Finance Board have other legal requirements that may duplicate, overlap or conflict with the rule. At the time of publication, the Board has not undertaken efforts to resolve or minimize the impact of any duplication, overlap or conflict on regulated persons, including but not limited to seeking waivers or amendments of or exemptions from such other rules or legal requirements, or entering into a memorandum of understanding or other agreement regarding same.

8. Alternatives: As the provisions of this law were enacted as part of the SFY 2014-15 budget, the Board did not consider alternative proposals. However, the Board did request public comment on the proposed rule on its website since May 2014. Public comment is still being accepted.

9. Federal standards: Not applicable.

10. Compliance schedule: This provision of law was effective June 1, 2014. NYSBOE provided several webinars in May and provided guidance materials via our website to enable regulated persons to achieve compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule: There is no impact on local governments due to this rule. This rule will have a minimal impact on small businesses. Should a small business engage in independent expenditures, they would already be required to register and report activity to the Board.

2. Compliance requirements: If a small business were to engage in independent expenditures, they would have to register with the NYSBOE as a political committee. In addition, they would have to maintain books of related financial activity and make required disclosures to the Board of such activity. This rule does not impact local government.

3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with this rule.

4. Compliance costs: It is unclear as to the initial capital costs that will be incurred by a regulated business or industry to comply with the rule. A regulated business may hire a staff accountant or services to comply.

5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments would be that a computer is necessary to make required disclosures.

6. Minimizing adverse impact: The rule was not designed to minimize any adverse economic impact the rule may have on small businesses. There is no impact on local governments.

7. Small business and local government participation: Although this is an emergency rule, the NYSBOE has solicited and will continue to receive and consider public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The rule text does not include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement, as the underlying statute, Chapter 55 of the Laws of 2014, did not authorize such a cure period.

9. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule has a statewide impact. Any entity which engages in independent expenditure activity, over a \$1,000 threshold, will have to register and report to the NYSBOE. This rule does not impact local government.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Entities that engage in independent expenditures activity will have to open and maintain a bank account, maintain books for a period of five years, and make a variety of disclosure reports depending on their activity. Disclosure reports range from 24 hour disclosures, weekly disclosures, periodic and election cycle disclosure reports, as applicable. Accounting services may be needed to comply although many entities will absorb this function in house. A computer is needed to comply with disclosure requirements of this rule.

3. Costs: Undetermined.

4. Minimizing adverse impact: This rule was not designed to minimize any adverse impact on rural areas, however, only entities that engage in such activity are captured.

5. Rural area participation: NYSBOE has solicited and is accepting public comment on for impacted entities to participate in the rule making process to minimize cost or complexity.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not Applicable.

Job Impact Statement

1. Nature of impact: This rule should have a minimal impact on jobs as it amends existing disclosure requirements for independent expenditures by political committees. Prior to this rule, Committees have had to register and disclose independent expenditure activity with the Board.

2. Categories and numbers affected: This rule will impact Committees which engage in independent expenditure activity. It may create employment opportunities due to increased recording keeping and reporting requirements. Approximate numbers of employment opportunities have not been determined.

3. Regions of adverse impact: This rule has a statewide impact but would not have an adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: The Board has not taken any measures to minimize adverse impacts on existing jobs or to promote the development of new employment opportunities. The Board has not determined that this rule would have an adverse impact on jobs.

5. (IF APPLICABLE) Self-employment opportunities: Not applicable.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Department of Environmental Conservation

NOTICE OF ADOPTION

Management of Coastal Sharks

I.D. No. ENV-47-14-00001-A

Filing No. 228

Filing Date: 2015-04-01

Effective Date: 2015-04-22

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303 and 13-0338

Subject: Management of coastal sharks.

Purpose: Make state regulations consistent with federal rules and maintain compliance with the ASMFC Interstate FMP for Coastal Sharks.

Text or summary was published in the November 26, 2014 issue of the Register, I.D. No. ENV-47-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Heins, Bureau of Marine Resources, NYSDEC, 205 North Belle Mead Road, Suite 1, East Setauket, New York 11733, (631) 444-0435, email: steve.heins@dec.ny.gov

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the Department.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, 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

Public Retirement Systems

I.D. No. DFS-16-15-00002-E

Filing No. 254

Filing Date: 2015-04-06

Effective Date: 2015-04-06

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

Action taken: Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

Specific reasons underlying the finding of necessity: The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards,

strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, and January 7, 2015. The Department is currently working with the Governor's Office to make additional revisions to the regulation.

Subject: Public Retirement Systems.

Purpose: To ban the use of placement agents by investment advisors engaged by the state employees' retirement systems.

Text of emergency rule: Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)(a) Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] Fund.]

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)(b) Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] Fund to provide technical or professional services to the [fund] Fund relating to investments by the [fund] Fund, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] investment managers, securities, or other investments, or monitor investment performance.]

[(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

[(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.]

[(f) (e) Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] Fund. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).]

[(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.]

[(g) OSC shall mean the Office of the State Comptroller.]

[(g) (h) Placement agent or intermediary shall mean any person or entity, including registered lobbyists, directly or indirectly engaged and compensated by an investment manager (other than [an] a regular employee of the investment manager) to promote investments to or solicit investment by [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] Fund, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of securing or influencing the decision to secure a particular transaction or investment by the Fund. [obtaining investments or providing other intermediary services with respect to the fund.] For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to

secure or influence the decision to secure a particular transaction or investment by the Fund.]

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

[(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.]

[(j) (k) Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] Fund, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] Fund. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.]

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4 (d) is amended to read as follows:

[(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] Fund, to [address] preclude potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] Fund, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] the Fund shall not [engages, hires, invests with, or commits] engage, hire, invest with or commit to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] Fund. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5 (g) is amended to read as follows:

[(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] Retirement System's financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] Fund to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)(4) disclose on the OSC public website the [fund's] Fund's investment policies and procedures; and

[(6)(5) require fiduciary and conflict of interest reviews of the [fund] Fund every three years by a qualified unaffiliated person.]

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire July 4, 2015.

Text of rule and any required statements and analyses may be obtained from: Lisa Fernez, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5023, email: lisa.fernez@dfs.ny.gov

Regulatory Impact Statement

1. **Statutory authority:** The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

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

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

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in *Matter of Dinallo v. DiNapoli*, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. **Legislative objectives:** Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. **Needs and benefits:** The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. **Costs:** The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

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

6. **Paperwork:** No additional paperwork should result from the prohibition imposed by the rule.

7. **Duplication:** This rule will not duplicate any existing state or federal rule.

8. **Alternatives:** The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking to do business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. **Federal standards:** The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. **Compliance schedule:** The emergency adoption of this regulation on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. **Effect of the rule:** This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collec-

tively, “the Retirement System”), and the New York State Common Retirement Fund (“the Fund”).

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund’s control environment is insufficient to protect the integrity of the state employees’ retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund’s members and beneficiaries, and safeguard the integrity of the Fund’s investments. Further, the rule defines “placement agent or intermediary” in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a “small business” as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of “small business” set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding “pay to play” practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries and to safeguard the integrity of the Fund’s investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary.

But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund’s members and beneficiaries and safeguard the integrity of the Fund’s investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor’s Office, Comptroller’s Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund (“the Fund”). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund’s members and beneficiaries, and to safeguard the integrity of the Fund’s investments.

Department of Health

NOTICE OF ADOPTION

Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. HLT-28-14-00015-A

Filing No. 257

Filing Date: 2015-04-07

Effective Date: 2015-04-22

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

Action taken: Amendment of Subpart 86-11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

Subject: Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities.

Purpose: To amend the new rate methodology effective July 1, 2014.

Text or summary was published in the July 16, 2014 issue of the Register, I.D. No. HLT-28-14-00015-P.

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

Revised rule making(s) were previously published in the State Register on January 14, 2015 and November 19, 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.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation

I.D. No. HLT-28-14-00016-A

Filing No. 256

Filing Date: 2015-04-07

Effective Date: 2015-04-22

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

Action taken: Amendment of Subpart 86-10 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

Subject: Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation.

Purpose: To amend the new rate methodology effective July 1, 2014.

Text or summary was published in the July 16, 2014 issue of the Register, I.D. No. HLT-28-14-00016-P.

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

Revised rule making(s) were previously published in the State Register on January 14, 2015 and November 19, 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.ny.gov

Assessment of Public Comment

The agency received no public comment.

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

Rate Rationalization – Prevocational Services, Respite, Supported Employment and Residential Habilitation

I.D. No. HLT-16-15-00014-P

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

Proposed Action: Addition of Subpart 86-13 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

Subject: Rate Rationalization – Prevocational Services, Respite, Supported Employment and Residential Habilitation.

Purpose: To establish new rate methodology effective July 1, 2015.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov): This regulation establishes a new reimbursement methodology for Prevocational (Site-based and Community-based), Respite (Hourly and Free-standing), Supported Employment Services, and Residential Habilitation (Family Care) programs, which will be effective July 1, 2015.

For Prevocational (Site-based) and Respite (Hourly and Free-standing) programs, the methodology will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2013 – December 31, 2013 for calendar year filers or the period of July 1, 2012 – June 30, 2013 for fiscal year filers.

2) The assignment of geographic location, based on CFR information and consistent with Department of Health (DOH) regions.

3) Operating, facility and capital components.

• The operating component recognizes a blend of actual provider costs and average regional costs.

• The facility component recognizes actual provider costs.

• The methodology for the capital component has not been significantly changed from that of the previous reimbursement methodology, except

that the initial reimbursement will remain in the rate for only two years from the date of site certification unless actual costs are verified with the Department of Health.

4) Wage Equalization factors.

5) A budget neutrality factor.

6) A two year phase-in period for transition to the methodology.

For Prevocational (Community-based) Services, Supported Employment Services and Residential Habilitation (Family Care) programs, the methodology will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2013 – December 31, 2013 for calendar year filers or the period of July 1, 2012 – June 30, 2013 for fiscal year filers to calculate a fee reimbursement schedule.

2) The assignment of geographic location, based on CFR information.

• For Residential Habilitation (Family Care), the geographic location will be consistent with DOH regions.

• For Prevocational (Community-based) Services and Supported Employment Services, the geographic location will be consistent with Office for People With Developmental Disabilities (OPWDD) regions.

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.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

These proposed regulations further the legislative objectives embodied in section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law. The proposed regulations concern changes in the methodology for reimbursement of prevocational services (site-based and community-based), respite services (hourly and free-standing), supported employment services, and residential habilitation services delivered in family care homes.

Needs and Benefits:

The Office for People With Developmental Disabilities (OPWDD) and the Department of Health (DOH) are seeking to implement a new reimbursement methodology which complements existing OPWDD requirements concerning prevocational, respite, supported employment and residential habilitation services that are provided in family care homes, and satisfies commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

The cost-based methodology for prevocational (site-based) and respite (hourly and free-standing) services combines regional average cost components and provider specific cost experiences. The fee methodology for prevocational (community-based), supported employment and residential habilitation (family care) will create standardized fees for these services. The purpose of the methodology change is to move from budget-based reimbursement to a system based on costs; to provide a clear and transparent method of reimbursement; to move toward consistency in rates across the system; and to provide a more stable system of reimbursement.

Costs:

Costs to the Agency and to the State and its Local Governments:

The new methodologies do not apply to the state as a provider of services.

Even if the methodologies in the proposed regulations lead to an increase in Medicaid expenditures in a particular county, these amendments 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.

Costs to Private Regulated Parties:

The proposed regulations will implement new reimbursement methodologies for prevocational services (site-based and community-based), respite services (hourly and free-standing), supported employment services, and residential habilitation services delivered in family care homes. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The proposed amendments will require additional paperwork to be completed by providers.

The proposed regulations require providers of prevocational services (site-based) to submit a capital assets schedule to OPWDD as part of the annual cost report; to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD; and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Duplication:

The proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

OPWDD developed the methodology in collaboration with DOH and discussed the methodology with representatives of provider associations and with CMS. A variety of factors were considered; however, the proposed regulations represent the results of decisions made from those discussions and collaboration with DOH.

Federal Standards:

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

Compliance Schedule:

OPWDD and DOH are planning for the regulations to be effective July 1, 2015. All necessary information and guidance regarding implementation of the new methodologies will be provided to agencies in advance of the effective date of regulations.

Regulatory Flexibility Analysis

Effect of Rule:

The Department has determined, through a review of the certified cost reports, that most prevocational services (site-based and community-based), respite services (free-standing and hourly), supported employment services (SEMP), and residential habilitation services that are delivered in family care homes, are provided by 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. Currently, there are 94 providers of prevocational services; 295 providers of respite services; 165 providers of SEMP services; and 32 providers of residential habilitation services delivered in family care homes. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The proposed regulations concern changes in the methodologies for reimbursement of prevocational services (site-based and community-based), respite services (free-standing and hourly), supported employment services (SEMP), and residential habilitation services delivered in family care homes.

The proposed regulations will shift resources across provider agencies; this will result in some agencies obtaining a higher reimbursement rate and others a lower reimbursement rate.

The proposed regulations primarily affect the operating cost component of agency reimbursement. The new operating cost component will reflect actual costs of services to individuals receiving prevocational (site-based) and respite (hourly and free-standing) services. Such costs will be averaged according to region and the averages will be adjusted and weighted for maximum accuracy. The final operating rate will incorporate actual costs of an agency and the average regional costs of all agencies in such region. For prevocational services (community-based), supported employment and residential habilitation (family care), the fee schedule will reflect the average regional costs of all agencies in the identified regions.

The capital cost component of the rate for prevocational services (site-based) and respite (free-standing) will be the lesser of approved or actual costs. The Department and OPWDD will retain the system of prior property approval and the attendant system of estimated costs and cost verification processes. A consequence of the failure to submit actual cost data within the two years prescribed by this rule will be the reduction of the capital cost component to zero until such time as the agency complies.

Compliance Requirements:

The proposed regulations will require additional paperwork to be completed by providers. The proposed rule requires providers of prevocational services (site-based) to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Professional Services:

Additional professional services will be required as a result of these regulations. The amendments require providers of prevocational services (site-based) to verify the accuracy and completeness of the capital assets

schedule. However, the regulations will not add to the professional service needs of local governments.

Compliance Costs:

The proposed regulations will require additional paperwork to be completed by providers and may result in minor compliance costs as a result. The proposed rule requires providers of prevocational services (site-based) to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. The Department does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

Economic and Technological Feasibility:

The proposed amendments do not impose on regulated parties the use of any technological processes.

Minimizing Adverse Impact:

Rate rationalization will provide a clear, transparent method of reimbursement that will normalize rates across the industry and make for a more stable system of reimbursement across the services affected. The proposed regulations minimize adverse economic impact by providing a multi-year phase-in period for transition to the new methodology for prevocational (site-based) and respite (hourly and free-standing) services. For providers that will experience a decrease in reimbursement, this will help to smooth the effects of the reduction in revenue.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department has determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Small Business and Local Government Participation:

The rate-setting methodologies in the proposed regulations were discussed with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers who have fewer than 100 employees. The Department and OPWDD also discussed plans to promulgate these regulations to providers during four meetings between October and December 2014. Further, the Department is committed to the transparency of this methodology by posting the results by provider on its website.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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. Forty three 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. In addition, certain townships in 10 other counties 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 in light of their impact on rural area provider agencies. The proposed regulations concern changes in the methodologies for reimbursement of prevocational services (site-based and community-based), respite services (free-standing and hourly), supported employment services (SEMP) and residential habilitation services that are delivered in family care homes.

The proposed regulations will shift resources across provider agencies, including rural area provider agencies. This will result in some agencies obtaining a higher reimbursement rate and others a lower reimbursement rate.

The proposed regulations primarily affect the operating cost component of agency reimbursement. The new operating cost component will reflect actual costs of services to individuals receiving prevocational (site-based) and respite (hourly and free-standing) services. Such costs will be averaged according to region and the averages will be adjusted and weighted for maximum accuracy. The final operating rate will incorporate actual costs of an agency and the average regional costs of all agencies in such region. For prevocational services (community-based), supported employment and residential habilitation (family care), the fee schedule will reflect the average regional costs of all agencies in the identified regions.

The capital cost component of the rate for prevocational services (site-based) and respite (free-standing) will be the lesser of approved or actual costs. The Department and OPWDD will retain the system of prior property approval and the attendant system of estimated costs and cost verification processes. A consequence of the failure to submit actual cost data

within the two years prescribed by this rule will be the reduction of the capital cost component to zero until such time as the agency complies.

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

There will be additional reporting, recordkeeping and professional services imposed by these regulations. The proposed rule requires providers of prevocational services (site-based) to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

Costs:

The proposed regulations will require additional paperwork to be completed by providers and may result in minor compliance costs as a result. The proposed rule requires providers of prevocational services (site-based) to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Minimizing Adverse Impact:

Rate rationalization will provide a clear, transparent method of reimbursement that will normalize rates across the industry and make for a more stable system of reimbursement across the services affected. The proposed regulations minimize adverse economic impact by providing a multi-year phase-in period for transition to the new methodology for prevocational (site-based) and respite (hourly and free-standing) services. For providers that will experience a decrease in reimbursement, this will help to smooth the effects of the reduction in revenue.

The Department has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The Department has determined that the revision to reimbursement proposed in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

Rural Area Participation:

The rate-setting methodologies in the proposed regulations were discussed with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), which represents some rural area providers. The Department and OPWDD also discussed plans to promulgate these regulations to providers during four meetings between October and December 2014. Further, the Department is committed to the transparency of this methodology by posting the results by provider on its website.

Job Impact Statement

A job impact statement is not being submitted for these proposed amendments because the Department determined that they will not cause a loss of more than 100 full time annual jobs State wide. The proposed regulations will implement a new reimbursement methodology for prevocational services (site-based and community-based), respite services (hourly and free-standing), supported employment and residential habilitation (family care). Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others.

Some providers will experience a decrease in reimbursement as a result of these amendments. The Department expects that most providers in this situation will be able to accommodate the reduction in revenue by making programs more efficient without compromising the quality of services. However, some providers may effectuate a modest reduction in employment opportunities as a result of the decrease in revenue. At the same time, other providers that experience an increase in reimbursement may commensurately increase employment opportunities. Therefore, the Department expects that there will be no overall effect on jobs and employment opportunities as a result of these amendments.

Higher Education Services Corporation

EMERGENCY RULE MAKING

New York State Science, Technology, Engineering and Mathematics Incentive Program

I.D. No. ESC-16-15-00001-E

Filing No. 230

Filing Date: 2015-04-01

Effective Date: 2015-04-01

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

Action taken: Addition of section 2201.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655, and 669-e

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

Specific reasons underlying the finding of necessity: This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

Subject: New York State Science, Technology, Engineering and Mathematics Incentive Program.

Purpose: To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

Text of emergency rule: PART 2201. GENERAL ELIGIBILITY CRITERIA

New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 New York State Science, Technology, Engineering and Mathematics Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's web site, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's web site.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its web site.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the life of the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 29, 2015.

Text of rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

Regulatory Impact Statement

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to

propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

Needs and benefits:

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is \$6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

Costs:

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

New York State Joint Commission on Public Ethics

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Outside Activities Regulations

I.D. No. JPE-16-15-00003-P

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

Proposed Action: Amendment of Part 932 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (17)(a)

Subject: Outside activities regulations.

Purpose: To provide guidance and approval procedures for outside activities by State government employees and officials.

Text of proposed rule: Title 19 NYCRR Part 932 is amended to read as follows:

Part 932 Outside Activity Restrictions And Approval Procedures

932.1 Purpose of Regulations.

The purpose of these regulations is to effectuate the conflicts of interests provisions of the Public Officers Law and to provide an approval procedure for outside activities by Policy Makers, heads of State Agencies, and Statewide Elected Officials.

932.1[2] Definitions.

(a) Approving Authority, for a Policy Maker, shall mean (i) the head of a State [a]Agency employing such Policy Maker; [or appointing authority, or his or her designee, as appropriate for the individual involved and, for the four statewide elected officials and the heads of State agencies, shall mean the State Ethics Commission which may delegate its approval authority to its executive director] (ii) the appropriate designee of the head of such State Agency; (iii) the individual or body that has the authority to appoint such Policy Maker to a position; or (iv) the appropriate designee of such individual or body.

(b) [Covered individual shall mean the four statewide elected officials and State officers or employees] Commission shall mean the New York State Joint Commission on Public Ethics and, where applicable, its predecessor agencies.

(c) Compensation shall mean the financial consideration received in exchange for services rendered, e.g., wages, salaries, benefits, professional fees, royalties, bonuses, or commissions on sales. Compensation shall also include income received from any business venture, whether or not incorporated, that is owned or controlled by an individual who is subject to this Part. Notwithstanding the foregoing, income received from transactions involving such individual's own securities, personal property, or real estate is not included in the term Compensation.

[d] Nominal compensation shall mean no more than either:

(1) the per diem amount provided to such position, where no other compensation for such appointment is received; or

(2) \$4,000 in annual compensation for personal services actually rendered, e.g. wages, salaries, professional fees, royalties, bonuses, or commissions on sales, and that portion of income received from a corporation or unincorporated trade or business which represents a reasonable allowance for salaries and compensation for personal services actually rendered

Income received by the individual from transactions involving the individual's own securities, person property or real estate is not included in determining annual compensation for personal services actually rendered, provided the transactions are not with any State agency.]

(d) Outside Activity Approval Form shall mean a form designated by the Commission as the Outside Activity Approval Form and available on the Commission's website.

(e) Party shall mean (i) any organization which at the last preceding election for governor of the State of New York polled at least fifty thousand votes for its candidate for governor; or (ii) the national political entity affiliated with such organization.

(f) Party Committee shall mean any State committee, county committee, and such other committee (including national committee) as the rules of the Party may allow.

[(e)] (g) Policy[-making position] Maker shall mean an officer, employee, director, commissioner, or member of a State Agency (other than a multi-state authority) who has been [that position annually] determined [by the appointing authority as set forth in a written instrument filed with

the State Ethics Commission or as amended as required by] to hold a policy-making position pursuant to Public Officers Law[, section] § 73-a(1)(c)[(ii) and (iii)].

[(h) State officer or employee shall be defined as the term State officer or employee is defined in § 73 and § 73-a of the Public Officers Law.]

[(f)] (h) Political [o]rganization shall mean any organization that is affiliated with, or subsidiary to, a [political] [p]Party[, and shall include, for example, partisan political clubs. Political organization shall not include an organization supporting a particular cause with no partisan inclination, for example, the League of Women Voters, and shall not include campaign or fundraising committees]. The term does not include campaign or fundraising committees.

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

[c] (j) [Four] [s]Statewide [e]Elected [o]Official[s] shall mean the Governor, [the] Lieutenant Governor, Attorney General, or [the] Comptroller [and the Attorney General] of the State of New York.

932.3 General Standard for All Persons Subject to Public Officers Law § 74.

No individual who is subject to Public Officers Law § 74, shall engage in any outside activity which interferes or conflicts with the proper and effective discharge of such individual's official State duties or responsibilities.

932.[2]4 Restrictions on [policymakers and] [c]Certain [others holding positions of officer or member of] [p]Political Activities [party organizations].

(a) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) [department, individual who serves as one of the four statewide elected officials, individual who serves in a policymaking position or member or director of a public authority (other than a multistate authority), public benefit corporation or commission at least one of whose members is appointed by the Governor] shall serve as an officer, director, or board member of any [political] [p]Party or [p]Political [o]rganization.

(b) No head of a State Agency, Statewide Elected Official, or Policy Maker (regardless of whether the person serves on an unpaid or per diem basis) [department, individual who serves as one of the four statewide elected officials, individual who serves in a policymaking position or member or director of a public authority (other than a multi-state authority), public benefit corporation or commission at least one of whose members is appointed by the Governor] shall serve as a member, officer, director, board member, or district leader of any [political] [p]Party [c]Committee [including political party district leader (however designated) or member of the national committee of a political party].

(c) Nothing in this section shall prohibit a head of a State Agency, Statewide Elected Official, or Policy Maker from serving as a delegate to a State or national Party convention.

[932.3 Restriction on holding other public office or private employment or engaging in other activities.

(a) No covered individual shall engage in any outside activity which interferes or is conflict with the proper and effective discharge of such individual's official duties or responsibilities.

(b) No individual who serves in a policymaking position on other than a nonpaid or per diem basis, or who serves as one of the four Statewide elected officials, shall hold any other public office or public employment for which more than nominal compensation, in whatever form, is received without, in each case, obtaining prior approval from the State Ethics Commission.

(c) No individual who serves in a policymaking position on other than a nonpaid or per diem basis, or who serves as one of the four Statewide elected officials, shall expend time or otherwise engage in any private employment, profession or business, or other outside activity from which more than nominal compensation, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from the State Ethics Commission.

(d) No individual who serves in a policymaking position on other than a nonpaid or per diem basis, or who serves as one of the four Statewide elected officials shall expend time or otherwise engage in any private employment, profession or business, or other outside activity from which more than \$1,000 but less than nominal compensation, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from his or her approving authority.

(e) No individual who serves in a policymaking position on other than a

nonpaid or per diem basis, or who serves as one of the four Statewide elected officials shall serve as a director or officer of a for-profit corporation or institution without, in each case, obtaining prior approval from the State Ethics Commission.]

[932.4 Procedure to approve certain outside activities.

(a) Any individual who requests approval to engage in any of the outside activities set forth in section 932.3 of this Part from which more than nominal compensation, in whatever form, is to be received, must file a written request to approve outside activities with the State Ethics Commission which must contain the consent of the individual's approving authority and any other information the Commission deems necessary to make a determination. The Commission will not consider requests without such consent. The State Ethics Commission may require such individual to submit additional information as it deems appropriate.

(b) The approving authority shall make its determination based on the provisions of sections 73 and 74 of the Public Officers Law, as well as pertinent State agency policies, procedures or rules and regulations governing employee conduct, and such other factors as the approving authority may deem appropriate. The interpretations of the approving authority of sections 73 or 74 of the Public Officers Law shall not be binding on the State Ethics Commission in any later investigation or proceeding.

(c) The State Ethics Commission shall make its determination based on whether the proposed outside activity interferes with or is in conflict with the proper and effective discharge of such individual's duties. In making its determination, the commission shall consider the provisions of sections 73 and 74 of the Public Officers Law.

(d) Those individuals who, prior to the effective date of this Part [April 11, 1990], are engaged in activities prohibited by section 932.3 of this Part shall have 45 days from such effective date to submit a request to approve outside activities to the State Ethics Commission to continue to engage in such activity. Upon a determination by State Ethics Commission that such outside activity is not appropriate, the individual must immediately cease and desist from engaging in such activity.

(e) Nothing contained in this Part shall prohibit any State agency from adopting or implementing its own rules, regulations or procedures with regard to outside employment which are more restrictive than the requirements of this Part.]

932.5 Required Prior Approval for Salaried Policy Makers, Heads of State Agencies, and Statewide Elected Officials

(a) A Policy Maker who serves the State on other than a nonpaid or per diem basis, shall obtain the following approvals prior to engaging in the activities listed below:

<i>Outside Activity</i>	<i>Required Approvals/ Actions</i>
<i>A job, employment (including public employment), or business venture that generates, or is expected to generate, between \$1,000 and \$5,000 in Compensation annually</i>	<i>Approving Authority must approve</i>
<i>A job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in Compensation annually</i>	<i>Approving Authority and the Commission must approve</i>
<i>Holding elected or appointed public office (regardless of Compensation) as an outside activity</i>	<i>Approving Authority and the Commission must approve</i>
<i>Serving as a director or officer of a for-profit entity (regardless of Compensation)</i>	<i>Approving Authority and the Commission must approve</i>
<i>Serving as a director or officer of a not-for-profit entity</i>	
<i>Compensation is \$0 - \$999 annually</i>	<i>Approval not required, but must notify Approving Authority in writing prior to commencing service</i>
<i>Compensation is between \$1,000 and \$5,000 annually</i>	<i>Approving Authority must approve</i>
<i>Compensation is more than \$5,000 annually</i>	<i>Approving Authority and the Commission must approve</i>

(b) A head of a State Agency or a Statewide Elected Official shall obtain approval from the Commission prior to engaging in the outside activities listed in Section 932.5(a).

[932.6 Complaints

Any person may file a complaint with the State Ethics Commission

which alleges that a violation of the provisions of this Part has occurred. The commission, pursuant to its authority under section 94 of the Executive Law, may conduct an investigation and take such other action as it deems proper.]

932.6 Approval Procedures.

(a) A Policy Maker who requires approval pursuant to Part 932.5(a) from his Approving Authority only, shall submit to the Approving Authority a written approval request prior to commencing the outside activity.

(1) The Approving Authority shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, pertinent State Agency policies, procedures, or regulations governing employee conduct, and such other factors as the Approving Authority may deem appropriate.

(2) The interpretations of the Approving Authority of the Public Officers Law shall not be binding on the Commission.

(b) A Policy Maker who also requires Commission approval pursuant to Part 932.5(a) shall submit to the Commission a request on the Outside Activity Approval Form. The form must be completed in full, including signatures from the individual and the Approving Authority. The Commission will not consider requests without a completed Outside Activity Approval Form.

(c) A head of a State Agency or Statewide Elected Official who requires Commission approval pursuant to Part 932.5(b) shall submit to the Commission a request on the Outside Activity Approval Form. The Commission will not consider requests without a completed Outside Activity Approval Form.

(d) With respect to outside activity requests that require Commission approval, the Commission shall make its determination based on its interpretation of whether the proposed outside activity is in accordance with the applicable provisions of the Public Officers Law, Commission Advisory Opinions, regulations, and policies. The Commission may require additional information as it deems appropriate.

[932.7 Violations

In addition to any penalty contained in any provision of law, a knowing and intentional violation of this Part by an individual subject to it may result in appropriate action taken by the State Ethics Commission or referral by it to the individual's appointing authority. The appointing authority, after such a referral, may take disciplinary action which may include a fine, suspension without pay or removal from office or employment in the manner provided by law.]

932.7 Previously Approved Outside Activity: Annual Disclosure and Material Changes

(a) Once an outside activity has been approved pursuant to Part 932.6 it shall remain effective unless and until there is a material change in the individual's State responsibilities or in the outside activity, at which point the individual must submit a new request for approval in accordance with Parts 932.5 and 932.6.

(b) On an annual basis, an individual who has received approval for an outside activity pursuant to Part 932.6, or has otherwise disclosed the not-for-profit board service pursuant to Part 932.5, must inform, in writing, his Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) if the individual is still engaged in the outside activity for which approval was granted. The Approving Authority (or, in the case of a head of a State Agency or a Statewide Elected Official, that State Agency's ethics officer or other designated individual) shall determine when such annual disclosure is to be made.

932.8 Enforcement.

In addition to any penalty contained in any other provision of law, an individual's performance of an outside activity that is in violation of Public Officers Law § 73 or § 74 may subject him to a civil penalty or other Commission action. Nothing herein shall limit or prohibit the State Agency, Approving Authority, or other appropriate entity from taking disciplinary action with respect to violations of this Part or the Public Officers Law, including a fine, suspension without pay, or removal from office or employment in the manner provided by law, regulation, or collective bargaining agreement.

932.[5]9 Codes of Ethics for [u]Uncompensated and [p]Per [d]Diem [d]Directors, [m]Members and [o]Officers.

The boards or councils whose officers or members are subject to § 73-a of the Public Officers Law and are not subject to § 73 of such law by virtue of their uncompensated or per diem compensation status and the commissions, public authorities, and public benefit corporations whose member or directors are subject to § 73-a of the Public Officers Law and are not subject to § 73 by virtue of their uncompensated or per diem compensation status shall adopt a code of ethical conduct covering conflicts of interest and business and professional activities, including outside activities, of such directors, members, or officers both during and after service with such boards, councils, commissions, public authorities, and public benefit

corporations. Such codes of ethical conduct shall be filed with the [State Ethics] Commission.

932.10 Agencies Permitted More Restrictive Rules.

Nothing contained in this Part shall prohibit any State Agency from adopting or implementing its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Michael E. Sande, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: regs@jcope.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law section 94(9)(c) generally directs the Joint Commission on Public Ethics ("JCOPE") to adopt, amend, and rescind rules and regulations to govern JCOPE's various procedures. Executive Law section 94(17)(a) directs JCOPE to promulgate rules concerning limitations on outside activities by persons subject to its jurisdiction. Public Officers Law section 74 establishes general standards concerning the prevention of actual and apparent conflicts of interest between a State employee's official responsibilities and her private interests.

2. Legislative objectives: To provide guidance and procedures regarding the outside activities of certain State officers and employees.

3. Needs and benefits: JCOPE's predecessor agencies created regulations regarding outside activities in Part 932. The proposed rulemaking will refine these regulations in order to make them easier to understand and to clarify certain provisions by defining key terms. The proposed rulemaking also will effect substantive changes to the existing regulations as follows:

A. Not-for-Profit Board Service

The current regulations require approval from an individual's agency and JCOPE for service on the Board of a for-profit entity, regardless of the compensation received. The regulations have no such requirement for Board service on a not-for-profit company or corporation.

The proposed amendment would now require a Policy Maker to disclose to his agency service as a board member of a not-for-profit entity, regardless of compensation received. If the individual receives compensation for such service, the approval requirements and thresholds remain the same as for any other outside activity.

B. Annual Disclosure of Previously-Approved Outside Activity

The proposed amended regulations would impose a new requirement on persons who have a previously-approved outside activity. Namely, these individuals would be required to disclose to their agencies, on an annual basis, if they are still engaged in the approved outside activity. The amended regulations codify the long-standing practice that an outside activity approval, duly approved by the agency and/or JCOPE, remains effective unless and until there is a material change in the individual's State responsibilities or in the previously-approved outside activity, at which point the individual must submit a new request for approval in accordance with Parts 932.5 and 932.6.

In many cases, current ethics officers may be unaware of approvals that were granted before they came to their jobs. This proposed change thus provides agencies with the opportunity to systematically review, if need be, all outside activities.

C. Monetary Threshold for Commission Approval

Currently, the regulations require an individual who has an outside activity that generates more than \$4,000 a year to seek approval from her agency and the Commission.

The proposed amended regulations increase this threshold to \$5,000. This figure corresponds with the upper range of Category C in the current Financial Disclosure Statement.

D. Summary of Amended Sections

Part 932.1 provides the purpose of the regulations.

Part 932.2 defines key terms in the regulations. The definitions are not meant to alter the scope of the existing regulations, but are instead designed to clarify those regulations.

Part 932.3 states the general ethical standards, with respect to outside activities, for all persons subject to Public Officers Law § 74.

Part 932.4 sets forth restrictions on certain political activities by Policy Makers, heads of State Agencies, and Statewide Elected Officials. The definitions of certain terms have been clarified, but the proposed amended regulations do not change the prohibitions on political activities in the current regulations.

Part 932.5 sets forth the required approvals and actions for various categories of covered outside activities. Policy Makers must obtain approval from their Approving Authority for an outside job, employment (including public employment), or business venture that generates, or is expected

to generate, between \$1,000 and \$5,000 in Compensation annually. Policy Makers must obtain approval from their Approving Authority and JCOPE with respect to: (i) a job, employment (including public employment), or business venture that generates, or is expected to generate, more than \$5,000 in Compensation annually; (ii) holding elected or appointed public office (regardless of Compensation) as an outside activity; and (iii) serving as a director or officer of a for-profit entity (regardless of Compensation). A head of a State Agency or a Statewide Elected Official must obtain approval from JCOPE prior to engaging in any of the outside activities listed in this Part. As discussed above, a Policy Maker who holds a position as an officer or director of a not-for-profit entity and receives less than \$1,000 in annual compensation for such service must disclose this position to the agency's ethics officer.

Part 932.6 outlines the procedures for seeking approval of outside activities.

Part 932.7 states that an approval of an outside activity remains in effect unless and until there is a material change in the individual's State responsibilities or in the outside activity. This Part also establishes a new requirement that an individual who has received approval of an outside activity to provide annual notification of whether the individual is still engaged in the outside activity.

Part 932.8 identifies the statutory provision, Executive Law section 94, that authorizes JCOPE to investigate possible violations of Public Officers Law sections 73 and 74 and their corresponding regulations and to take appropriate action as authorized in these statutes.

Part 932.9 directs boards, councils, commissions, and other entities whose officers or members are subject to Public Officers Law § 73-a, but are not subject to § 73 of such law by virtue of their uncompensated or per diem compensation status, to adopt a code of ethical conduct.

Part 932.10 reserves the authority of any State Agency to adopt or implement its own rules, regulations, or procedures with regard to outside activities that are more restrictive than the requirements of this Part.

4. Costs:

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

b. costs to the agency, state and local government: Minimal costs to state and local governments.

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

5. Local government mandate: The proposed regulation imposes no new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district, or other special district.

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

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

8. Alternatives: JCOPE could promulgate a formal advisory opinion or other guidance. However, amending the existing outside activity regulations through the formal rulemaking process provides more clarity to affected parties.

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

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

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping, or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that while the outside activity regulations may affect what activities a Policy Maker, head of a State Agency, or Statewide Elected Official (as defined in the regulations) may perform outside the individual's State responsibilities, this does not impose record-keeping requirements or other adverse economic impacts on small businesses and local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping, or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the outside activity regulations govern activities a Policy Maker, head of a State Agency, or Statewide Elected Official (as defined in the regulations) may perform outside the individual's State responsibilities. Rural areas are not affected in any way.

Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will have a limited impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes these findings based on the fact that the regulations apply only to Policy Makers, heads of a State Agency, and Statewide Elected Officials, during the period of their State service.

Long Island Power Authority

NOTICE OF ADOPTION**Provisions of LIPA's Tariff for Adjustment to Rates and Changes of Service Classifications****I.D. No.** LPA-02-15-00006-A**Filing Date:** 2015-04-02**Effective Date:** 2015-04-02

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

Action taken: The Long Island Power Authority ("LIPA") adopted a proposal to modify its Tariff for Electric Service ("Tariff") to update delivery charges, authorize reconciliation of energy efficiency revenues, and introduce a revenue decoupling mechanism.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Provisions of LIPA's Tariff for adjustment to rates and changes of service classifications.

Purpose: To modify and add to the Tariff in order to implement revenue-neutral changes required to maintain the 3-year LIPA rate freeze.

Text or summary was published in the January 14, 2015 issue of the Register, I.D. No. LPA-02-15-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: jbell@lipower.org

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.

Office of Mental Health

NOTICE OF ADOPTION**Prevention of Influenza Transmission****I.D. No.** OMH-04-15-00002-A**Filing No.** 231**Filing Date:** 2015-04-02**Effective Date:** 2015-04-22

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

Action taken: Amendment of Part 509 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04
Subject: Prevention of Influenza Transmission.

Purpose: Provide clarification and flexible system for documentation.

Text or summary was published in the January 28, 2015 issue of the Register, I.D. No. OMH-04-15-00002-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office of Parks, Recreation and Historic Preservation

NOTICE OF ADOPTION**Resident Curator Program****I.D. No.** PKR-06-15-00002-A**Filing No.** 234**Filing Date:** 2015-04-06**Effective Date:** 2015-04-22

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

Action taken: Amendment of section 389.1; and addition of sections 389.2-389.6 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09, subdivision 2-h

Subject: Resident Curator Program.

Purpose: To rehabilitate vacant and unused buildings at no cost to the State by leasing the buildings to private individuals.

Text or summary was published in the February 11, 2015 issue of the Register, I.D. No. PKR-06-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Attorney, OPRHP, Albany, NY 12238 (USPS mail), 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Office of Parks, Recreation and Historic Preservation (State Parks) received only three written comments on the regulation establishing the Resident Curator Program. They all supported the regulation.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Site Based and Community Prevocational Services

I.D. No. PDD-16-15-00016-P

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

Proposed Action: Amendment of Subparts 635-10 and 635-99 of Title 14 NYCRR.

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

Subject: Site Based and Community Prevocational Services.

Purpose: To distinguish requirements for site based prevocational services and community prevocational services.

Substance of proposed rule (Full text is posted at the following State website: www.opwdd.ny.gov): The proposed amendments make changes to regulations in 14 NYCRR sections 635-10.4 and 635-10.5 concerning prevocational services, day habilitation services and community habilitation services.

The proposed amendments create a new service delivery model for prevocational services by distinguishing between site based prevocational services and community prevocational services. The amendments limit applicability of existing prevocational service regulations to those services provided before July 1, 2015. The amendments add new regulations on the delivery and reimbursement of site based prevocational services and community prevocational services delivered on and after July 1, 2015. The amendments also make corresponding changes to existing provisions on the reimbursement of day habilitation and community habilitation services.

Site Based Prevocational Services:

New requirements for site based prevocational services include the following:

- Site based prevocational services are defined as prevocational services provided in non-residential facilities certified by OPWDD.
- The proposed amendments duplicate allowable activities in existing regulations for prevocational services and add other allowable activities such as: assessing the individual to determine his or her work interests and skills; instruction in benefits planning; instruction in the use of technology that can assist in developing job skills and meeting workplace expectations; assisting the individual to experience a variety of employment options within the community; and developing the individual's service delivery plan.
- The proposed amendments duplicate existing regulations for prevocational services concerning earning capacity of individuals in this service.
- The amendments require OPWDD approval for enrollment into site based prevocational services (where allowed) on and after July 1, 2015 and add eligibility criteria for enrollment into the service. OPWDD approval for enrollment into site based prevocational services is not required for individuals enrolled in prevocational services at a site prior to July 1, 2015.

• The proposed unit of service requirements for site based prevocational services are duplicative of unit of service requirements in existing prevocational services. Site based prevocational services must be billed on a full and half unit basis.

• The amendments provide billing limits that restructure limits on billable service time in existing regulations on prevocational services to distinguish between weekdays and weekend days, to delete blended services, which are discontinued, and to add limits for community prevocational services.

• The amendments address documentation requirements for documentation of service delivery, development of a service delivery plan, and documentation of the service in the individual's individualized service plan (ISP). For individuals receiving prevocational services at a site, the amendments require providers to identify site based prevocational services in the ISP within a specified timeframe.

Community Prevocational Services

New requirements for community prevocational services include the following:

- Community prevocational services are defined as prevocational ser-

vices that are provided in the most integrated setting appropriate to the needs of the individual receiving such services. Community prevocational services may also involve service delivery at a site under specified circumstances in which service delivery in the community could jeopardize the health and safety of individuals.

• Allowable activities duplicate activities in existing regulations and those added in the proposed amendments for site based prevocational services. For community prevocational services, the amendments add transportation between activities.

• The amendments limit the number of individuals receiving community prevocational services in a group to no more than 8 individuals.

• The amendments require OPWDD approval for enrollment into community prevocational services on and after July 1, 2015 and add eligibility criteria for enrollment into the service. Prior OPWDD approval is not required for individuals who were enrolled in prevocational services in the community prior to July 1, 2015.

• The amendments specify the unit of service for community prevocational services, which is one hour equaling 60 minutes, reimbursed in 15-minute increments.

• The amendments provide billing limits that restructure limits on billable service time in existing regulations on prevocational services to distinguish between weekdays and weekend days and to add limits for community prevocational services and community habilitation services for individuals living in certified residences.

• The amendments address documentation requirements for documentation of service delivery, development of a service delivery plan and documentation of the service in the individual's ISP. For individuals receiving prevocational services in the community, the amendments require providers to identify community prevocational services in the ISP and the associated unit of service change within a specified timeframe.

Day Habilitation Services

Changes to existing requirements for day habilitation services include the following:

• Limits on billable service time in existing regulations are restructured and revised to distinguish limits for weekdays and weekend days, to delete limits for blended services, which are discontinued, and to address site based and community prevocational services.

Community Habilitation Services

Changes to existing requirements for community habilitation services include the following:

• Limits on billable service time in existing regulations are modified to delete requirements for when community habilitation may not be reimbursed, to delete limits for blended services, which are discontinued, and to address site based and community prevocational services in existing regulations on when community habilitation may be reimbursed.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, 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, supports and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD 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 the provision of services, as stated in 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 create a new service delivery model for prevocational services by distinguishing between site based prevocational services and community prevocational services. The amendments also make other associated changes in existing regulations.

3. Needs and Benefits: OPWDD is continuing to transform its system to strive toward its goal for individuals receiving services to fully participate in their communities. In the area of pre-employment services, OPWDD is promoting service delivery in integrated settings that meet federal require-

ments for Home and Community Based Services (HCBS) settings. Consequently, the proposed regulations create two distinct types of prevocational services: site based prevocational services and community prevocational services. The amendments limit the applicability of existing regulations for prevocational services to those services delivered prior to July 1, 2015, and distinguish site based prevocational services and community prevocational services delivered on and after July 1, 2015.

Site based prevocational services are prevocational services that are delivered in OPWDD certified non-residential facilities. The proposed requirements for site based prevocational services are substantially similar to existing regulations for prevocational services, with the exception of adding some allowable activities, revising billing limits, and clarifying the prohibition of new enrollments in sheltered workshops. The proposed amendments clarify that the prohibition of prevocational services applies to day training programs as sheltered workshops are certified as day training programs in OPWDD's system. The amendments also make changes to billing limits to allow for individuals to receive site based and community prevocational services and other day services on the same day. OPWDD considers that this will encourage person centered service delivery in the community. Additionally, the amendments allow individuals who were receiving prevocational services at a site prior to the effective date of these regulations to be automatically enrolled into site based prevocational services. OPWDD recognizes the importance of continuity of care for individuals receiving services and added this provision to allow individuals to make a seamless transition into its new service delivery model, and to avoid a disruption in service delivery.

The proposed amendments define community prevocational services as prevocational services provided in the most integrated setting appropriate to the needs of the individual receiving such services. By identifying community prevocational services as its own service with customized requirements for service delivery and reimbursement, OPWDD is promoting service delivery in integrated community settings in accordance with its plan to transform its system. Community prevocational services may also involve service delivery at a site under specified circumstances in which service delivery in the community could jeopardize the health and safety of individuals. This allows individuals to still be served when the provider cannot safely provide prevocational services in the community due to weather emergencies or other situations. Similar to requirements for site based prevocational services, individuals who were receiving prevocational services in the community prior to the effective date of these regulations will be automatically enrolled in community prevocational services for the same reasons specified above. The amendments define eligibility criteria for enrollment into this service in order to ensure that the service is appropriate for individuals. The amendments also establish an hourly unit of service for community prevocational services, which will allow for reimbursement to be commensurate with services delivered, and provide billing limits duplicative of those for site based prevocational services, for reasons specified above.

Lastly, the proposed amendments make associated changes to existing billing limits for day habilitation and community habilitation services. Existing limits are modeled after those defined for site based and community prevocational services. These changes are necessary to promote consistency in service provision and reimbursement when multiple services are provided on a given day.

4. Costs:

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

OPWDD considers that the proposed amendments will be cost neutral for the State in its role paying for Medicaid. Although the State will be reimbursing providers for additional activities provided under community prevocational services, OPWDD expects that community prevocational services will bring individuals one step closer to achieving competitive/self-employment in the long-term.

Even if the proposed amendments lead to an increase in Medicaid expenditures in a particular county, these amendments 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 as a provider of site based and community prevocational services will incur costs to deliver these services and comply with the proposed amendments. However, the Medicaid program will reimburse OPWDD based on the fees established for these services. OPWDD spending on delivering these services is expected to be at the level of the established fees, so that the cost of delivering the service will approximately equal the fees.

b. Costs to private regulated parties: There are no initial capital costs. Providers will incur costs to deliver the service and comply with the proposed amendments. The Medicaid program will reimburse providers for site based and community prevocational services at the fees established for these services. OPWDD expects that providers will spend at the fee

levels to deliver these services, so that the cost of delivering the services will approximately equal the fees.

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: The proposed amendments duplicate many existing documentation requirements for prevocational services. However, providers of prevocational services will experience an increase in paperwork as a result of the proposed amendments. In distinguishing site based and community prevocational services as two separate services, each service will have its own requirements for documentation with which providers will have to comply. Providers will need to obtain OPWDD approval for each distinct service. Other documentation requirements for each service include developing a service delivery plan, documenting service delivery and identifying each service separately on an individual's individualized service plan (ISP), including the associated unit of service change for community prevocational services. Although there will be an increase in paperwork, providers can explore ways to streamline documentation where allowed (e.g. developing a service delivery plan for both site based and community prevocational services when services are delivered by the same provider).

These paperwork requirements are necessary to ensure proper use of federal and State Medicaid funds.

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

8. Alternatives: As stated earlier, the proposed amendments provide billing limits that allow for the provision of site based and community prevocational services on the same day. OPWDD originally considered not allowing the provision of these services on the same day, which would have simplified methods of billing and reimbursement for these services. However, upon contemplating its vision for the delivery of pre-employment services, OPWDD determined that allowing a combination of both services on the same day is critical to promoting person centered service delivery and the provision of prevocational services in the community. OPWDD recognizes that by allowing both service options on a given day, individuals and providers are not being forced to choose one or the other, which could result in a choice of the familiar site based service option over services in the community.

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 amendments effective July 1, 2015. OPWDD consulted with a workgroup comprised of providers and provider associations in the development of the proposed regulations. Additionally, OPWDD plans to provide necessary guidance to all providers regarding the new requirements with enough lead time that providers can transition to the new service delivery model when the regulations go into effect. OPWDD has notified all providers of the proposed amendments approximately three months in advance of their effective date so that they may contact OPWDD for technical assistance before these regulations go into effect.

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 which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 100 providers of prevocational services. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed amendments create a new service delivery model for prevocational services by distinguishing between site based prevocational services and community prevocational services. The amendments also make other associated changes in existing regulations.

2. Compliance Requirements: The proposed amendments will impose compliance requirements on providers of site based and community prevocational services. Providers will be responsible for providing some new allowable activities under both site based and community prevocational services. In distinguishing site based and community prevocational services as two separate services, each service will have its own requirements for documentation in which providers will have to comply. Providers will need to obtain OPWDD approval for each distinct service and comply with other documentation requirements such as developing a service delivery plan, documenting service delivery and identifying each service separately on an individual's individualized service plan (ISP), including the associated unit of service change for community prevocational services.

OPWDD considers that the compliance requirements in the proposed

amendments are necessary to ensure the proper use of federal and state public funds. Moreover, these requirements will not be burdensome because they are consistent with requirements for other HCBS waiver services, with which providers are very familiar.

The amendments will have no effect on local governments.

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

4. Compliance Costs: There will be costs related to the compliance requirements specified above for providers of site based and community prevocational services. The Medicaid program will reimburse providers of these services at the fees established for these services. Provider spending on delivering site based and community prevocational services is expected to be at the level of these fees, so that the cost of delivering the service will approximately equal the fees. OPWDD does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

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

6. Minimizing Adverse Impact: The purpose of these proposed amendments is to create a new service delivery model for prevocational services by distinguishing between site based and community prevocational services. The amendments specify the requirements pertaining to the provision and funding of each service. There will be modest costs to all providers, including small business providers, for the provision of site based and community prevocational services; however OPWDD does not expect that such costs will result in an adverse impact to providers. Providers will be reimbursed at the fees established for these services and OPWDD expects that the cost of providing the service will approximately equal the fees providers are paid for the services.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small Business Participation: The proposed regulations were discussed with representatives of providers, including those members of the Interagency Council (IAC), and New York State Rehabilitation Association, Inc. (NYSRA) who have fewer than 100 employees. OPWDD set up a workgroup comprised of providers and provider associations for the purpose of obtaining input on changes to pre-employment and employment services, including development of the proposed regulations. OPWDD discussed the amendments with providers on January 23, 2015 and February 20, 2015, and shared the draft regulations with providers on a weekly basis to solicit feedback. OPWDD also informed all providers, including small business providers, of the proposed amendments approximately three months in advance of their scheduled effective date.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: OPWDD services are provided in every county in New York State. 44 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, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed amendments create a new service delivery model for prevocational services by distinguishing between site based prevocational services and community prevocational services. The amendments also make other associated changes in existing regulations.

2. Compliance Requirements: The proposed amendments will impose compliance requirements on providers of site based and community prevocational services. Providers will be responsible for providing some new allowable activities under both site based and community prevocational services. In distinguishing site based and community prevocational services as two separate services, each service will have its own requirements for documentation in which providers will have to comply. Providers will need to obtain OPWDD approval for each distinct service and comply with other documentation requirements such as developing a ser-

vice delivery plan, documenting service delivery and identifying each service separately on an individual's individualized service plan (ISP), including the associated unit of service change for community prevocational services.

OPWDD considers that the compliance requirements in the proposed amendments are necessary to ensure the proper use of federal and state public funds. Moreover, these requirements will not be burdensome because they are consistent with requirements for other HCBS waiver services, with which providers are very familiar.

The amendments will have no effect on local governments.

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

4. Costs: There will be costs related to the compliance requirements specified above for providers of site based and community prevocational services. The Medicaid program will reimburse providers of these services at the fees established for these services. Provider spending on delivering site based and community prevocational services is expected to be at the level of these fees, so that the cost of delivering the service will approximately equal the fees. OPWDD does not expect costs to vary for providers in rural areas or for local governments of different types and sizes.

5. Minimizing Adverse Impact: The purpose of these proposed amendments is to create a new service delivery model for prevocational services by distinguishing between site based and community prevocational services. The amendments specify the requirements pertaining to the provision and funding of each service. There will be modest costs to all providers, including providers in rural areas, for the provision of site based and community prevocational services; however OPWDD does not expect that such costs will result in an adverse impact to providers. Providers will be reimbursed at the fees established for these services and OPWDD expects that the cost of providing the service will approximately equal the fees providers are paid for the services.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on providers in rural areas or local governments or exempt providers in rural areas or local governments from these requirements and timetables.

6. Rural Area Participation: The proposed regulations were discussed with representatives of providers, including those members of NYSARC and CP Association of NYS, which represent providers in rural areas. OPWDD set up a workgroup comprised of providers and provider associations for the purpose of obtaining input on changes to pre-employment and employment services, including development of the proposed regulations. OPWDD discussed the amendments with providers on January 23, 2015 and February 20, 2015, and shared the draft regulations with providers on a weekly basis to solicit feedback. OPWDD also informed all providers, including providers in rural areas, of the proposed amendments approximately three months in advance of their scheduled effective 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 proposed amendments create a new service delivery model for prevocational services by distinguishing between site based prevocational services and community prevocational services. The amendments also make other associated changes in existing regulations. Providers will incur costs, including staff costs, to deliver site based and community prevocational services, and providers will be reimbursed for delivering these services at the fees established for each service. If additional staff are needed to implement the new service delivery model, there could be a positive impact on jobs and increased employment opportunities in the short term. In the long term, OPWDD expects that community prevocational services will bring individuals one step closer to achieving competitive/self-employment. Consequently, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supported Employment Services (SEMP) Redesign

I.D. No. PDD-16-15-00017-P

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

Proposed Action: Amendment of Subparts 635-10, 635-12 and 635-99 of Title 14 NYCRR.

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

Subject: Supported Employment Services (SEMP) Redesign.

Purpose: To redesign SEMP by establishing requirements for the provision and funding of Intensive and Extended SEMP.

Substance of proposed rule (Full text is posted at the following State website: www.opwdd.ny.gov): The proposed amendments make changes to regulations in 14 NYCRR subparts 635-10 and 635-12 concerning supported employment services (SEMP) and liability for services.

The proposed amendments redesign the existing SEMP service delivery model. The amendments limit applicability of existing SEMP regulations to SEMP provided before July 1, 2015, and add new regulations on the delivery and reimbursement of Intensive and Extended SEMP delivered on and after July 1, 2015. The amendments also make changes to requirements on liability of services related to individuals applying for SEMP.

Delivery of SEMP:

New requirements for the delivery of SEMP include the following:

- The amendments specify various allowable activities for SEMP that may be provided to and/or on behalf of an individual.

- The amendments identify two phases for the delivery of SEMP: Intensive SEMP and Extended SEMP.

- Intensive SEMP services include job development and/or intensive job coaching and may be provided as:

- o Intensive - 1, which is Intensive SEMP provided to one individual; or
- o Intensive - 2, which is Intensive SEMP provided to a group of 2-8 individuals.

- Extended SEMP services include ongoing job coaching and career development services provided to individuals who may have received up to 365 days of intensive supported employment services and who are currently employed. Extended SEMP may be provided as:

- o Extended - 1, which is Extended SEMP provided to one individual; or
- o Extended - 2, which is Extended SEMP provided to a group of 2-8 individuals.

- The amendments also include provisions for SEMP services and supports to assist an individual to achieve self-employment, including home-based self-employment. Wages earned in self-employment may be below the New York State minimum wage.

- Intensive and Extended SEMP may be provided as self-directed services to an individual who hires his or her own SEMP support staff.

- The amendments include qualifications for staff providing SEMP services and a definition of competitive integrated employment to the glossary found in section 635-99.1.

Reimbursement of SEMP

New provisions for the reimbursement of SEMP include the following:

- Reimbursement is not permitted for delivery of Intensive and Extended SEMP on the same date of service.

- The amendments require OPWDD approval for enrollment into Intensive and Extensive SEMP on and after July 1, 2015 and add eligibility criteria for enrollment into the service. Prior OPWDD approval is not required for individuals who were enrolled in SEMP prior to July 1, 2015 and who remained continuously enrolled on and after July 1, 2015.

- The amendments limit hours of service for Intensive SEMP to no more than 250 hours across 365 days, unless OPWDD authorizes an extension. The amendments limit hours of service for Extended SEMP to no more than 200 hours of service across a 365 day time period, unless OPWDD authorizes an extension. Extensions must have prior authorization from OPWDD. OPWDD's decision will be based on specified criteria.

- An individual may move between individual and group employment as needed in Intensive and Extended SEMP.

- The unit of service for Intensive and Extended SEMP is one hour, which equals 60 minutes, and is reimbursed in 15-minute increments.

- Individuals in the Intensive phase of SEMP are not eligible to receive the Pathway to Employment service.

- The amendments address documentation requirements for development of a service delivery plan, documentation of service delivery and documentation of the service in the individual's ISP. The amendments require providers to identify the unit of service change for SEMP in the ISP within a specified timeframe.

- The amendments require the service provider to maintain documentation that there is no SEMP funding available to the individual from ACCESS-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

Liability for Services

Changes to existing liability for services regulations include the following:

- Existing regulations permit a limited exception to liability for services regulations described in section 635-12.12 for individuals applying for

SEMP, who meet specified criteria. The proposed amendments prohibit the limited exception for individuals who enroll in SEMP on and after July 1, 2015.

- The proposed regulations permit the limited exception for individuals who were enrolled in SEMP prior to July 1, 2015, and who were continuously enrolled in SEMP with the same provider on and after July 1, 2015. The regulations also permit the limited exception in other specified circumstances.

- The proposed amendments add new notice requirements concerning the changes in criteria for qualification of the limited exception and situations when individuals enrolled in SEMP prior to July 1, 2015 switch service providers on and after July 1, 2015. Notification must be provided within the specified timeframes.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, 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, supports and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD 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 the provision of services, as stated in 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(b) and 16.00 of the Mental Hygiene Law. The proposed amendments redesign the existing service delivery model for supported employment services (SEMP) by establishing new requirements for the provision and funding of Intensive and Extended SEMP. The amendments also make changes to existing liability for service regulations related to individuals applying for SEMP.

3. Needs and Benefits: In effort to satisfy its commitment in its transformation agreement with the Centers for Medicare and Medicaid Services (CMS), OPWDD has been transforming its service delivery system to increase the number of individuals in competitive employment. OPWDD's vision includes supporting individuals with developmental disabilities to fully participate in their communities through employment. Currently, OPWDD offers supported employment services, also known as SEMP, which assist individuals in obtaining and maintaining paid competitive jobs in the community. Over the past year, OPWDD has been collaborating with CMS and SEMP providers to redesign SEMP to improve the service and better position individuals to obtain employment. The proposed amendments are a result of these collaborations.

The proposed amendments limit the applicability of existing regulations for SEMP to those services delivered prior to July 1, 2015, and add new requirements for delivery and reimbursement of SEMP delivered on and after July 1, 2015. The amendments create two phases of SEMP: Intensive SEMP and Extended SEMP. Intensive SEMP services include job development and/or intensive job coaching. Extended SEMP services include ongoing job coaching and career development services provided to individuals who are employed. Each phase is geared to the type of support that is needed and is driven by the individual's abilities and employment situation. By breaking down the service into these two phases, individuals receiving services will have a person centered experience, and providers will be able to deploy staff resources more efficiently and effectively.

The amendments specify eligibility criteria for each phase to ensure that the phase and level of support provided is appropriate for the individual. Individuals who were receiving SEMP prior to the effective date of these regulations will be automatically enrolled in either Intensive or Extended SEMP, whichever is appropriate. This will allow individuals to make a seamless transition into the new service delivery model, avoiding a disruption of service. Additionally, the amendments limit the hours of service for each phase to facilitate the transition into competitive employment and to prevent individuals from languishing in a service that is not meeting their needs. OPWDD allows for an extension of the hours

of service limit under specified circumstances to allow for flexibility in service delivery when additional support is needed to assist an individual in working towards competitive employment.

The proposed amendments identify various allowable activities under SEMP that are essential to the effective delivery of this service, such as: vocational assessment; person-centered employment planning; job-related discovery; and job development, analysis, customization, and carving. The amendments also allow providers to provide allowable activities on behalf of an individual in addition to face to face with the individual. OPWDD recognizes that it is often necessary to provide activities on behalf of an individual in order to assist an individual with obtaining and maintaining competitive employment. Such activities may consist of staff negotiating with prospective employers on behalf of individuals and communicating with an existing employer to review the individual's progress in meeting workforce expectations and to discuss and address any challenges the individual may have in the work environment. Additionally, the amendments establish an hourly unit of service for reimbursement of SEMP, which will allow for reimbursement to be commensurate with services delivered.

Lastly, existing OPWDD regulations in section 635-12.12 permit a limited exception to liability for services regulations for individuals applying for SEMP, who meet specified criteria. Currently, these individuals are not required to apply for Medicaid and the Home and Community Based Services (HCBS) Waiver, and agencies providing SEMP to these individuals are eligible to receive state payments for SEMP. The proposed amendments prohibit the limited exception for individuals who enroll in SEMP on and after July 1, 2015. This will result in decreased costs for the State, which will allow for State funding to be used in other ways to enrich OPWDD's service delivery system, including the provision of non-HCBS Waiver services.

4. Costs:

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

The proposed amendments concerning the SEMP redesign will be cost neutral for the State in its role paying for Medicaid costs, and over time, will result in cost savings to the State. Although the State will be reimbursing providers for additional allowable activities provided under SEMP, OPWDD has limited the hours of service delivery, which will motivate individuals to obtain and maintain competitive employment. OPWDD expects that the redesign of SEMP will bring individuals one step closer to achieving competitive/self-employment in the long-term, which will result in a decrease in costs to the State. Additionally, the proposed amendments to OPWDD's liability for services regulations requiring individuals applying for SEMP, who meet specified criteria, to apply for Medicaid and enrollment into the HCBS Waiver, will result in decreased costs to the State as the State will no longer be responsible to pay the full cost of SEMP for these individuals but will instead only be responsible for its share of Medicaid costs.

These amendments 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 as a provider of SEMP will incur costs to deliver these services and comply with the proposed amendments. However, the Medicaid program will reimburse OPWDD based on the fees established for SEMP. OPWDD spending on delivering SEMP is expected to be at the level of the established fees, so that the cost of delivering the service will approximately equal the fees. Further, OPWDD will not incur costs as a result of the changes to liability for services regulations that exclude individuals applying for SEMP, who meet specified criteria, from the limited exception. This change will merely result in OPWDD as a provider being reimbursed by a different funding stream (e.g. Medicaid or individual/family personal funds).

b. Costs to private regulated parties: There are no initial capital costs. As is the case with OPWDD-provided SEMP, voluntary provider spending on delivering SEMP is expected to be at the level of the established fees, so that the cost of delivering the service will approximately equal the fees.

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: Providers will experience an increase in paperwork as a result of the proposed amendments, which includes new requirements for documentation of service delivery. Additional documentation requirements will be imposed as providers will need to obtain OPWDD approval for each phase of the service. Also, providers that request an extension of hours of service for individuals will need to complete additional paperwork. Further, providers will have to identify the SEMP unit of service change on an individual's individualized service plan (ISP). The amendments also require the provider to maintain documentation that

there is no funding available from ACCESS-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

Lastly, the proposed amendments add new notice requirements concerning the changes in criteria for qualification of the limited exception and situations when individuals enrolled in SEMP prior to July 1, 2015 switch service providers on and after July 1, 2015.

These paperwork requirements are necessary to ensure proper use of federal and State Medicaid funds.

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

8. Alternatives: The proposed amendments limit the hours of services for each phase (Intensive and Extended) of the SEMP service. OPWDD originally considered creating two hourly limits within the Intensive and Extended phases. This would have decreased the reimbursement for individuals who become unemployed and return to the Intensive Phase. However, OPWDD determined that it would be more person-centered to maintain the number of hours of service regardless of the number of times an individual returns to the Intensive Phase.

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 amendments effective July 1, 2015. OPWDD consulted with a workgroup of providers and provider associations in the redesign of this service and in the development of the proposed regulations. Additionally, OPWDD plans to provide guidance to all providers regarding the new requirements with enough lead time that providers can transition to the new service delivery model when the regulations go into effect. OPWDD has notified all providers of the proposed amendments approximately three months in advance of their effective date so that they may contact OPWDD for technical assistance before these regulations go into effect.

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 which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 211 providers of supported employment services (SEMP). OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed amendments redesign the existing service delivery model for SEMP by establishing new requirements for the provision and funding of Intensive and Extended SEMP. The amendments also make changes to existing liability for service regulations related to individuals applying for SEMP.

2. Compliance Requirements: The proposed amendments will impose compliance requirements on SEMP providers. Providers will be responsible for providing many new allowable activities specified in the amendments and for tailoring the level of support to the individual based on the identified phase for that individual. Providers will need to obtain OPWDD approval for each phase and any requests for extensions of hours of service. Providers will also have to comply with documentation requirements such as development of a service delivery plan and documentation of service delivery. Additionally, providers must identify the SEMP unit of service change on an individual's individualized service plan (ISP), and maintain documentation that there is no funding available from ACCESS-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

Lastly, the proposed amendments add new notice requirements concerning the changes in criteria for qualification of the limited exception and situations when individuals enrolled in SEMP prior to July 1, 2015 switch service providers on and after July 1, 2015.

OPWDD considers that the compliance requirements in the proposed amendments are necessary to ensure the proper use of federal and state public funds. Moreover, these requirements will not be burdensome because they are consistent with requirements for other HCBS waiver services, with which providers are very familiar.

The amendments will have no effect on local governments.

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

4. Compliance Costs: There will be costs related to the compliance requirements specified above for SEMP providers. The Medicaid program will reimburse providers of these services at the fees established for these services. Provider spending on SEMP is expected to be at the level of these fees, so that the cost of delivering the service will approximately equal the fees.

Providers will not incur costs as a result of the changes to liability for services regulations that exclude individuals applying for SEMP, who

meet specified criteria, from the limited exception. This change will merely result in providers being reimbursed by a different funding stream (e.g. Medicaid or individual/family personal funds). Providers may incur nominal costs to disseminate the required notifications specified in the proposed amendments. However, OPWDD expects that such costs will be absorbed through the administrative component of each SEMP provider's reimbursement.

OPWDD does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

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

6. Minimizing Adverse Impact: The purpose of these proposed amendments is to redesign the existing SEMP service delivery model by establishing new requirements for the delivery and reimbursement of SEMP that are designed to meet standards set forth by the Centers for Medicare and Medicaid Services (CMS). There will be modest costs to small business providers to comply with the proposed amendments; however OPWDD does not expect that such costs will result in an adverse impact on providers. Providers will be reimbursed at the fees established for these services and OPWDD expects that the cost of providing the service will approximately equal the fees providers are paid for the services.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small Business Participation: The proposed regulations were discussed with representatives of providers, including those members of the Interagency Council (IAC), and New York State Rehabilitation Association, Inc. (NYSRA) who have fewer than 100 employees, at a provider association meeting held on December 15, 2014. Additionally, OPWDD held a series of conference calls with a committee of sixty providers and representatives of providers, including those specified above, for the purpose of consulting with providers and obtaining input on changes to pre-employment and employment services, including the redesign of SEMP and development of the proposed regulations. Specifically, OPWDD discussed the proposed amendments with providers on November 14, November 21, December 1, and December 11, 2014 and January 12, 2015. OPWDD also informed all providers, including small business providers, of the proposed amendments approximately three months in advance of their scheduled effective date.

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. 44 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, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed amendments redesign the existing service delivery model for SEMP by establishing new requirements for the provision and funding of Intensive and Extended SEMP. The amendments also make changes to existing liability for service regulations related to individuals applying for SEMP.

2. Compliance Requirements: The proposed amendments will impose compliance requirements on SEMP providers. Providers will be responsible for providing many new allowable activities specified in the amendments and for tailoring the level of support to the individual based on the identified phase for that individual. Providers will need to obtain OPWDD approval for each phase and any requests for extensions of hours of service. Providers will also have to comply with documentation requirements such as development of a service delivery plan and documentation of service delivery. Additionally, providers must identify the SEMP unit of service change on an individual's individualized service plan (ISP), and maintain documentation that there is no funding available from ACCESS-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

Lastly, the proposed amendments add new notice requirements concerning the changes in criteria for qualification of the limited exception and

situations when individuals enrolled in SEMP prior to July 1, 2015 switch service providers on and after July 1, 2015.

OPWDD considers that the compliance requirements in the proposed amendments are necessary to ensure the proper use of federal and state public funds. Moreover, these requirements will not be burdensome because they are consistent with requirements for other HCBS waiver services, with which providers are very familiar.

The amendments will have no effect on local governments.

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

4. Compliance Costs: There will be costs related to the compliance requirements specified above for SEMP providers. The Medicaid program will reimburse providers of these services at the fees established for these services. Provider spending on SEMP is expected to be at the level of these fees, so that the cost of delivering the service will approximately equal the fees.

Providers will not incur costs as a result of the changes to liability for services regulations that exclude individuals applying for SEMP, who meet specified criteria, from the limited exception. This change will merely result in providers being reimbursed by a different funding stream (e.g. Medicaid or individual/family personal funds). Providers may incur nominal costs to disseminate the required notifications specified in the proposed amendments. However, OPWDD expects that such costs will be absorbed through the administrative component of each SEMP provider's reimbursement.

OPWDD does not expect costs to vary for providers in rural areas or for local governments of different types and sizes.

5. Minimizing Adverse Impact: The purpose of these proposed amendments is to redesign the existing SEMP service delivery model by establishing new requirements for the delivery and reimbursement of SEMP that are designed to meet standards set forth by the Centers for Medicare and Medicaid Services (CMS). There will be modest costs to providers in rural areas to comply with the proposed amendments; however OPWDD does not expect that such costs will result in an adverse impact on providers. Providers will be reimbursed at the fees established for these services and OPWDD expects that the cost of providing the service will approximately equal the fees providers are paid for the services.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on providers in rural areas or local governments or exempt providers in rural areas or local governments from these requirements and timetables.

6. Small Business Participation: The proposed regulations were discussed with representatives of providers, including those members of NYSARC and CP Association of NYS, which represent providers in rural areas, at a provider association meeting held on December 15, 2014. Additionally, OPWDD held a series of conference calls with a committee of sixty providers and representatives of providers, including those specified above, for the purpose of consulting with providers and obtaining input on changes to pre-employment and employment services, including the redesign of SEMP and development of the proposed regulations. Specifically, OPWDD discussed the proposed amendments with providers on November 14, November 21, December 1 and December 11, 2014 and January 12, 2015. OPWDD also informed all providers, including providers in rural areas, of the proposed amendments approximately three months in advance of their scheduled effective 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 proposed amendments redesign the existing service delivery model for SEMP by establishing new requirements for the provision and funding of Intensive and Extended SEMP. The amendments also make changes to existing liability for service regulations related to individuals applying for SEMP. Providers will incur costs, including staff costs, to deliver SEMP, and providers will be reimbursed for delivering this service at the fees established for the service. If additional staff are needed to implement the redesigned service delivery model, this could result in a positive impact on jobs and increased employment opportunities in the short term. In the long term, OPWDD expects that the redesigned SEMP will bring individuals one step closer to achieving competitive/self-employment, which will also increase employment. Consequently, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
CTV-23-94-00009-P	June 8, 1994
CTV-23-94-00010-P	June 8, 1994
CTV-23-94-00011-P	June 8, 1994
CTV-23-94-00012-P	June 8, 1994
CTV-23-94-00030-P	June 8, 1994
CTV-23-94-00035-P	June 8, 1994
CTV-24-94-00013-P	June 15, 1994
CTV-24-94-00026-P	June 15, 1994
CTV-24-94-00034-P	June 15, 1994
CTV-24-94-00037-P	June 15, 1994
CTV-24-94-00042-P	June 15, 1994
CTV-24-94-00043-P	June 15, 1994
CTV-24-94-00051-P	June 15, 1994
CTV-25-94-00015-P	June 22, 1994
CTV-25-94-00021-P	June 22, 1994
CTV-25-94-00023-P	June 22, 1994
CTV-25-94-00026-P	June 22, 1994
CTV-25-94-00033-P	June 22, 1994
CTV-27-94-00029-P	July 6, 1994
CTV-27-94-00031-P	July 6, 1994
CTV-39-94-00017-P	September 28, 1994
CTV-39-94-00018-P	September 28, 1994
CTV-39-94-00019-P	September 28, 1994
CTV-39-94-00023-P	September 28, 1994
CTV-39-94-00033-P	September 28, 1994
CTV-39-94-00035-P	September 28, 1994
CTV-39-94-00037-P	September 28, 1994
CTV-39-94-00039-P	September 28, 1994
CTV-45-94-00010-P	November 9, 1994

NOTICE OF ADOPTION

Approval of Amendments and Repeal of Certain Sections of Gas Safety Regulations in 16 NYCRR Part 255

I.D. No. PSC-38-14-00021-A

Filing No. 232

Filing Date: 2015-04-02

Effective Date: 2015-04-22

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

Action taken: Amendment of Part 255 of Title 16 NYCRR.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Approval of amendments and repeal of certain sections of gas safety regulations in 16 NYCRR Part 255.

Purpose: To approve amendments and repeal certain sections of gas safety regulations in 16 NYCRR Part 255.

Text of final rule: 255.3 - Definitions

(29) Service line means the piping, including associated metering and pressure reducing appurtenances, that transports gas below grade from a main or transmission line to [first accessible fitting inside a wall of the customer's building] the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream where a meter is located within the building; if a meter is located outside the building, the service line will be deemed to terminate at the outside of the building foundation wall.

255.507 - Test requirements for pipelines to operate at less than 125 PSIG (862 kPa).

(c) [Except as provided in subdivision (f) of this section,] [t] The test medium shall be water, inert gas or air.

(d) Except as provided in subdivisions (f) [and (g)] of this section, the test must be conducted by maintaining the pressure at or above the test pressure for at least one hour after stabilization.

[(f) For tests on short sections (100 feet (30.5 meters) or less) of pipe, and tie-in sections, where all joints, uncoated portions of longitudinal seams, and/or fittings are exposed, a soap test is acceptable at line pressure. For short sections of plastic pipe, the entire pipe length must be soap tested. Gas may be used as the test medium at the maximum pressure available in the distribution system at the time of the test.]

[(g)] (f) For plastic insertions of less than 1500 feet (457.2 meters) length, the test duration may be 30 minutes prior to insertion followed by a 30 minute test after insertion and an inspection of all visible portions of the pipe for damage.

255.619 - Maximum allowable operating pressure: Steel or plastic pipelines.

(a) Except as provided in subdivision (c) of this section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following:

(3) the highest actual operating pressure to which the segment was subjected during the 5 years preceding July 1, 1970, [or during any successive five year period thereafter,] unless the segment was tested in accordance with sections 255.505 or 255.507 during the five year period or the segment was upgraded in accordance with sections 255.555 or 255.557. *The MAOP must not exceed the MAOP on August 30, 2011 if the MAOP is determined using this method.*

[(e) Notwithstanding the limitation of paragraph 255.619(a)(3), an operator may maintain a previously established maximum allowable operating pressure for a pipeline not cathodically protected by bringing the pressure up to the previously determined maximum allowable operating pressure at least once every five years, conducting a leakage survey at that pressure and repairing all leaks found in accordance with this Part.]

255.625 - Odorization of gas.

(a) All gas transported in transmission lines, and distribution mains operating at 125 PSIG (862 kPa) or more, except gas in route to storage fields via a transmission pipeline line that transported gas without an odorant from that line before May 5, 1975, is to be adequately odorized in compliance with subdivision 255.625(c) so as to render it readily detectable by the public and employees of the operator at all gas concentrations of one fifth of the lower explosive limit and above.

255.723 - Distribution systems: Leakage surveys and procedures.

(b) The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements.

(1) A leakage survey with leak detector equipment shall be conducted at intervals not exceeding 15 months, but at least once each calendar year, in business districts within the operator's gas franchise area including tests of the atmosphere of [accessible manholes] gas, electric, telephone, sewer, and water system manholes, at cracks in pavement, at the curbline, in the sidewalk [including the service line area up to the building wall], and at other locations [where it would be reasonable to expect a gas leak to be found.] providing an opportunity for finding gas leaks.

(2) Leakage surveys of the distribution system outside of business districts, [including the service line area up to the building wall,] must be made as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months.

(3) If the operator employs leakage history to determine areas of active corrosion, the leakage survey frequency shall be at least once every 3 calendar years at intervals not exceeding 39 months on mains and service lines.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 255.619(a)(3).

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@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.

Summary of Revised Regulatory Impact Statement

1. Statutory authority: Public Service Law (PSL) §§ 4, 5, 65, and 66 and 49 USC 60101 et. seq. authorizes the proposed rule amendments. The Public Service Commission (PSC or Commission) has general supervision of all gas companies operating anywhere in the State and of all property owned, leased or operated by a gas company in connection with or to facilitate the conveying, transportation, distribution, or furnishing of gas for light, heat or power. See PSL §§ 4(1), 5(1)(b), 65(1) and 66(1).

2. Legislative objectives: The new rules achieve the statutory goal of PSL § 65 by ensuring the continued safety of gas service and gas delivery in New York State. The purpose of the proposed regulations is to make State gas safety regulations as stringent as the corollary federal regulations by, for instance, requiring leakage surveys and atmospheric corrosion

inspections of inside gas piping upstream from the meter in addition to gas piping over which the PSC currently asserts jurisdiction.

3. Needs and benefits: Safety measures that are at least as stringent as the federal rules further protect the overall safety of gas delivery and service in New York State. Moreover, the proposed regulatory changes are necessary to align the Commission's gas safety regulations with the federal regulations to ensure that the Commission may continue to make its annual § 60105 certification to the U.S. Department of Transportation that the Commission has adopted all applicable federal gas safety standards and thereby remains eligible for federal funding to continue to implement New York's gas safety program.

4. Costs: Regulated gas utilities or local distribution companies (LDCs), including municipally-owned gas companies, would see an increase in their operation and maintenance costs because they would need to perform leakage surveys and corrosion inspections on inside gas piping that is upstream from a gas meter. Specifically, National Grid estimates the cost of developing and implementing leakage surveys and atmospheric corrosion testing to be \$50 million over three years and \$14 million each year thereafter. Consolidated Edison (Con Edison) estimates the cost to perform this testing as required in the proposed rule to be \$55 million annually. New York State Electric and Gas (NYSEG) estimates additional costs of \$943,610 to perform leakage surveys and atmospheric corrosion testing, while Rochester Gas & Electric (RG&E) estimates an additional \$1,526,933 to conduct such testing. Increased costs may impact professionals who currently make alterations and repairs on inside piping because such professionals may need to be Operator Qualified and drug tested in accordance with the Commission's proposed gas safety rule amendments. If applicable, gas utilities would also be responsible for at least a portion of the new Operator Qualified training and testing costs, which could be recoverable in PSC utility rate proceedings where appropriate. Building owners who would be required to hire only Operator Qualified professionals to alter or repair inside gas piping upstream from the gas meter may see a slight increase in costs because newly Operator Qualified and alcohol and drug tested individuals who perform alterations and repairs likely would spread the cost of training and testing among all building owners. Some compliance costs associated with the proposed changes could be mitigated with the opportunity for waivers from the PSC, which, if allowed, could extend the time intervals during which leakage and corrosion inspections would need to occur. Localities that now use building inspectors to approve alterations and repairs made to inside gas piping may reduce their costs because utilities would be responsible for such inspections. Eliminating the five-year cycling option to maintain an LDC's Maximum Allowable Operating Pressure (MAOP) would reduce costs for LDCs. Prohibiting soap testing of new inside services would slightly increase costs because in-service pressure testing prior to placing pipe into service takes more time than soap testing and storage costs may increase for pre-pressure-tested pipe that has not yet been placed into service.

5. Costs to local government: Inspections, training, and testing of inside gas piping upstream of the meter would fall under the jurisdiction of the state and federal regulators; therefore, LDCs would be required to carry out such actions. As such, local governments would likely see a decrease in costs associated with building inspections of inside gas services.

For municipalities that own and operate gas companies, costs that are associated with additional testing and training, the storage of pre-tested pipes, and the added time required for pressure (as opposed to soap) testing may increase slightly.

6. Costs to the public service commission or the department of public service: Since amendment of the regulations as proposed would result in continued federal funding to administer the State's Gas Safety program, no additional costs to the Department of Public Service are expected.

7. Local government mandates: If applicable, local governments would need to amend building or other codes that may be in conflict with the State's amended gas safety regulations. Such conflicts would occur if a local code, for instance, authorized professionals who are not Operator Qualified or drug tested to perform operation and maintenance on inside gas piping upstream from the meter.

8. Paperwork: Gas companies would need to maintain additional Operator Qualification certificates for the additional professionals who would be performing operation and maintenance on inside gas piping. Professionals who now perform such work on inside gas piping upstream of the meter would need to retain documentation that they are Operator Qualified.

9. Duplication: The proposed regulations do not duplicate, overlap or conflict with any existing federal or State statutes or regulations.

10. Alternatives: There are no significant alternatives to consider because the proposed regulations are consistent with federal regulations. The possibility of waivers exists, which would allow an LDC to deviate from the rules upon a showing that the application of all of the operation and maintenance requirements, primarily the schedule of leakage surveys and corrosion inspections, would be impractical, costly, inappropriate, or

unreasonable, if it could be shown that the proposed technical alternative would be equal to or safer than the rules being adopted.

11. Federal standards: The proposed rule amendments are intended to conform 16 NYCRR Part 255 and related Parts to 49 USC 60101 et. seq. and 49 CFR Part 192.

12. Compliance schedule: The proposed revisions to Parts 255.507, 255.619, and 255.625 would be effective upon publication of the Notice of Adoption in the New York State Register. The regulated community and other licensed professionals who perform work on gas piping will not be required to comply with the new rules immediately. The PSC will more specifically outline a framework for implementation that contains discrete timelines by which the regulated community will need to be in compliance with the requirements associated with the new definition of service line and which addresses the waiver process.

Revised Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule aligns the definition of "service line" with its federal code counterpart (16 NYCRR §§ 255.3 and 255.723), repeals soap pressure testing (§ 255.507), deletes the technical requirement that an operator may throttle pressure in cathodically unprotected steel pipelines to maintain the current maximum allowable operating pressure (§ 255.619) and eliminates an exception that gas in route to storage need not be odorized (§ 255.625).

2. Compliance requirements: The proposed rule would require small businesses comprised of utility contract workers (including Master Plumbers) who now perform operation and maintenance on inside piping to become Operator Qualified and submit to drug testing in order to perform such work. To the extent that Master Plumbers and other utility contract workers can demonstrate that they are working on de-energized or purged pipelines, they would not be performing a "covered task" and therefore, would not have to comply with Operator Qualification requirements. A specific Operator Qualification requirement includes pre-activity drug testing, which if Master Plumbers and other such workers can demonstrate they are working on de-energized or purged gas and only conducting alteration or repair work, they would not be performing a "covered function." Absent performance of a "covered function," Master Plumbers and other utility contract workers would not have to comply with this drug testing requirement. Additionally, if Master Plumbers and other such workers can show that their licensing or training program is technically equivalent to existing Operator Qualification requirements contained in Part 255 of New York's gas safety rules, no additional compliance requirements exist for these small business members.

A small number of towns in New York State operate their own municipal gas corporations and under the proposed rule may be required to expand the retention of their Operator Qualification records to the extent that new employees or contractors will become operator qualified to perform operation and maintenance work on each gas corporation's inside building piping that is upstream of the meter.

3. Professional services: There are no professional services that a small business or local government is likely to need to comply with the changes associated with this rule.

4. Compliance costs: Costs to industry relative to compliance with the "service line" provisions of the proposed rule vary widely among New York utilities. National Grid estimates the cost of developing and implementing leakage surveys and atmospheric corrosion testing to be \$50 million over three years and \$14 million each year thereafter. Consolidated Edison (Con Edison) estimates the cost to perform this testing as required in the proposed rule to be \$55 million annually. New York State Electric and Gas (NYSEG) estimates additional costs of \$943,610 to perform leakage surveys and atmospheric corrosion testing, while Rochester Gas & Electric (RG&E) estimates an additional \$1,526,933 to conduct such testing. Some costs associated with the proposed changes could be mitigated with the opportunity for waivers from the PSC, which, if approved, would extend the time intervals during which leakage and corrosion inspections would need to occur.

5. Economic and technological feasibility: The proposed rule does not require any specialized technology for compliance.

6. Minimizing adverse impact: Potential offsets to minimize adverse impacts on small businesses could include adding such costs to utility operation and maintenance budgets to socialize them among utility ratepayers. Small businesses in the form of building owners may also be able to bear the added costs of trained operator qualified workers to work on inside piping upstream of the meter because such costs per building owner will likely be negligible. In order to minimize any adverse impacts associated with compliance, the Commission may issue waivers, which would allow the regulated community to deviate from the proposed rules upon a showing that the application of all of the operation and maintenance requirements, primarily the schedule of leakage surveys and corrosion inspections, would be impractical, costly, inappropriate, or unreasonable. The waiver applicant would have to demonstrate to the Commission that the proposed technical alternative would be equal to or

safer than the rules being adopted. This extension of time could provide relief not only for utilities, but also small municipal gas corporations, where applicable, may have to conduct leakage surveys and atmospheric corrosion inspections.

7. Small business and local government participation: The PSC complied with the New York State Administrative Procedure Act (SAPA) section 202-b(6) by assuring that small businesses and local governments were given an opportunity to participate in this rule making. This participation occurred through meetings and/or outreach with affected municipalities, such as the City of New York, utilities, such as Consolidated Edison Company of New York and National Grid, labor unions, and other stakeholder groups, such as the NYS Association of Towns, Conference of Mayors, and NYS Association of Counties, during the rulemaking process. The Department held two stakeholder meetings, in New York City on October 21, 2104 and in Albany on October 28, 2014. At those meetings, Staff presented an overview of the proposed changes and listened to the concerns of the gas utilities and representatives of various plumbing organizations.

Furthermore, PSC accepted public comments to the Notice of Proposed Rulemaking during the public comment period, which began on September 24, 2014 and closed on November 10, 2014. The PSC received 13 comments on the proposed rules from: the Plumbing Foundation of the City of New York, Inc. (Plumbing Foundation), Plumbing Contractors Association of Long Island, Inc. (Plumbing Contractors), Hudson Valley Mechanical Contractors Association, Inc. (Hudson Valley Mechanical), KeySpan Gas East Corp. d/b/a National Grid, Niagara Mohawk Power Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY (National Grid), Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (CHG&E), New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation (NYSEG/RG&E), Independent Master Plumbers of Westchester (Independent Plumbers), New York City Department of Buildings (NYCDOB), Northeast Gas Association (NGA), Praxair, Inc. (Praxair), Master Plumbers Council of the City of New York, Inc. (Master Plumbers), National Fuel Gas Distribution Corporation (NFG), the New York State Plumbing, Heating and Cooling Contractors, and members of the Senate and Assembly.

For a description of the public comments received and the PSC's response, please refer to the Summary and Full Assessment of Public Comments documents. The Secretary of the Public Service Commission also issued a notice to stakeholder groups on a distribution list to apprise members of this rulemaking and to solicit comments.

8. Cure period: No cure period is included in the proposed rule. Gas Safety Section Staff at the Department of Public Service typically offers utilities a thirty (30) day cure period to correct deficiencies in biannual audit findings and prior to recommending the pursuit of an enforcement case. Staff will work on formalizing internal guidance to document this existing best practice which involves a right to cure. Additionally, Department Staff anticipates commencing a comprehensive revision to Part 255 in the future, whereupon an express cure period will be considered as part of the rulemaking package.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule applies to the entire State and may impact all rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed rule change to the "service line" definition will unlikely impact rural areas, in that, most high rise buildings with customer meters located on upper floors are found in urban instead of rural areas of the State.

A small number of towns located in rural areas throughout New York State who operate their own municipal gas corporations may experience minimal impacts under the proposed rule because they may be required to expand the retention of their Operator Qualification records to the extent that new employees or contractors (including Master Plumbers) will need to become operator qualified to perform operation and maintenance work on each gas corporation's inside building piping. Municipal operators may also have to retain records establishing that leakage surveys and atmospheric corrosion inspections were performed on the inside piping.

3. Costs: Costs to industry relative to compliance with the "service line" provisions of the proposed rule vary widely among New York utilities whose operating territories cover rural areas. Specifically, National Grid estimates the cost of developing and implementing leakage surveys and atmospheric corrosion testing to be \$50 million over three years and \$14 million each year thereafter. New York State Electric and Gas (NYSEG) estimates additional costs of \$943,610 to perform leakage surveys and atmospheric corrosion testing, while Rochester Gas & Electric (RG&E) estimates an additional \$1,526,933 to conduct such testing. For municipalities located in rural areas who own and operate gas corporations, costs associated with additional testing and training, the storage of pre-tested pipes, and the added time required for pressure (as opposed to

soap) testing may increase slightly. Some costs associated with the proposed changes could be mitigated with the opportunity for waivers from the PSC, which, if allowed, would extend the time intervals during which leakage and corrosion inspections would need to occur.

4. Minimizing adverse impact: Minimal adverse impacts exist relative to rural areas of New York State. To the extent any adverse impacts arise, the regulated community and other licensed professionals who perform work on gas piping located in rural areas will not be required to comply with the new rules immediately. In order to minimize any adverse impacts associated with compliance, the Commission may issue waivers, which would allow the regulated community to deviate from the proposed rules upon a showing that the application of all of the operation and maintenance requirements, primarily the schedule of leakage surveys and corrosion inspections, would be impractical, costly, inappropriate, or unreasonable. The waiver applicant would have to demonstrate to the Commission that the proposed technical alternative would be equal to or safer than the rules being adopted.

5. Rural area participation: The PSC complied with the New York State Administrative Procedure Act (SAPA) section 202-bb(7) by assuring that public and private interests in rural areas have been given an opportunity to participate in the rule making process. This participation occurred through meetings and/or outreach with affected municipalities, utilities, such as Consolidated Edison Company of New York and National Grid, labor unions, and other stakeholder groups, such as the NYS Association of Towns, Conference of Mayors, and NYS Association of Counties, during the rulemaking process. The Department held two stakeholder meetings, in New York City on October 21, 2104 and in Albany on October 28, 2014. At those meetings, Staff presented an overview of the proposed changes and listened to the concerns of the gas utilities and representatives of various plumbing organizations.

Furthermore, the PSC accepted public comments to the Notice of Proposed Rulemaking during the public comment period, which began on September 24, 2014 and closed on November 10, 2014. The PSC received 13 comments on the proposed rules from: the Plumbing Foundation of the City of New York, Inc. (Plumbing Foundation), Plumbing Contractors Association of Long Island, Inc. (Plumbing Contractors), Hudson Valley Mechanical Contractors Association, Inc. (Hudson Valley Mechanical), KeySpan Gas East Corp. d/b/a National Grid, Niagara Mohawk Power Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY (National Grid), Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (CHG&E), New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation (NYSEG/RG&E), Independent Master Plumbers of Westchester (Independent Plumbers), New York City Department of Buildings (NYCDOB), Northeast Gas Association (NGA), Praxair, Inc. (Praxair), Master Plumbers Council of the City of New York, Inc. (Master Plumbers), National Fuel Gas Distribution Corporation (NFG), the New York State Plumbing, Heating and Cooling Contractors, and members of the Senate and Assembly. For a description of the public comments received and the PSC's response, please reference the Summary and Full Assessment of Public Comment documents. The Secretary of the Public Service Commission also issued a notice to stakeholder groups on a distribution list to apprise members of this rulemaking and to solicit comments.

Revised Job Impact Statement

1. Nature of impact: Compliance with the requirements associated with the proposed "service line" provisions of the rule may result in additional training, education, and testing requirements for all professionals, in addition to the already qualified utility workers and contractors, who perform work on inside piping upstream of the meter. There may be an initial deficit in the number of operator qualified workers to perform this type of work while persons who currently perform such work absent Operator Qualifications are trained and tested, which may create a backlog. However, it is anticipated that by aligning the state definition of "service line" with its federal code counterpart, a LDC (operator) will likely have to hire additional qualified workers to address the increase in its operation and maintenance requirements which will likely translate into a long-term growth in jobs. Costs to comply with existing Operator Qualifications, specifically pre-activity and random drug testing of all utility workers and contractors, could result in a reallocation of work. Based on a projected increase in costs associated with potential drug testing of Master Plumbers in New York City, LDCs could forego hiring these workers, which could adversely impact jobs in this sector. It is anticipated that adding the requirement that gas in transmission lines in route to storage be odorized will have a minimal impact on state jobs since no intrastate pipelines are known to be affected by the proposed rule. Likewise, the proposed elimination of the MAOP throttling provision will have a minimal impact on jobs because the operator qualified workers who would otherwise be responsible for performing the five-year cycling could refocus job tasks and perform, for instance, leakage surveys, atmospheric corrosion inspections, or pressure testing instead. Proposed elimination of soap testing

could in fact produce the opposite effect of job loss and lead to an increase in jobs because more workers would be needed to perform the more labor intensive pressure testing instead. Overall, negative impacts to income will be minimized and negative impacts on jobs will likewise be minimal.

2. Categories and numbers affected: There are an unknown number of operator qualified utility workers who perform work on inside piping that could be impacted by the proposed rule. Additionally, there are an unknown number of Master Plumbers in the City of New York who currently work on natural gas piping inside of buildings who will be subject to the proposed Operator Qualification and drug testing programs in order to continue to perform such work.

3. Regions of adverse impact: Urban areas in the state with older high rise buildings will likely bear the most impact because more inside gas piping will have to be inspected and any operation and maintenance work will have to be performed by an operator qualified professional. There are not entire regions in the State, however, where this rule making will have a disproportionate adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: Potential offsets to minimize adverse impacts on building owners could include adding such costs to utility operation and maintenance budgets to socialize them among utility ratepayers rather than individual building owners. Additionally, the PSC will address implementation of the "service line" definition as part of the continued stakeholder outreach and Special permit or waiver process. No adverse impacts exist relative to the requirement that gas in route to storage in transmission lines be odorized because this rule change only affects interstate pipeline operators which are non-jurisdictional in New York State. Staff is unaware of any intrastate pipeline operators subject to New York's gas safety program in Part 255 who would be impacted by this odorization requirement. No adverse impacts exist relative to the proposed elimination of soap testing and MAOP throttling provisions because existing jobs could be redirected within the industry or could even increase in response to this proposed rule.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York Public Service Commission (PSC) accepted public comments to the Notice of Proposed Rulemaking during the public comment period, which began on September 24, 2014 and closed on November 10, 2014. The PSC received 13 comments on the proposed rules from: the Plumbing Foundation of the City of New York, Inc. (Plumbing Foundation), Plumbing Contractors Association of Long Island, Inc. (Plumbing Contractors), Hudson Valley Mechanical Contractors Association, Inc. (Hudson Valley Mechanical), KeySpan Gas East Corp. d/b/a National Grid, Niagara Mohawk Power Corporation, The Brooklyn Union Gas Company d/b/a National Grid NY (National Grid), Consolidated Edison Company of New York, Inc. (Con Edison), Central Hudson Gas & Electric Corporation (CHG&E), New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation (NYSEG/RG&E), Independent Master Plumbers of Westchester (Independent Plumbers), New York City Department of Buildings (NYCDOB), Northeast Gas Association (NGA), Praxair, Inc. (Praxair), Master Plumbers Council of the City of New York, Inc. (Master Plumbers), National Fuel Gas Distribution Corporation (NFG), the New York State Plumbing, Heating and Cooling Contractors, and members of the Senate and Assembly.

Utilities

NGA and the local gas distribution companies (LDCs), which include National Grid, Con Edison, CHG&E, NYSEG/RG&E, and NFGD, focused their public comments on the proposed rule change to the "service line" definition (Part 255.3) and the newly expanded requirements to conduct leakage surveys and atmospheric corrosion inspections on inside building piping (Part 255.723). Specifically, the LDCs expressed concerns about the projected costs of conducting leakage surveys and atmospheric corrosion inspections on inside gas piping within high rise buildings, namely in the City of New York. Several LDCs sought guidance as to how to properly conduct such testing and inspections. All of the LDCs also indicated in comments that New York utilities would need a three-year extension of rule deadlines to comply with these new testing and inspection requirements. The LDCs suggested that utility employees and contractors, including Master Plumbers, would not be subject to Operator Qualification requirements because these workers typically limit their scope of work to de-energized or purged pipelines inside buildings and such work would not be considered a "covered task" under the gas safety rules. A specific component of Operator Qualification requirements includes pre-activity and random drug testing if the worker is performing operation and maintenance on inside building gas pipelines. The LDCs suggest that such workers would not have to submit to drug testing, among other requirements, because they do not have to be Operator Qualified.

The LDCs supported the proposed deletion of the maximum allowable operating pressure (MAOP) throttling provision (Part 255.619) and did not offer any opposition to the proposed deletion of the odorization requirement for all gas except such gas in route storage (Part 255.625). Likewise, the LDCs did not oppose the proposed deletion of the soap testing of pipelines provision (Part 255.507), but instead sought clarification that soap testing of tie-in joints would continue to be allowed under existing regulations.

New York City Department of Buildings

NYCDOB sought clarification between the proposed rule change to the "service line" definition and the corollary federal rule.

Plumber Representatives

Various plumbing organizations expressed concerns about potential costs related to additional training and licensing in order to comply with the new rule. These representatives also noted the potential for duplicative training programs and asked that the Commission consider the current professional requirements in the New York City code as technically equivalent to the PSC's Operator Qualification rules.

Praxair

Praxair offered general support for the proposed rule changes and described products currently available that are sold by the company for the purpose of conducting leakage surveys.

Legislative

The Bronx Assembly delegation, Senator Jeffrey Klein, Senator Michael Ranzhofer, and New York City Council member Ritchie Torres specifically expressed concern about potential costs related to additional training and licensing to be incurred by Master Plumbers in order to comply with the new rule. The legislators supported the public comments filed by NGA and noted concerns with the additional costs estimated at \$55 million and the potential effects on Master Plumbers. The legislators claimed that current municipal training programs for Master Plumbers contain stricter licensing requirements than the PSC's Operator Qualification rules. Additionally, the legislators asked that the PSC consider instituting an exception to the proposed rule's Operator Qualification requirements based on existing stringent municipal licensing programs for Master Plumbers as being already Part 255 compliant. (14-G-0357SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Consider a Joint Proposal to Extend the Electric Rate Plan Adopted by an Additional Year

I.D. No. PSC-16-15-00004-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 proposal to extend Con Edison's electric rate plan one year using certain credits accrued to customers to offset recommended revenue requirement needs. The proposal also addresses standby, advanced metering and other issues.

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

Subject: To consider a joint proposal to extend the electric rate plan adopted by an additional year.

Purpose: To consider a joint proposal to extend the electric rate plan adopted by an additional year.

Substance of proposed rule: The Commission is considering a proposal that, if approved, would extend by one year the current Consolidated Edison Company of New York, Inc. (Con Edison or the Company) electric rate plan established by the Commission in this proceeding. The proposal recommends that the Commission use certain credits which have accrued to customers during the rate plan to offset the recommended revenue requirement needs of Con Edison during the extension period. In addition, the proposal recommends various changes to the standby rates offered by the Company, a process to further evaluate the Company's plans to implement new metering technology and addresses other issues. The Commission may adopt, modify or reject, in whole or in part, terms set forth in the proposal.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

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

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

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

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

(13-E-0030SP8)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00005-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 a proposed tariff filing by New York State Electric & Gas Corporation to make various changes in the rates, charges, rules and regulations contained in PSC No. 120—Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York State Electric & Gas Corporation to effectuate changes to Public Service Law (PSL) Section 66-j in relation to net metering for non-residential farm waste or fuel cell electric generating equipment. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0033SP1)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00006-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 a proposed tariff filing by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in PSC No. 19—Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Rochester Gas and Electric Corporation to effectuate changes to Public Service Law (PSL) Section 66-j, Chapters 494 and 518, in relation to net metering for non-residential farm waste or fuel cell electric generating equipment. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0035SP1)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00007-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 a proposed tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes in the rates, charges, rules and regulations contained in PSC No. 220 — Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to effectuate changes to Public Service Law (PSL) Section 66-j in relation to net metering for non-residential farm waste or fuel cell electric generating equipment. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0034SP1)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00008-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 proposed tariff filing by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in PSC No. 15 — Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Central Hudson Gas and Electric Corporation to effectuate changes to Public Service Law (PSL) Section 66-j in relation to net metering for non-residential farm waste or fuel cell electric generating equipment. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0031SP1)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00009-P

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

Proposed Action: The Public Service Commission is considering a proposed tariff filing by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in PSC No. 10—Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to effectuate changes to Public Service Law (PSL) Section 66-j in relation to net metering for non-residential

farm waste or fuel cell electric generating equipment, as well as certain changes required by the Commission's Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making other Findings, and Establishing Further Procedures (issued December 15, 2014), and subsequent Order Clarifying Prior Order (issued January 9, 2015) in Cases 14-E-0151 and 14-E-0422. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The changes complying with the Commission orders listed above concern establishing whether co-located facilities satisfy the net metering kW limit. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0032SP1)

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

Submetering of Electric Service at 325 Lexington Avenue, New York, NY 10016

I.D. No. PSC-16-15-00010-P

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

Proposed Action: The Commission is considering whether to grant, reject or modify the petition of 325 Lex Condominium to submeter electricity at 325 Lexington Avenue, New York, NY 10016.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Submetering of electric service at 325 Lexington Avenue, New York, NY 10016.

Purpose: Whether to authorize the submetering of electric service at 325 Lexington Avenue, New York, NY 10016.

Substance of proposed rule: On March 27, 2015, 325 Lex Condominium filed a petition requesting authority to submeter electric service to the new condominium building located at 325 Lexington Avenue, New York, NY, which consists of 125 living units, none of which are low income. The petitioners' state that Quadlogic Control Corporation's S-10 meters would be used to track consumption and that the building is heated by natural gas. The Commission may approve, reject or modify the petition and 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0181SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-16-15-00011-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent to Submeter electricity filed by North Queensview Homes for the premises located at, and attached to, 33-60 21st St., Long Island City, NY.

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

Subject: Notice of Intent to Submeter electricity.

Purpose: To consider the request of North Queensview Homes to submeter electricity at 33-60 21st St., LIC, NY, and adjoining properties.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent filed by North Queensview Homes Inc., to submeter electricity at 33-60 21st Street, 33-64 21st Street, 33-65 14th Street, 33-55 14th Street, 33-43 14th Street, 33-47 14th Street and 33-68 21st Street, Long Island City, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0172SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-16-15-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent of Homeport I L.L.C., to submeter electricity at 7 and 8 Navy Pier Court, Staten Island, New York.

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

Subject: Notice of Intent to Submeter electricity.

Purpose: To consider the request of Homeport I L.L.C. to submeter electricity at 7 and 8 Navy Pier Court, Staten Island, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Notice of Intent of Homeport I L.L.C., to submeter electricity at 7 and 8 Navy Pier Court, Staten Island, New York located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Notice.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0193SP1)

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

Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR

I.D. No. PSC-16-15-00013-P

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

Proposed Action: The Public Service Commission is considering a proposed tariff filing by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in PSC No. 3 — Electricity.

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

Subject: Net Energy Metering for Non-Residential Farm Waste or Fuel Cell Electric Generating Equipment and SIR.

Purpose: To effectuate changes to Public Service Law Sections 66-j in relation to Net Energy Metering and SIR.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Orange and Rockland Utilities, Inc. to effectuate changes to Public Service Law (PSL) Section 66-j in relation to net metering for non-residential farm waste or fuel cell electric generating equipment. Chapter 494 allows non-residential customers to install farm waste generation at their premises and be able to participate in farm waste net metering provisions. Chapter 518 increases the rated capacity of fuel cell electric generating equipment from 1,500 kW to 2,000 kW and be eligible for net metering. The New York State Standard Interconnection Requirements (SIR) document would be modified to incorporate this update to PSC Section 66-j. The filing has an effective date of July 27, 2015. 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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-E-0036SP1)