RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Firewood (All Hardwood Species), Nursery Stock, Logs, Green Lumber, Stumps, Roots, Branches and Debris

I.D. No. AAM-03-10-00003-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 139 of Title 1 NYCRR.

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

Subject: Firewood (all hardwood species), nursery stock, logs, green lumber, stumps, roots, branches and debris.

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

Public hearing(s) will be held at: 11:00 a.m., March 23, 2010 at Department of Agriculture and Markets, 10B Airline Dr., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

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(d) of section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new subdivision (d) is added to read as follows:

(d) That area in the Borough of Richmond in the City of New York bound by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and Morningstar Road; then south to the intersection of Morningstar Road and Richmond Terrace; then southwest along Morningstar Road to its intersection with Forest Avenue; then east along Forest Avenue to its intersection with Willow Road East; then south and then southeast along Willow Road East to its intersection with Victory Boulevard; then west along Victory Boulevard to its intersection with Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to its intersection with Rivington Avenue; then east along Rivington Avenue to its intersection with Mulberry Avenue; then south on Mulberry Avenue to its intersection with Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey; then east along the borderline of the State of New York and New Jersey excluding Shooters Island to the point of beginning.

Paragraph 1 of subdivision (b) of section 139.3 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(1) Firewood (all hardwood species) and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following genera: Acer (Maple); Aesculus (Horse Chestnut); Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry); Fraxinus (Ash); *Cercidiphyllum japonicum (Katsura);* Platanus (Plane Tree, Sycamore); and Sorbus (Mountain Ash) are regulated articles.

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

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory authority:

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

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

Section 167 of the Agriculture and Markets Law provides, in part,

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

2. Legislative objectives:

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

3. Needs and benefits:

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

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to extend by approximately two square miles, the existing quarantine area on Staten Island. The proposed rule contains the needed modifications. This rule also amends 1 NYCRR section 139.3(b)(1) to add katsura (Cercidiphyllum japonicum) to the list of regulated host materials subject to regulation under the quarantine. Katsura has been found by the United States Department of Agriculture (USDA) to be subject to infestation by the Asian Long Horned Beetle.

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

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

Control of the Asian Long Horned Beetle is accomplished by the removal of infested host trees and materials and then chipping or burning them. More than 18,000 infested trees have been removed to date. Chemical treatments are also used to suppress ALB populations with approximately 480,000 treatments administered. However, the size of the area infested and declining fiscal resources cannot mitigate the risk from the movement of regulated articles outside of the area under quarantine. As a result, the extension of the quarantine on Staten Island imposed by this rule has been determined to be the most effective means of preventing the further spread of the Asian Long Horned Beetle. It will help to ensure that as control measures are undertaken in the areas the Asian Long Horned Beetle currently infests, it does not spread beyond those areas via the movement of infested trees and materials.

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

4. Costs:

(a) Costs to the State government: none.

(b) Costs to local government: A wood debris pick-up program, funded entirely by New York City, is already in place. New York City's Department of Parks and Recreation advises that the amendments, including the extension of the quarantine area on Staten Island, will not result in any additional costs to New York City.

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

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

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

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

The extension of the existing quarantine area on Staten Island would affect eight nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

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

5. Local government mandate:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of ½'' or more in diameter of host species will require proper handling and disposal, i.e., chipping and/or incineration if such materials are to leave the quarantine area established by this rule. A wood debris pick-up program, funded entirely by New York City, is already in place. New York City's Department of Parks and Recreation advises that the amendments, including the extension of the quarantine area on Staten Island, will not result in any additional costs to New York City. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

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

7. Duplication:

None.

8. Alternatives:

The failure of the State to extend the existing quarantine on Staten

Island where the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The amendment does not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

1. Effect on small business.

The small businesses affected by extending the existing quarantine area on Staten Island are the nursery dealers, nursery growers, landscaping companies, transfer stations, compost facilities and general contractors located within that area. There are eight such businesses within that area. Since there is already a quarantine area on Staten Island, the City of New York and the borough of Staten Island will remain involved in the proposed extension of this quarantine.

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

2. Compliance requirements.

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

3. Professional services.

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

4. Compliance costs.

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

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

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

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

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

Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the proposed quarantine area, in the event that they do, they would be subject to the same costs as other regulated parties. A wood debris pick-up program, funded entirely by New York City, is already in place. New York City's Department of Parks and Recreation advises that the amendments, including the extension of the quarantine area on Staten Island, will not result in any additional costs to New York City.

5. Minimizing adverse impact.

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

6. Small business and local government participation.

The Department has had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of Asian long horned beetle quarantines. The Department has also had extensive consultation with the USDA on the efficacy of such quarantines. Most recently, the Department has had discussions with the City of New York and the borough of Richmond concerning this amendment to extend the existing quarantine on Staten Island. Representatives of the city and borough governments expressed support for the amendment.

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

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

Rural Area Flexibility Analysis

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the quarantine areas to which the amendments apply are not situated in "rural areas," as defined in section 481(7) of the Executive Law.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The extension of the existing quarantine area on Staten Island and the addition of katsura as a species susceptible to infestation by the Asian long horned beetle are designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the Asian long horned beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and maple product industries.

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

As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.

Education Department

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Museum Collections Management Policies

I.D. No. EDU-01-09-00004-RP

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

Proposed Action: Amendment of section 3.27 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 216 (not subdivided) and 217 (not subdivided)

Subject: Museum collections management policies.

Purpose: To clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Text of revised rule: 1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective March 31, 2010, to read as follows:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection *only* when so designated by the *board of trustees of the* institution *by vote conducted on or before December 19, 2008*;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective March 31, 2010, to read as follows:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement*, including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision*;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, *which shall be consistent with paragraph (7) of this subdivision,* and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] *(vi)* of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses*, for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section,* or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) *Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:*

(i) the item or material is not relevant to the mission of the institution;

(ii) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(iii) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(iv) the institution is unable to conserve the item or material in a responsible manner.

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.

Revised rule making(s) were previously published in the State Register on August 26, 2009.

Revised rule compared with proposed rule: Substantial revisions were made in section 3.27(a), (c)(6) and (7).

Text of revised proposed rule and any required statements and analyses may be obtained from Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Jeffrey W. Cannell, Deputy Comm. for Cultural Education, State Education Department, Cultural Education Center, Room 10C34, Albany, NY 12230, (518) 474-5930, email: ppaolucc@mial.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Revised Rule Making in the State Register on August 26, 2009, the proposed rule has been substantially revised as follows:

The Notice of Revised Rule Making published in the August 26, 2009 State Register, included proposed revisions to (1) provide a January 15, 2010 sunset date on the prohibition against adding a historic structure to a collection, (2) provide definitions of ''Collection Management Policy'', ''Intrinsic Value'', and ''Item'', (3) require that collection items be appropriate to an institution's corporate purposes, mission statement and collection management policy, and that the acquisition and deaccessioning of collection items is consistent with the institution's corporate purposes, mission statement and collection management policy, and (4) provide ten additional criteria that a museum or historical society with collections must meet in order to deaccession items or materials in their collections.

The proposed rule has now been further revised to restate the original proposed rule published in the January 7, 2009 State Register. While the Department has discussed the above proposed revisions with legislators, institutions and constituents during the Fall of 2009, a consensus has not been reached with respect to these revisions, and the Department believes it is appropriate to proceed with the original proposed rule which has remained in effect as an emergency rule since its initial adoption effective December 19, 2008. The Department will continue to review and evaluate comments received from constituents, and intends to send representatives to a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly. It is anticipated that the proposed revised rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

The aforementioned changes require that the Needs and Benefits section of the previously published Regulatory Impact Statement be revised as follows:

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following four criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

Revised Regulatory Flexibility Analysis

The proposed revised rule applies to museums and historical societies authorized to hold collections chartered by the Board of Regents and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the proposed revised rule that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Revised Rule Making in the State Register on August 26, 2009, the proposed rule has been substantially revised as set forth in the Revised Regulatory Impact Statement submitted herewith.

The aforementioned changes require that the Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services section of the previously published Rural Area Flexibility Analysis be revised as follows:

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

The purpose of the proposed amendment is to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(1) the item or material is not relevant to the mission of the institution;

(2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

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

Revised Job Impact Statement

The proposed revised rule applies to museums and historical societies with collections, chartered by the Board of Regents and will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the proposed revised rule that it will have no impact on jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

Since publication of a Notice of Revised Rule Making in the State Register on August 26, 2009, the State Education Department received the following comments:

COMMENT:

A museum expressed support for the revised regulation as a marked improvement over the current emergency rule now in place. It was noted that the proposed revisions permit museums to deaccession for the purpose of 'refinement' of a collection, and that this is a critical criteria for museums, especially those that collect works of modern and contemporary art, where the historic importance of a work (or lack thereof) may only become apparent many years after its acquisition.

DEPARTMENT RESPONSE:

No response is necessary as the comment is supportive of the proposed amendment.

COMMENT:

A museum association expressed support for the proposed amendment but had serious concerns about what the consideration of the amendment at this time will have on the success of the ''Brodsky-Serrano legislation.'' The association recommended that the Regents table the proposed amendment and help advance legislation that will result in consistently applied rules, and that the Regents designate an advisory council on museums, which could be of assistance immediately on an ad-hoc basis.

DEPARTMENT RESPONSE:

SED and the Regents will discuss with the sponsors of the Brodsky and Serrano bills (A.6959-A and S.4584-A, respectively) how to best time adoption of the present amendment.

The appointment of a Regents advisory council or committee on museums is not pertinent to this amendment but SED will take this suggestion under consideration as a separate matter.

COMMENT:

New York State Museum Research and Collections managers suggested changes to proposed section 3.27(c)(7) to clarify the language and align the language with State Museum deaccessioning criteria.

The managers suggest revising the phrase ''the item or material has failed to retain its identity'' in section 3.27(c)(7)(ii), by adding the following: (a) ''the item or material lacks physical integrity or is deteriorated beyond usefulness'' and (b) ''the item or material either lacks authenticity or is so lacking in documentation as to render it valueless for purposes of scholars or public education.''

The managers further suggest replacing the phrase ''the institution is repatriating the item or returning the item to its rightful owner'' in section 3.27(c)(7)(viii), with the phrases ''the institution is repatriating the item in keeping with the Native American Graves Protection and Repatriation Act and any other relevant governmental laws or acts,'' and ''the institution is returning the item to its rightful owner.''

The managers also suggest adding as an additional deaccessioning criteria ''the item occupies space or demands resources disproportionate to its present or anticipated importance to the collections.''

DEPARTMENT RESPONSE:

SED believes the suggested changes are useful and may consider adding these changes as part of a future revised rule making or as a separate rule making.

COMMENT:

A museum objected to the prohibition in proposed section 3.27(c)(6)(vii) on spending proceeds from deaccessioning for capital expenses, because it would remove the ability to spend on HVAC or fire suppression systems or professional storage systems, because they would be considered capital expenses. The museum noted that 'capital expense' is not defined and to rely on commonly held understandings or customary usage invites argument. The museum also indicated that the proposed amendment appears to be at odds with the Brodsky legislation (A.6959-A) which provides that proceeds may be used for the acquisition of collection items and ''for the preservation, protection or care'' of collection items, but may not be used ''for traditional and customary operating expenses.'' It is contended that by preventing deaccession monies from being spent on HVAC, fire suppression and professional storage systems and other preventive conservation measures, the proposed amendment guts the law of its original intent - to allow for the preservation, protection or care of collections. Treating an object after it has been damaged, while essential, is hardly protecting or caring for collections. The museum further states that the meaning of 'direct care' has been subject to debate, as has the wording in the Regents regulations (the preservation, protection or care of collections) but the museum was advised that monies could be spent on anything that directly touches the object. However, the museum noted that this view is inexplicably held not to apply to the one thing that directly touches objects and can cause more harm than anything else short of direct physical damage - the climatic environment.

DEPARTMENT RESPONSE:

It is a subject of ongoing debate whether to allow proceeds from deaccessioning to be used for heating, ventilation and air conditioning (HVAC) and other environmental controls, security systems, shelving, and the like. SED classifies these expenditures as ''operating expenses'' which are already addressed in the existing rule. SED will consider including a defini-

tion of ''capital expense'' as part of a future revised rule making or as a separate rule making.

COMMENT:

A commenter disagreed that policies governing deaccessioning are best articulated through regulations, noting that professional standards in this area are in flux and still evolving and that regulations are therefore premature. It was noted the Society of American Archivists' Acquisition and Appraisal Section in 2008 proposed a Working Group to investigate issues in reappraisal and deaccessioning and possibly to suggest professional standards. The commenter contended it should be left to the board of directors of each institution to implement and approve deaccessioning policies and practices that are consistent with professional best practices and the needs of the institution.

DEPARTMENT RESPONSE:

SED notes that museum deaccessioning standards have been widely circulated, debated and agreed upon within such organizations as American Association of Museums, American Association for State and Local History, International Council of Museums (UNESCO) and Association of Art Museum Directors. SED first circulated collection management rules in 1992 and the Regents first adopted them as regulation in 1998.

Prior to the proposed amendment the criteria for deaccessioning appeared only in SED-issued guidance documents. Although SED seeks voluntary compliance by its chartered institutions with accepted professional standards, SED notes recent instances of deaccessioning by institutions that were inconsistent with, if not violative of, such standards and widely condemned by the public, and believes such instances call for more comprehensive and clearer regulatory language, not less.

The recent discussion of deaccessioning by archival associations is noteworthy but does not directly relate to the issue of museum standards. SED will meet with a representative of an association of colleges and universities to discuss what impact the proposed amendment will have or should have on library and archival collections.

COMMENT:

A commenter suggested an additional justification for deaccessioning could be added to the proposed amendment, namely that ''the material is part of a larger collection, other portions of which are owned by another repository that makes its holdings accessible to the public.''

DEPARTMENT RESPONSE:

SED believes an action by an institution to add an item or material to a larger collection can be covered under the existing criteria.

COMMENT:

A commenter asked why deaccessioning proceeds could not be used for the salaries of staff responsible for the preservation of collections, or for the costs of replacing a leaky roof on a building.

DEPARTMENT RESPONSE:

SED classifies these expenditures as ''operating expenses'' which are already addressed in the existing Rule.

COMMENT:

A commenter contended that the regulations reflect an attitude towards the ethics of deaccessioning that has been seriously criticized in the last few years, noting that art lawyers and some museum administrators have suggested that blind adherence to the general precept that collections should not be monetarized to support operations can actually be harmful to the mission of the organization.

DEPARTMENT RESPONSE:

SED opposes using proceeds from deaccessioning to support operating expenses or pay debt, even when such spending might keep the doors open in an otherwise failing institution. Instead, SED prefers to work with an institution to restructure its operations, modify or scale back its facility, merge or consolidate with another institution, or in the worst case, go out of business after relocating the collection to another, more viable institution that agrees to make the collection available to the public.

COMMENT:

A question was raised whether the proposed amendment applies to libraries and archives.

DEPARTMENT RESPONSE:

SED notes that libraries and archives as stand-alone institutions are not covered by the regulation, but that many public libraries own museum collections not covered by Regents regulations on collection management. As noted above, SED is scheduling discussions with a representative of archivists and librarians as to what regulation, if any, is needed and appropriate.

Insurance Department

EMERGENCY RULE MAKING

Standards for the Management of the New York State Retirement Systems

I.D. No. INS-03-10-00008-E
Filing No. 1
Filing Date: 2010-01-06
Effective Date: 2010-01-06

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: Insurance Law, sections 201, 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 Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards of behavior with regard to investment of the Common Retirement Fund's assets, 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 Insurance 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 and September 16, 2009. Regulation No. 85 needs to remain effective for the general welfare.

Subject: Standards for the management of the New York State Retirement Systems.

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

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 April 5, 2010.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 201, 301, 314, 7401(a), and 7402(n) of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, and to prescribe regulations interpreting the 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 sections 310, 311 and 312 of the Insurance Law. 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 a 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.

Section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies. 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: Section 314 of the Insurance Law 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 amendment, 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 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 Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (''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 Insurance Department.

Nevertheless, recent allegations regarding ''pay to play'' practices, whereby politically connected individuals reportedly sold access to invest-

ment 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 amendment 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 amendment. There are no costs to the Insurance 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 amendment 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 amendment.

7. Duplication: This amendment 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.

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.

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.

The standards set forth in the proposed amendment will be subject to comment and discussion at the public hearing required by Section 314 of the Insurance Law.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

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 the amended regulation can be made permanent.

Regulatory Flexibility Analysis

1. Effect of the rule: This amendment 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 (collectively, ''the Retirement System''), and the New York State Common Retirement Fund (''the Fund''). The Second Amendment to Regulation 85 (11 NYCRR 136), effective November 19, 2008, established new standards with regard to investment of the assets of the New York State Common Retirement Fund (''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 Insurance 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 amendment 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 amendment. The State Comptroller is not a ''small business'' as defined in section 102(8) of the State Administrative Procedure Act.

This amendment 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 proposal 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 amendment is also directed to placement agents, who as a result of this proposal, 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 amendment 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 amendment will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this amendment 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 amendment. There are no costs to the Insurance Department 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. The standards set forth in the amendment will be subject to additional comment and discussion at the public hearing required by Section 314 of the Insurance Law.

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(13) will be affected by this proposal. The amendment 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 amendment 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 amendment does not adversely impact rural areas.

5. Rural area participation: Affected parties doing business in rural areas of the State, will have the opportunity to comment upon and discuss the rule at the public hearing required by Section 314 of the Insurance Law.

Job Impact Statement

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. The amendment bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund (''the Fund''). The amendment 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.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Residential Late Payment Charges

I.D. No. LPA-03-10-00004-P

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

Proposed Action: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to authorize the application of its existing late payment charge to residential customers.

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

Subject: Residential late payment charges.

Purpose: To extend the application of late payment charges to residential customers.

Public hearing(s) will be held at: 10:00 a.m., March 12, 2010 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., March 12, 2010 at Long Island Power Authority at 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority (''Authority'') is considering a proposal to modify its Tariff for Electric Service to authorize the application of its existing late payment charge of 1.5% per month to residential customers. All of New York State's major electric utilities other than LIPA impose late payment charges on residential customers at a rate of 1.5% per month. The revenue associated with a residential late payment charge will help the Authority to mitigate substantial carrying costs on working capital and the cost of collections to the Authority and its ratepayers that arise from residential arrears. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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.

Office of Mental Health

EMERGENCY RULE MAKING

Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

I.D. No. OMH-03-10-00001-E

Filing No. 1470

Filing Date: 2009-12-31

Effective Date: 2009-12-31

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

Action taken: Amendment of Part 577 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Specific reasons underlying the finding of necessity: The amendments are made in accordance with the 2009-2010 enacted Deficit Reduction Legislation, by reducing the growth rate of Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with Part 582 of Title 14 NYCRR, effective 1/1/10.

Subject: Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

Purpose: To reduce the growth of Medicaid reimbursement for licensed Article 31 private psychiatric hospitals.

Text of emergency rule: 1. Paragraph (1) of subdivision (e) of Section 577.7 is amended to read as follows:

(1) Allowable operating costs in the rate year are calculated by choosing the lower of the base year cost computed on a per diem basis or the limitation cost computed on a per diem basis, and trending this amount forward two years by the inflation factor*, except for the rate period effective January 1, 2010, to December 31, 2010, when the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period.* Administration costs, as contained in and part of operating costs, shall be subject to an administrative cost screen. Two separate administrative cost screens shall be calculated, one for hospitals with greater than 100 beds (group one), and one for hospitals with 100 or less beds (group two). The administrative cost screen is derived from the costs in the fiscal year one year prior to the base year (i.e., the same cost year from which the limitation is derived), and shall be the group average per diem cost plus 10 percent.

2. Paragraph (4) of subdivision (h) of Section 577.7 is amended to read as follows:

(4) The operating cost component of the rate will be updated annually*, except for the period January 1, 2010, to December 31, 2010,* with the Medicare inflation factor for hospitals and units excluded from the prospective payment system, until the hospital has operated for six months at a minimum occupancy level of at least 75 percent and files its first cost report for that same period in accordance with section 577.5 of this Part.

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 March 30, 2010.

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

Regulatory Impact Statement

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

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including hospitals, licensed by the Office of Mental Health.

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 577 are needed to reduce the growth rate of Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with Part 582 of Title 14 NYCRR. (Note: These amendments are not applicable to psychiatric hospitals which are jointly licensed pursuant to Article 31 of the Mental Hygiene Law, as well as Article 28 of the Public Health Law.) These amendments are made in accordance with the 2009-2010 enacted Deficit Reduction Legislation.

3. Needs and benefits: Effective January 1, 2010, the amendments will remove the 2010 trend factor of 2.5 percent in the development of the 2010 per diem Medicaid rates for Article 31 private psychiatric hospitals. This reduction is consistent with the elimination of the inflationary adjustments and trends applied to rates for community mental health programs in 2009-2010. This amendment is a reflection of the serious fiscal condition of the State. As a result of the enacted Deficit Reduction Legislation, the rate of growth in Medicaid expenditures for the private psychiatric hospitals will be slowed, but the expectation is that the level of services provided by such hospitals will be maintained.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: This regulatory amendment will not result in any additional cost to regulated parties, but will reduce the rate of growth in Medicaid payments that the Article 31 private psychiatric hospitals would have received, projected to be 2.5 percent. Currently there are nine such providers. It is estimated that this action will result in an annual reduction in Medicaid growth of approximately $1.0 million State share of Medicaid ($2.0 million gross Medicaid).

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this amendment is consistent with the 2009-2010 enacted Deficit Reduction Legislation and the budgetary constraints included therein. The elimination of the 2010 trend factor of 2.5 percent is consistent with the elimination of the inflationary adjustments and trends applied to rates for community mental health programs in 2009-2010 and reflects the serious fiscal condition of the State. The only alternative to this rulemaking would have been to make budgetary cuts to another program which may have already sustained previous cuts and could have the potential for putting those providers at financial risk. Therefore, that alternative was not considered. It should be noted that residential treatment facilities and Department of Health-licensed hospitals have had the same budgetary constraints enacted.

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

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rulemaking will reduce the rate of growth in Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with Part 582 of Title 14 NYCRR The proposed change is consistent with the 2009-10 enacted Deficit Reduction Legislation and recognizes the serious fiscal condition of the State. This change removes the 2010 trend factor in the development of the 2010 per diem Medicaid rates for Article 31 hospitals, and, as a result, slows the rate of growth in Medicaid expenditures. There will be no adverse economic impact on small businesses or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rulemaking, which serves to reduce the growth rate of Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law and issued an operating certificate in accordance with Part 582 of Title 14 NYCRR, will not impose any adverse economic impact on rural areas. The proposed change is consistent with the 2009-10 enacted Deficit Reduction Legislation and recognizes the serious fiscal condition of the State. This change removes the 2010 trend factor in the development of the 2010 per diem Medicaid rates for Article 31 hospitals, and, as a result, slows the rate of growth in Medicaid expenditures.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the regulation eliminates the 2010 trend factor in the development of the 2010 per diem Medicaid rates for Article 31 hospitals, and, as a result, slows the rate of growth in Medicaid expenditures. The proposed change is consistent with the 2009-10 enacted Deficit Reduction Legislation and recognizes the serious fiscal condition of the State. There will be no adverse impact on jobs and employment opportunities.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

IRA and Community Residence Reimbursement Methodology

I.D. No. MRD-03-10-00002-EP

Filing No. 1471

Filing Date: 2009-12-31

Effective Date: 2010-01-01

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

Proposed Action: Amendment of section 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.36(c) and 43.02

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

The specific reasons underlying the finding of necessity, above, are as follows: Prices established for Individualized Residential Alternative facilities and community residences are offset by a rent allowance based on SSI levels. However, SSI levels for 2010 were not public in time for OMRDD to update the reimbursement offset within the timeframes established by the State Administrative Procedure Act for regular rulemaking procedures. Without these amendments, the prices established by OMRDD for these facilities might not be properly offset by the amount of rent received by the provider from other sources (primarily SSI). The State would then be overpaying the provider by an amount equivalent to the rent portion of the SSI. The amount of the overpayment would be unavailable for the State to expend on other needed supports and services to individuals with developmental disabilities, adversely affecting the health, safety and welfare of these individuals who would then not be able to receive the supports and services.

Subject: IRA and community residence reimbursement methodology.

Purpose: To update rent allowance offsets based on Supplemental Security Income (SSI) levels for 2010.

Public hearing(s) will be held at: 11:00 a.m., March 8, 2010 at Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Counsel's Office, 3rd Fl., Albany, NY; 11:00 a.m., March 10, 2010 at Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Counsel's Office, 3rd Fl., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: o Paragraph 671.7(a)(9) - Add new subparagraph (xviii):

(xviii) Effective January 1, 2010:

NYC and Nassau, Rockland,

Suffolk, and Westchester Counties $ 31.97 per day

Rest of State $ 30.97 per day

Note: Rest of paragraph remains unchanged.

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 March 30, 2010.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, OMRDD, Regulatory Affairs Unit, Office of Counsel, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@omr.state.ny.us

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, 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. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. Section 41.36(c) of the Mental Hygiene Law requires OMRDD to establish fees or rates for community residences.

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.09(b), 41.36 and 43.02 of the Mental Hygiene Law. The emergency/proposed amendments are necessary to maintain the current prices for Individualized Residential Alternative (IRA) facilities and community residences.

3. Needs and benefits: OMRDD annually updates the rent allowances based on Supplemental Security Income (SSI) consistent with levels determined by the Federal Social Security Administration for SSI Congregate Care level II. These updated figures constitute an essential element of OMRDD's price setting and reimbursement methodologies for IRAs and community residences.

SSI levels for 2010 were not public in time for OMRDD to update the reimbursement offset which is based on the SSI levels within the timeframes established by the State Administrative Procedure Act for regular rulemaking procedures. Without these amendments, the prices established by OMRDD for these facilities might not be properly offset by the amount of rent received by the provider from other sources (primarily SSI). The State would then be overpaying the provider by an amount equivalent to the rent portion of the SSI. The amount of the overpayment would be unavailable for the State to expend on other needed supports and services to individuals with developmental disabilities, adversely affecting the health, safety and welfare of these individuals who would then not be able to receive the supports and services.

4. Costs:

a. Costs to the Agency and to the State and its local governments: Since the SSI levels determined by the Social Security Administration remain unchanged for calendar year 2010, the amendments repeat the same per diem levels for 2010 as were in effect for 2009. There are therefore no costs associated with the emergency/proposed amendments, either for the State or for local governments. The amendments only continue the methodology used to establish prices for IRA facilities and community residences to maintain funding at current levels.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency/proposed amendments are necessary to continue funding of IRAs and community residences at levels of reimbursement that are currently in effect.

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: No additional paperwork will be required by the emergency/proposed amendments.

7. Duplication: The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of IRA facilities and community residences. There is no alternative to emergency adoption that would allow for prompt, timely implementation updating of the rent allowance offsets contained in the emergency/proposed amendments.

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

10. Compliance schedule: The emergency rule is effective January 1, 2010. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These emergency/ proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate Individualized Residential Alternative (IRA) and community residence facilities for persons with developmental disabilities in New York State:

While most of these residences are operated by voluntary agencies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

The emergency/proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of these residential services.

Since the amendments do not increase funding of the facilities, they will not result in any costs to local governments.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The emergency/proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of most of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments. OMRDD has considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, since the emergency/proposed rule requires no compliance effort on the part of the regulated service providers (most of which could be considered as small businesses under SAPA), OMRDD does not, at this time, contemplate the development of any such small business regulation guide.

5. Economic and technological feasibility: The emergency/proposed amendments are concerned with price setting in the affected facilities. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: The purpose of these emergency/proposed amendments is to continue to reimburse providers of IRAs and community residences at current levels. The provisions do not increase or decrease funding of small business providers of services.

These amendments impose no adverse economic impact on regulated parties or local governments. Therefore, regulatory approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: The SSI levels, as a component of OMRDD's price setting methodology for IRAs and community residences, are not determined by OMRDD. OMRDD is incorporating them into its methodology as soon as practicable.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with updating the rent allowances, which are based on the Supplemental Security Income (SSI) per diem levels and which are a component of OMRDD's price setting methodology for Individualized Residential Alternatives (IRAs) and community residences. Since the amendments do not increase or decrease funding for the affected facilities, OMRDD expects that their adoption will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported budgets and costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodology has been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have an impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with updating the rent allowances, which are based on the Supplemental Security Income (SSI) per diem levels and which are a component of OMRDD's price setting methodology for Individualized Residential Alternatives (IRAs) and community residences. Since the amendments do not increase or decrease funding for the affected facilities, OMRDD expects that their adoption will not have any adverse impacts on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

I.D. No. PSC-40-09-00008-A
Filing Date: 2010-01-04
Effective Date: 2010-01-04

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

Action taken: On 12/16/09, the PSC order approving, with modifications, selected electric and gas Energy Efficiency Portfolio Standard (EEPS) programs for the commercial and industrial customer market sector and defer consideration of certain others.

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

Subject: Specific commercial and industrial electric and gas energy efficiency programs.

Purpose: To approve with modifications, electric and gas energy efficiency programs and defer consideration of certain others.

Substance of final rule: The Commission on December 16, 2009 adopted an order approving, rejecting and deferring certain commercial and industrial; residential; and low-income residential customer energy efficiency programs with modifications for Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation, New York State Research and Development Authority, Niagara Mohawk Power Corporation d/b/a National Grid, and The Brooklyn Union Gas Company/KeySpan Gas East Corporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann__ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1127SA9)

NOTICE OF ADOPTION

Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

I.D. No. PSC-40-09-00010-A
Filing Date: 2010-01-04
Effective Date: 2010-01-04

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

Action taken: On 12/16/09, the PSC adopted an order approving, with modifications, selected electric and gas Energy Efficiency Portfolio Standard (EEPS) programs for the commercial and industrial customer market sector.

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

Subject: Specific commercial and industrial electric and gas energy efficiency programs.

Purpose: To approve with modifications, electric and gas energy efficiency programs.

Substance of final rule: The Commission on December 16, 2009 adopted an order approving and rejecting certain commercial and industrial; residential; and low-income residential customer energy efficiency programs with modifications for Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation/Rochester Gas and Electric Corporation, New

York State Research and Development Authority, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and The Brooklyn Union Gas Company/KeySpan Gas East Corporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann__ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1127SA8)

NOTICE OF ADOPTION

Specific Commercial and Industrial Electric and Gas Energy Efficiency Programs

I.D. No. PSC-41-09-00013-A

Filing Date: 2010-01-04

Effective Date: 2010-01-04

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

Action taken: On 12/16/09, the PSC adopted an order approving selected electric and gas Energy Efficiency Portfolio Standard (EEPS) programs for the commercial and industrial customer market sector.

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

Subject: Specific commercial and industrial electric and gas energy efficiency programs.

Purpose: To approve selected electric and gas energy efficiency programs.

Substance of final rule: The Commission on December 16, 2009 adopted an order approving certain commercial and industrial; residential; and low-income residential customer energy efficiency programs for the New York State Research and Development Authority, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann__ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(08-E-1127SA10)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-03-10-00005-P

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

Proposed Action: The Public Service Commission is considering whether to approve, reject or modify the proposal by Martin Rosenwasser and Edward Kravitz, to increase its annual revenues by $172 or 107%.

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

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues of $172 or 107%.

Substance of proposed rule: On December 23, 2009, Martin Rosenwasser and Edward Kravitz (the company) filed Leaf No. 12, Revision 1, as an amendment to its electronic tariff schedule, P.S.C No. 2- Water, to become effective on May 1, 2010. The company's filing proposes to increase the current seasonal rate from $80 to $166, which will produce additional annual revenues of $172 or approximately 107%. The company's current rate has been in effect since January 1, 1989. The company currently provides water service to two customers in the Town of Thompson, Sullivan County.

Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Access to Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rate request.

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.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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.

(09-W-0866SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rochester Gas and Electric Corporation's Request for Funds Exceeding the Approved ''Fast Track'' Gas Energy Efficiency Budget

I.D. No. PSC-03-10-00006-P

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

Proposed Action: The Commission is considering Rochester Gas and Electric Corporation's December 21, 2009 petition for additional ''fast track'' gas energy efficiency program funds and for recovery of costs anticipated to exceed the previously approved program budget.

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

Subject: Rochester Gas and Electric Corporation's request for funds exceeding the approved ''fast track'' gas energy efficiency budget.

Purpose: To encourage cost effective gas energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, in whole or in part, to reject, or to take any other action with respect to Rochester Gas and Electric Corporation's petition submitted on December 21, 2009. The petition seeks approval for additional ''fast track'' gas energy efficiency program funding or, to the extent additional funds are not authorized, to defer for later recovery program costs anticipated to exceed the previously approved program budget.

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.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn__brilling@dps.state.ny.us

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.

(08-G-1013SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Portions of RG&E's Gas Cost Refund Tariff

I.D. No. PSC-03-10-00007-P

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

Proposed Action: The Commission is considering a petition by Rochester Gas and Electric Corporation (RG&E) for waiver of certain portions of RG&E's gas cost refund tariff.

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

Subject: Waiver of certain portions of RG&E's gas cost refund tariff.

Purpose: To allow quarterly refunds received from Tennessee Gas Pipeline to be returned to eligible customers on an accelerated basis.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by Rochester Gas and Electric Corporation (RG&E) for waiver of certain portions of RG&E's gas cost refund tariff in order to allow quarterly refunds received from Tennessee Gas Pipeline Company to be returned to eligible customers on an accelerated three-month schedule instead of the twelve month schedule as specified in RG&E's tariff.

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.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

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.

(09-G-0859SP1)

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in ''DATES.''

DATE: October 1, 2009, through October 31, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued:

1. Chesapeake Appalachia, LLC, Pad ID: Gowan, ABR-20091001, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 5, 2009.

2. Chief Oil & Gas, LLC, Pad ID: Poor Shot East Unit Drilling Pad #1, ABR-20091002, Anthony Township, Lycoming County, Pa. Consumptive Use of up to 5.000 mgd; Approval Date: October 5, 2009.

3. East Resources, Inc., Pad ID: Pazzaglia 507, ABR-20091003, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

4. East Resources, Inc., Pad ID: Soderburg 501, ABR-20091004, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

5. East Resources, Inc., Pad ID: Fitch-1H, ABR-20091005, Union Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

6. East Resources, Inc., Pad ID: Palmer 112, ABR-20091006, Canton Township, Bradford County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 6, 2009.

7. East Resources, Inc., Pad ID: Allen 264, ABR-20091007, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

8. East Resources, Inc., Pad ID: Howe 257, ABR-20091008, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

9. East Resources, Inc., Pad ID: Ostrander 412, ABR-20091009, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 7, 2009.

10. Chief Oil & Gas, LLC, Pad ID: Ritchey Unit Drilling Pad, ABR-20091010, Juniata Township, Blair County, Pa.; Consumptive Use of up to 1.990 mgd; Approval Date: October 7, 2009.

11. East Resources, Inc., Pad ID: Bryan 406, ABR-20091011, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 8, 2009.

12. East Resources, Inc., Pad ID: Benson 130D, ABR-20091012, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2009.

13. East Resources, Inc., Pad ID: Cooper 400, ABR-20091013, Tioga Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 13, 2009.

14. Citrus Energy, Pad ID: Procter and Gamble Mehoopany Plant IV, ABR-20091014, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: October 13, 2009.

15. East Resources, Inc., Pad ID: Burleigh 508, ABR-20091015, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 14, 2009.

16. East Resources, Inc., Pad ID: Busia 457, ABR-20091016, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

17. Chesapeake Appalachia, LLC, Pad ID: Harry, ABR-20091017, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

18. East Resources, Inc., Pad ID: Phillips 504, ABR-20091018, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

19. East Resources, Inc., Pad ID: Hungerford 458, ABR-20091019, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 19, 2009.

20. Chesapeake Appalachia, LLC, Pad ID: James Smith, ABR-20091020, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

21. Chesapeake Appalachia, LLC, Pad ID: Jayne, ABR-20091021, Auburn Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: October 20, 2009.

22. Victory Energy Corporation, Pad ID: Brown #1, ABR-20091022, West Branch Township, Potter County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: October 20, 2009.

23. Cabot Oil and Gas Corporation, Pad ID: ShieldsG P2, ABR-20091023, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: October 22, 2009.

24. Fortuna Energy, Inc., Pad ID: DCNR 587 Pad #9, ABR-20091024, Ward Township, Tioga County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 24, 2009.

25. Fortuna Energy, Inc., Pad ID: Knights 24, ABR-20091025, Troy Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: October 24, 2009.

26. Penn Virginia Oil & Gas Corporation, Pad ID: Cady #1; ABR-20091026, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: October 27, 2009.

27. East Resources, Inc., Pad ID: Schildt 259, ABR-20091027, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: October 27, 2009.

28. EOG Resources, Inc., Pad ID: PHC 6H, ABR-20090721.1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

29. EOG Resources, Inc., Pad ID: PHC 7H, ABR-20090722.1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

30. EOG Resources, Inc., Pad ID: PHC 8H, ABR-20090723.1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of up to 1.999 mgd; Modification Date: October 28, 2009.

31. Novus Operating, LLC, Pad ID: Wilcox #1, ABR-20090803, Covington Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Transferred Date: October 22, 2009.

32. Novus Operating, LLC, Pad ID: Brookfield #1, ABR-20090804, Brookfield Township, Tioga County, Pa.; Consumptive Use of up to 0.999 mgd; Transferred Date: October 22, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 17, 2009.

Stephanie L. Richardson

Secretary to the Commission.