

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.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Occupational Therapy

I.D. No. EDU-46-12-00015-P

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

Proposed Action: Amendment of sections 76.4 and 76.9; and addition of section 76.10 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 7905(1)(c), 7906(4), and 7908(1)(a), (b), and (c), (2), (3), (4), (5) and (6); and L. 2012, ch. 329, section 5 and ch. 444, section 2

Subject: Occupational therapy.

Purpose: Establish standards relating to continuing competency, limited permits and supervision of OT assistant students.

Substance of proposed rule (Full text is posted at the following State website: <http://www.op.nysed.gov>): The Commissioner of Education proposes to amend sections 79.4 and 79.9 and add a new section 79.10 of the Regulations of the Commissioner of Education, effective February 13, 2013, relating to continuing competency requirements in occupational therapy, limited permits for occupational therapy assistants, and supervision of students in occupational therapy assistant programs. The following is a summary of the substance of the proposed rule:

The proposed amendments to sections 76.4 and 76.9 of the Regulations of the Commissioner of Education implement the provisions of Chapter 329 of the Laws of 2012, which authorize a limited permit for occupational therapy assistants and provide that an occupational therapy assistant student engaged in clinical practice may be supervised by an occupational therapy assistant, as well as by an occupational therapist.

Subdivision (a) of section 76.4 of the Regulations of the Commissioner of Education is amended to add occupational therapy assistants to those professionals authorized to be granted a limited permit to practice.

Section 76.9 of the Regulations of the Commissioner of Education is amended to provide that occupational therapy assistants may supervise occupational therapy students who are engaged in clinical practice.

The proposed addition of section 76.10 to the Regulations of the Commissioner of Education implements the provisions of Chapter 444 of the Laws of 2012, which added a new section 7908 to the Education Law establishing a continuing competency requirement for occupational therapists and occupational therapy assistants.

The new paragraph 76.10(a) sets forth definitions required to implement the continued competency requirements, including definitions of professional subjects and related subjects.

The new paragraph 76.10(b) sets forth the applicability of the new requirement to all licensees, provides for exemptions for the first triennial registration period, and authorizes the Department to make an adjustment to the requirements for good cause which prevents compliance.

The new paragraph 76.10(c) sets forth the requirement that 36 continuing competency hours be completed in each triennial registration period, including at least 24 hours in professional subjects, and describes the acceptable learning activities that may be used to meet this requirement.

The new paragraph 76.10(d) provides that a licensee must certify to compliance with the requirement upon re-registration.

The new paragraph 76.10(e) sets forth rules for licensees returning after a lapse in practice.

The new paragraph 76.10(f) provides authorization for a conditional registration for those licensees who admit to non-compliance with the requirement, but who agree to remedy any deficiency in compliance.

The new paragraph 76.10(g) sets forth recordkeeping requirements for licensees.

The new paragraph 76.10(h) sets forth rules for measurement of an hour of credit for continuing competency courses and workshops.

The new paragraph 76.10(i) sets forth rules for approval of sponsors of continuing competency coursework or training.

The new paragraph 76.10(j) sets forth the fees for licensees as mandated by the statute.

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Paragraph (c) of subdivision (1) of section 7905 of the Education Law, as added by section 1 of Chapter 329 of the Laws of 2012, authorizes the Commissioner of Education to promulgate regulations for the issuance of a limited permit to an occupational therapy assistant.

Subdivision 4 of section 7906 of the Education Law, as amended by

Chapter 329 of the Laws of 2012 implements the provisions of the statute which provide that an occupational therapy assistant student engaged in clinical practice may be supervised by an occupational therapy assistant, as well as by an occupational therapist.

Paragraph (a) of subdivision (1) of section 7908 of the Education Law, as added by Chapter 444 of the Laws of 2012, requires a licensed occupational therapist and occupational therapist assistant to complete mandatory continuing competency requirements as a condition for registration to practice in New York State and provides an exception to licensees with a conditional registration certificate.

Paragraph (b) of subdivision (1) of section 7908 of the Education Law allows occupational therapists and occupational therapist assistants to be exempt from the mandatory continuing competency requirement for the triennial registration period during which they are first licensed. It also authorizes the State Education Department to adjust the requirement in certain cases.

Paragraph (c) of subdivision (1) of section 7908 of the Education Law provides an exemption from the continuing competency requirement for licensees not engaged in the practice of occupational therapy and occupational therapist assisting and directs the State Education Department to establish continuing competency requirements for licensees reentering the profession.

Subdivision (2) of section 7908 of the Education Law provides that an occupational therapist or occupational therapist assistant must complete the mandatory continuing learning activities requirements to be registered to practice in New York State, and establishes the continuing competency hour requirement and a proration formula for certain licensees.

Subdivision (3) of section 7908 of the Education Law authorizes the State Education Department to issue conditional registrations for occupational therapists or occupational therapist assistants who fail to meet the continuing competency requirements, to establish requirements for such licensees under conditional registration, and to charge a fee for such conditional registration.

Subdivision (4) of section 7908 of the Education Law defines acceptable learning activities as activities which contribute to professional practice in occupational therapy and which meet standards prescribed in the Regulations of the Commissioner of Education.

Subdivision (5) of section 7908 of the Education Law requires occupational therapists and occupational therapist assistants to maintain adequate documentation of compliance with the continuing education requirements and provide such documentation at the request of the State Education Department.

Subdivision (6) of section 7908 of the Education Law authorizes the State Education Department to charge occupational therapists and occupational therapist assistants a mandatory continuing education fee.

Section 5 of Chapter 329 of the Laws of 2012 authorizes the State Education Department to promulgate regulations regarding the issuance of limited permits to occupational therapy assistants and regarding the supervision of occupational therapy assistant students.

Subdivision (6) of section 7908 of the Education Law establishes a \$900 fee for sponsors of continuing competency activities.

Section 2 of Chapter 444 of the Laws of 2012 authorizes the State Education Department to promulgate such rules or regulations as may be necessary to implement the new law requiring the completion of continuing competency by occupational therapists and occupational therapist assistants.

2. LEGISLATIVE OBJECTIVES:

The proposed addition of section 76.10 of the Regulations of the Commissioner of Education carries out the intent of the aforementioned statutes in that it will, as directed by statute, establish standards relating to mandatory continuing competency for occupational therapists and occupational therapist assistants. Specifically, the regulations would establish appropriate standards for what constitutes acceptable learning activities, continuing competency requirements when there is a lapse in practice, requirements for licensees under conditional registration, recordkeeping requirements applicable to licensees, and standards for the approval of sponsors of continuing learning activities to licensed occupational therapists and occupational therapist assistants.

The proposed amendment to section 76.4 of the Regulations of the Commissioner of Education implements the provisions of Chapter 329 of the Laws of 2012 which authorize a limited permit for occupational therapy assistants. This amendment will permit occupational therapy assistants who have completed their education requirements but have not passed the examination to practice under the supervision of a physician or occupational therapist for a maximum of two years.

The proposed amendment to section 76.9 of the Regulations of the Commissioner of Education implements the provisions of Chapter 329 of the Laws of 2012 which provide that an occupational therapy assistant student engaged in clinical practice may be supervised by an occupational therapy assistant, as well as by an occupational therapist.

3. NEEDS AND BENEFITS:

The proposed rule is needed to implement the requirements of section 7908 of the Education Law, as added by Chapter 444 of the Laws of 2012. The purpose of the proposed addition of section 76.10 of the Regulations of the Commissioner is to establish, consistent with the statute, continuing competency requirements that licensed occupational therapists and occupational therapist assistants must complete to be registered to practice these professions in New York State and requirements for the approval of sponsors of such continuing learning activities. As required by statute, the proposed rule is also needed to determine the appropriate continuing competency standards when a licensee has a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing learning activities to licensed occupational therapists and occupational therapist assistants.

The needs and benefits of the proposed amendments of section 76.4 and 76.9 of the Regulations of the Commissioner are described in section 2 above.

4. COSTS:

(a) Costs to State government. The proposed rule is necessary to implement Chapters 444 and 329 of the Laws of 2012 by establishing standards as directed by statute. The proposed rule does not impose any additional costs on the State beyond those imposed by statute. It is anticipated that the costs to the State Education Department in implementing the requirements of Chapter 444 of the Laws of 2012 will be offset by the registration and sponsor approval fees authorized by the law.

(b) Costs to local government: None.

(c) Cost to private regulated parties. The proposed rule does not impose additional costs on licensed occupational therapists and occupational therapist assistants beyond those imposed by statute. Statutory provisions impose a mandatory continuing competency fee of \$45 for occupational therapists and \$25 for occupational therapist assistants at each triennial registration and require that occupational therapists and occupational therapist assistants complete a prescribed number of hours of acceptable continuing learning activities. Statutory provisions also impose a \$900 fee for sponsors of continuing competency activities for a three-year term. Approval of sponsors is for a three-year period. The statutory fee for a three-year renewal is also \$900.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed rule does not impose additional costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule is necessary to implement Chapters 444 and 329 of the Laws of 2012, relating to continuing competency requirements for occupational therapists and occupational therapist assistants, limited permits for occupational therapy assistants, and supervision of students in occupational therapy assistant programs. The proposed rule does not impose any program, service, duty, or responsibility upon local governments beyond those inherent in the statutes.

6. PAPERWORK:

The proposed rule implements a statutory requirement that occupational therapists and occupational therapy assistants maintain adequate documentation of completion of a learning plan and of acceptable learning activities. In addition, the rule requires sponsors of continuing competency to occupational therapists and occupational therapist assistants to maintain a record for at least six years which includes: the name and curriculum vitae of the faculty, a record of attendance of licensed occupational therapists or occupational therapist assistants in the course if a course, a record of participation of a licensed occupational therapist or occupational therapist assistant in a self-study program if a self-study program, an outline of the course or program, date and location of the course or program, and the number of hours for completion of the course or program.

7. DUPLICATION:

There are no Federal requirements applicable to the subject matter of the proposed rule, and the proposed rule is needed to implement the State law requirements set forth in Chapters 444 and 329 of the Laws of 2012. Therefore, the amendment does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to implement Chapters 444 and 329 of the Laws of 2012, relating to continuing competency requirements for occupational therapists and occupational therapist assistants, limited permits for occupational therapy assistants, and supervision of students in occupational therapy assistant programs. There are no viable alternatives to the proposed rule, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards for the continuing education of licensed occupational therapists or occupational therapist assistants.

10. COMPLIANCE SCHEDULE:

The proposed rule implements and clarifies statutory continuing competency requirements for occupational therapists and occupational

therapist assistants. Occupational therapists and occupational therapist assistants must comply with the continuing competency requirements on the effective date of the authorizing statute, February 13, 2012. The statute and implementing regulation establish a phase-in period in which the licensee will be required to complete less than the full 36 hours of continuing competency based upon a prorated formula. No additional period of time is necessary to enable regulated parties to comply. It is anticipated that regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

As required by Education Law section 7908, as added by Chapter 444 of the Laws of 2012, effective February 13, 2012, the proposed addition of a new section 76.10 to the Regulations of the Commissioner of Education relates to mandatory continuing competency for licensed occupational therapists and occupational therapy assistants, some of whom are organized as small businesses. This continuing education will be provided by sponsors approved by the State Education Department, some of which are small businesses.

As of July 2012, there were 11,159 occupational therapists licensed in New York State and 4,048 certified occupational therapy assistants. Reliable data on the number of these individuals employed by a small business is not available for New York State. However, a national workforce study conducted by the American Occupational Therapy Association in 2010 reflected that, nationally, 53% of these professionals work in either a hospital, a school setting or academia. If that pattern holds true for New York State, it follows that the potential maximum number of professionals employed by a small business would be the remaining 47%, or 7,147. The number is likely to be substantially smaller than this.

The proposed rule includes a provision that permits a sponsor to be deemed approved by the State Education Department, if it is approved by the National Board for Certification in Occupational Therapy (NBCOT) or the New York State Occupational Therapy Association (NYSOTA). For such sponsors there are no additional compliance requirements in the regulation. The Department expects that almost all 300 sponsor/small businesses will be deemed approved by virtue of their being approved by these organizations. Based upon the Department's experience in other licensed professions, which have similar sponsor approval procedures (podiatry, ophthalmic dispensing), only about 50 sponsors will seek approval through a State Education Department review, of which only about 38 will be small businesses (.75 x 50).

The proposed amendments to sections 76.4 and 76.9 of the regulations of the Commissioner of Education, required by Chapter 329 of the Laws of 2012, conform these sections to the statutory changes which create a limited permit for occupational therapy assistants and provided for the supervision of occupational therapy assistant students engaged in clinical fieldwork by occupational therapy assistants.

2. COMPLIANCE REQUIREMENTS:

The proposed rule contains no compliance requirements not mandated by statute on occupational therapist and occupational therapy assistants organized as small businesses.

The rule contains no compliance requirements for sponsors of continuing education that are deemed approved through the approval of the National Board for Certification in Occupational Therapy (NBCOT) or the New York State Association for Occupational Therapy (NYSOTA).

There are compliance requirements for sponsors seeking approval through a State Education Department review. Every three years, organizations desiring to offer continuing education to licensed occupational therapists and occupational therapist assistants based upon a review by the State Education Department must submit an application for advance approval as a sponsor at least 90 days prior to the date for the commencement of the continuing education. The applicant must document in the application: curricular areas of offerings, its organizational status as an educational entity or expertise in the professional area, the qualifications of course instructors, methods for assessing the learning of participants, and recordkeeping procedures. Applicants would be approved to offer continuing education to occupational therapists and occupational therapy assistants for a three-year term.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed rule. The regular staff of small businesses will be able to complete the application needed for the review by the State Education Department.

4. COMPLIANCE COSTS:

The rule contains no compliance costs not mandated by statute on occupational therapist and occupational therapy assistants organized as small businesses. The continuing competency fee is set forth in statute, as is the basic triennial continuing competency hour requirement.

An organization seeking approval as a sponsor providing continuing

learning activities to occupational therapists and occupational therapy assistants would be required to pay the Department a fee of \$900, a fee mandated by statute. Such fee would be paid once every three years, upon submission of the organization's application. Therefore, the annualized cost is \$300.

The Department estimates that it would require a staff member to spend about eight hours to complete the application. Based on an hourly rate of \$37 per hour (including fringe benefits), we estimate that the cost of completing the application to be \$296. An application would have to be completed once every three years. Therefore, the annualized cost of completing the application is estimated to be \$98.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose any technological requirements on regulated parties. See above Compliance Costs for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

Many of the occupational therapists and occupational therapy assistants organized as small businesses currently comply with the continuing education requirements established for national certification by the National Board for Certification in Occupational Therapy (NBCOT). To the extent possible, the proposed rule was drafted so that a professional who complies with these national certification requirements would meet the state mandated continuing competency requirements.

The Department believes that the standards for sponsor review by the State Education Department are reasonable, and that uniform standards should apply, regardless of the size of the sponsoring organization, in order to ensure the quality of the continuing education.

7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Occupational Therapy, many of whom have experience in a small business environment, provided input in the development of the proposed rule. In addition, staff of the State Education Department have worked with the statewide and national professional associations and councils that represent occupational therapists and occupational therapy assistants by disseminating information concerning the proposed regulation to these organizations and seeking their input. These organizations include members who own and operate small businesses.

(b) Local Governments:

The proposed rule establishes continuing competency requirements for occupational therapists and occupational therapy assistants and standards for sponsors of such continuing competency. It also conforms the Commissioner's regulations to statutory changes which created a limited permit for occupational therapy assistants and provided for the supervision of occupational therapy assistant students engaged in clinical fieldwork by occupational therapy assistants. The proposed rule will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Because it is evident from the nature of the proposed rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule will apply to all of the occupational therapists and occupational therapy assistants who live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

As required by Education Law section 7908, as added by Chapter 444 of the Laws of 2012, effective February 13, 2012, the proposed addition of a new section 76.10 to the Regulations of the Commissioner of Education will require occupational therapists and occupational therapy assistants, including those that reside or work in rural areas, to complete a prescribed number of hours of acceptable continuing learning activities to be registered to practice in New York State. The proposed rule prescribes the learning activities that may meet the continuing competency requirement and the subjects for those continuing learning activities. The rule requires licensees to certify that they have met the requirement upon applying for renewal of registration to practice in New York State. The proposed rule requires each licensee to maintain prescribed documentation concerning completed acceptable continuing learning activities.

The proposed addition of a new section 76.10 to the Regulations of the Commissioner of Education also establishes standards for the New York State Education Department's review of sponsors desiring to offer acceptable continuing learning activities in the form of courses of learning or self-study programs, including sponsors that may be located in rural areas. The rule requires such sponsors to maintain specified records related to the offering of the courses of learning and self-study programs for a six-year period from the date of completion of the coursework. The proposed rule does not impose a need for professional services other than educational services to meet the continuing competency requirements.

The proposed amendments to sections 76.4 and 76.9 of the Regulations of the Commissioner of Education are required by Chapter 329 of the Laws of 2012 and do not impose any reporting, recordkeeping, other compliance requirements or professional services not mandated by statute.

3. COSTS:

The proposed rule does not impose additional costs on occupational therapists, occupational therapy assistants or sponsors of approved continuing education activities beyond the costs imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule implements the continuing competency requirements for occupational therapists and occupational therapy assistants found in section 7908 of the Education Law. The statutory requirements do not make exceptions for individuals who live or work in rural areas. The Department has determined that the proposed rule's requirements should apply to all occupational therapists and occupational therapy assistants, regardless of their geographic location, to help ensure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of sponsors are necessary to ensure quality offerings in all parts of the State. Because of the nature of the proposed regulation, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of occupational therapy and occupational therapy assisting. Included in this group were the State Board for Occupational Therapy, and professional associations representing the occupational therapy profession. These groups have members who live or work in rural areas. Also, the Department solicited comment from all colleges and universities in the State that offer occupational therapy and occupational therapy assistant programs, including those located in rural areas.

Job Impact Statement

Education Law section 7908, as added by Chapter 444 of the Laws of 2012, establishes mandatory continuing competency requirements for licensed occupational therapists and occupational therapy assistants authorized to practice in New York State. The proposed rule establishes standards for acceptable continuing competency to meet the statutory requirement.

The proposed rule implements specific statutory requirements and directives. Education Law section 7908 establishes the requirement that licensed occupational therapists and occupational therapy assistants must complete a prescribed number of hours of continuing learning activities in order to register to practice in New York State. Therefore, any impact on jobs and employment opportunities by establishing a continuing competency requirement for occupational therapists and occupational therapy assistants is attributable to the statutory requirement, not the proposed rule, which simply establishes consistent standards as directed by statute.

In any event, a similar statutory continuing competency requirement was established for individuals licensed as physical therapists and physical therapist assistants in 2008, and the Department is not aware that the requirement significantly affected jobs or employment opportunities in those professions. In addition, the statutory requirement should increase job and employment opportunities for instructors and administrators who will provide the continuing competency coursework to licensees.

Chapter 329 of the Laws of 2012 authorizes the issuance of a limited permit for occupational therapy assistants and provides for the supervision of occupational therapy assistant students engaged in clinical activities by an occupational therapy assistant. The proposed rule amends existing regulations to conform to these statutory changes.

Because it is evident from the nature of the proposed regulation, which implements specific statutory requirements and directives, that the proposed rule will have no impact on jobs or employment opportunities attributable to its adoption or only a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Amendment of Part 590, Payment of Expenses Upon Acquisition of Real Property to Comply with the Marriage Equality Act

I.D. No. ENV-34-12-00004-A

Filing No. 1082

Filing Date: 2012-10-30

Effective Date: 2012-11-14

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

Action taken: Amendment of Part 590 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301 and 3-0305

Subject: Amendment of Part 590, Payment of Expenses Upon Acquisition of Real Property to Comply with the Marriage Equality Act.

Purpose: To ensure regulations are gender neutral to comply with the Marriage Equality Act.

Substance of final rule: The proposed amendments to 6 NYCRR Part 590 have been made to comply with the Marriage Equality Act which requires changing terms such as "husband" to "person". Other words have been changed to reflect gender neutrality.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 590.8(a) and 590.9(c).

Text of rule and any required statements and analyses may be obtained from: Keith Matteson, NYS DEC, 625 Broadway, Albany, NY 12233, (518) 402-9442, email: bkmattes@gw.dec.state.ny.us

Revised Job Impact Statement

A job impact statement is not submitted with the proposal because there will be no adverse impact on existing or future jobs and employment opportunities. The non-substantive revisions to the express terms were made so that the regulation would be gender neutral.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Henderson Shores Unique Area

I.D. No. ENV-46-12-00002-P

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

Proposed Action: Addition of section 190.10(f) to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m), 9-0105(1) and (3)

Subject: Henderson Shores Unique Area.

Purpose: To protect public safety and natural resources on the Henderson Shores Unique Area.

Text of proposed rule: A new subdivision (f) is added to 6 NYCRR section 190.10 to read as follows:

(f) *Henderson Shores Unique Area. Description: For the purposes of this section, Henderson Shores Unique Area, referred to in this section as "the area", means all those state lands located in Jefferson County in the Town of Henderson, on portions of lots 15, 16, 26, 27, 36 and 37, Black River Tract, Township #6, Constable's Eleven Towns, Great Tract #5, Macomb's Purchase.*

(1) *All camping shall be prohibited.*

(2) *The area shall be closed to public use between the hours of 10:00 pm and 5:00 am.*

(3) *All campfires are prohibited.*

(4) *No person shall possess glass containers.*

Text of proposed rule and any required statements and analyses may be obtained from: Keith Rivers, NYS DEC Region 6 Sub-office, 7327 State Route 812, Lowville, NY 13367, (315) 376-3521, email: rwrivers@gw.dec.state.ny.us

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

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

Additional matter required by statute: A Negative Declaration has been prepared in compliance with Article 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory authority

Environmental Conservation Law (“ECL”) section 1-0101(3)(b) directs the Department to guarantee “that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences.” ECL section 3-0301(1)(b) gives the Department the responsibility to “promote and coordinate management of...land resources to assure their protection...and take into account the cumulative impact upon all such resources in...promulgating any impact upon all such resources...in promulgating any rule or regulation.” ECL section 9-0105(1) authorizes the Department of Environmental Conservation to “exercise care, custody, and control” of State lands. ECL section 3-0301(2)(m) authorizes the Department of Environmental Conservation (DEC) to adopt rules and regulations “as may be necessary, convenient or desirable to effectuate the purposes of (the ECL),” and ECL 9-0105(3) authorizes DEC to “make necessary rules and regulations to secure proper enforcement of (ECL Article 9).”

2. Legislative objectives

In adopting various articles of the ECL, the legislature has established forest, fish, and wildlife conservation to be policies of the State and has empowered DEC to exercise care, custody, and control over certain State lands and other real property. Consistent with these statutory interests, the proposed regulations will protect natural resources and the safety and welfare of those who engage in recreational activities on the Henderson Shores Unique Area. The Department also has been provided authority by the Legislature to manage State owned lands (see ECL section 9-0105(1), and to promulgate rules and regulations for the use of such lands (see ECL section 3-0301(2)(m) and ECL section 9-0105(3)).

3. Needs and benefits

The Henderson Shores Unique Area (“the Area”) located in the town of Henderson in Jefferson County was acquired in 1988 by the State because of its unique habitat. The unspoiled nature of Henderson Shores with its 3,700 feet of lake frontage along Lake Ontario, its deer wintering area, which is a significant habitat, as well as classified wetlands, is a very rare commodity in the eastern Lake Ontario basin. The 893 acre area consists of calcareous pavement barrens or an alvar which is a rare natural community that exists in very shallow soils over limestone bedrock. These areas are characterized by dramatic changes in moisture, ranging from very wet conditions in early spring and summer to very dry conditions the remainder of the year. This environment supports habitats for rare plants such as the yellow lady slipper, reindeer lichen, fragrant sumac and the cork elm, a threatened species, currently found on the Area. It is also habitat for threatened animals such as the whip-poor-will, upland sandpiper and black and white warbler. The limestone underlying the shallow soils, however, makes it extremely sensitive to overuse.

The Area was purchased with funds from the 1986 Environmental Quality Bond Act under the Unique Character category of the Open Space Plan. ECL Section 52-0101(h) defines “unique character” as “lands of special natural beauty, wilderness character, geological, ecological or historical significance suitable for the state nature and historic preserve and similar lands within a forest preserve county outside the Adirondack and Catskill parks.” Because of the uniqueness of this Area, the rating system score for this parcel, which is used to determine its eligibility for acquisition, was high in the categories of Natural Beauty and Ecological Significance. The project vulnerability rating was also high based upon potential adverse impact to the area within a two year period. The intent of the proposed regulations is to protect this sensitive Area while also providing for public use.

Pursuant to the authority provided by ECL Section 9-0105(1) to exercise “care, custody and control” of State lands, in 1989 the Department announced, through a press release, that no camping would be permitted on the Area until at least such time as a Unit Management Plan was developed. This was done to protect the fragile soils and vegetation. To facilitate a more “day use” of the property, rather than overnight camping, a gate was installed at the beginning of the Radar Road. Public use, therefore, was restricted to access by foot with the exception of persons holding a CP-3 permit (access for persons with disabilities) from the Department. Permit holders were permitted to drive the 7 miles of the Radar Road to reach the shoreline. However, the Department determined that the gate was unnecessarily restricting public access, therefore in an effort to provide better public access to the shoreline, the gate was removed around 2000. Camping on the Area was still prohibited by Department no-

tice in the form of a sign at the access point on Radar Road. Despite this sign, illegal camping has been occurring on the Area since the gate was removed. Illegal roadways, to reach the best shoreline camping locations, have also developed. On these shallow soils a few passes by a vehicle creates a route that is evident for a long time and becomes established for others to use. Additionally, open fires, unsanitary conditions, littering and broken glass, especially along the rocky shoreline, have become environmental concerns and public safety issues. The proposed regulations, to prohibit overnight camping, open fires and glass containers, are intended to codify the Department’s current policy, provide greater public awareness of the rules and requirements for use of the Area, enhance the Department’s ability to enforce these rules and requirements, all of which should ultimately help protect the natural resources of the Area and improve public enjoyment of the recreational opportunities it provides.

A letter was distributed in February to interested parties explaining the intent of the proposed regulations. The distribution list included sportmen’s groups, State and non-profit agencies, local government, and interested members of the public. Very few responses were received. The majority of responses was supportive in nature or discussed concerns such as invasive plants, which were not the focus of the proposed regulations. There were some concerns regarding the prohibition of camping, however, since camping is currently prohibited by sign, there will be no change in use.

4. Costs

There will be no increased staffing, construction or compliance costs projected for State or local government or to private regulated parties as a result of this rulemaking. Costs to the Department will be minimal, approximately \$500 for necessary signage.

5. Local government mandates

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity.

7. Duplication

There is no duplication, conflict, or overlap with State or Federal regulations.

8. Alternative approaches

The “No Action” alternative is not acceptable since unregulated use of the area would continue, resulting in degradation to the natural resources and associated negative impacts to users. Proposed public use restrictions could be implemented through the posting of signs, however, restrictive signs are routinely removed by the public. As a result, judges are hesitant to convict people for sign violations that are not backed up by specific regulations.

Restricting motor vehicle access from the town road to the lake shore would reduce some of the use and some of the potential impacts associated with that use, however, since the road is the only public access to the interior of the property, this alternative would not be desirable and would only be considered as a last resort.

9. Federal standard

There is no relevant Federal standard governing the use of State lands.

10. Compliance schedule

The regulations will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations. Once the regulations are adopted they are effective immediately. The Department will educate the public about the regulations through information posted on the Departments’ web site.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they will bear no economic impact as a result of this proposal. The proposed regulations relate solely to protecting public safety and natural resources on the Henderson Shores Unique Area.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record-keeping or other compliance requirements on rural areas. The proposed regulations relate solely to protecting public safety and natural resources on the Henderson Shores Unique Area.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulations relate solely to

protecting public safety and natural resources on the Henderson Shores Unique Area.

Department of Health

EMERGENCY RULE MAKING

Statewide Pricing Methodology for Nursing Homes

I.D. No. HLT-46-12-00003-E

Filing No. 1065

Filing Date: 2012-10-26

Effective Date: 2012-10-26

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

Action taken: Addition of section 86-2.40 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2808(2-c)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to implement, as expeditiously as possible, the new Medicaid reimbursement methodology for nursing homes, effective January 1, 2012. The new methodology will replace an overly complex and burdensome methodology with a transparent pricing methodology that will stabilize the nursing home industry by timely providing predictable rate setting information that can be effectively used by providers to plan and manage their operations. In addition, implementing the pricing methodology as soon as possible will also mitigate the retroactive cash flow impact of reconciling rates that are paid today to the new pricing rates effective on January 1, 2012.

Proceeding with the proposed regulations on an emergency basis is in accordance with the provisions of Public Health Law section 2808(2-c) which provides the Commissioner of Health the explicit authority to issue these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure Federal approval of the associated Medicaid State Plan Amendment.

Subject: Statewide Pricing Methodology for Nursing Homes.

Purpose: To establish a new Medicaid reimbursement methodology for Nursing Homes.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for the operating component of non-specialty residential health care facilities (nursing homes). The operating component of the price is based upon allowable costs and is the sum of the direct price, indirect price and a facility-specific non-comparable price. The direct and indirect prices are a blend of a statewide price and a peer group price. There are two peer groups: 1) all non-specialty hospital-based facilities and non-specialty freestanding facilities with certified beds capacities of 300 or more, and 2) non-specialty freestanding facilities with certified bed capacities of less than 300 beds. The direct price is subject to a case mix adjustment and a wage index adjustment. The indirect price is subject to a wage index adjustment. Per-diem adjustments to the operating component of the rate include add-ons for bariatric, traumatic brain-injured (TBI) extended care, and dementia residents; adjustments for the reporting of quality data; and transition payments. Non-specialty facilities will transition to the price over a five-year period (2012-2016), with prices fully implemented beginning in 2017. The non-capital component of the rate for specialty facilities, which are not subject to the new reimbursement methodology, will be the rates in effect for such facilities on January 1, 2009.

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 January 23, 2013.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for this regulation is contained in Section

2808(2-c) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.40 to establish a new Medicaid reimbursement methodology for Nursing Homes. The reimbursement methodology is based on a blend of statewide prices and peer group prices, with adjustments for case mix, regional wage differences, add-ons for certain patients, and quality incentives and payments. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new and streamlined methodology will significantly reduce administrative burdens on both nursing homes and the Department and, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Needs and Benefits:

The new pricing reimbursement methodology reforms an outdated, complex, administratively burdensome (to both providers and the Department) rate-setting system with a stable, predictable and transparent methodology that rewards efficiencies and incentivizes quality outcomes. The new pricing system will also provide a good foundation for the transition of nursing home residents to Managed Care that will occur over the next several years. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be reporting quality measures in their annual cost report.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations.

Costs to Local Government:

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

Costs to the Department of Health:

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

Local Government Mandates:

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

Paperwork:

The proposed regulation does not create new or additional paperwork responsibility of any kind.

Duplication:

These regulations do not duplicate existing state or federal regulations.

Alternatives:

The Department is required by the Public Health Law section 2808 2-c to implement the new pricing methodology. The department worked closely with the Nursing Home Industry Associations to develop the details of the pricing methodology to be implemented by the regulation.

Federal Standards:

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

Compliance Schedule:

The new prices will be published by the department and transmitted to the EMedNY system. There are no new compliance efforts required by the nursing homes.

Regulatory Flexibility Analysis

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer employees. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 60 residential health care facilities were identified as employing fewer than 100 employees.

To ensure a smooth transition and mitigate significant swings in Medicaid revenues, the new Medicaid reimbursement methodology for nursing homes implemented by this regulation will be phased-in over a

five year period (full implementation in the sixth year). Of the 60 nursing homes, 36 nursing homes that are subject to this regulation will experience a decrease in Medicaid revenues. The losses in Medicaid revenues will occur gradually - and will increase from .473% of total operating revenue in year to 5.4% of total operating revenue in year six. Twenty-four nursing homes that are subject to this regulation will experience an increase in Medicaid revenues. The gains in Medicaid revenues will occur gradually - and will increase from 1.2% of total operating revenue in year to 2% of total operating revenue in year six. In addition, the new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

This rule will have no direct effect on local governments.

Compliance Requirements:

There are no new compliance requirements.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Economic and Technological Feasibility:

The proposed rule doesn't require additional technological or economic requirements.

Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Small Business and Local Government Participation:

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. The Department worked closely with the Nursing Home Associations to develop the details of the pricing methodology to be implemented by the regulation. In addition, contact information for the Department was provided for anyone interested in further information.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

There are no new compliance requirements as a result of the proposed rule.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No additional compliance costs are anticipated as a result of this rule.

Minimizing Adverse Impact:

To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year. The new methodology will also, by limiting the potential bases of subsequent administrative rate appeals and audit adjustments, enhance the stability and certainty of initial Medicaid payments and reduce the likelihood of litigation.

Rural Area Participation:

The Department, in collaboration with the Nursing Home Industry Associations (which include representation of rural nursing homes) worked collaboratively to develop the key components of the statewide pricing methodology. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is not expected that the proposed rule to establish a new Medicaid reimbursement methodology for Nursing Homes will have a material impact on jobs or employment opportunities across the Nursing Home industry. To ensure a smooth transition to the new pricing methodology by mitigating significant fluctuations (increases or decreases) in the amount of Medicaid revenues received by nursing homes, per diem transition rate adjustments will be included in the proposed regulations to phase-in the new pricing methodology over a five-year period, with full implementation in the sixth year.

**EMERGENCY
RULE MAKING**

Reduction to Statewide Base Price

I.D. No. HLT-46-12-00004-E

Filing No. 1066

Filing Date: 2012-10-26

Effective Date: 2012-10-26

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

Action taken: Amendment of section 86-1.16 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to achieve targeted savings.

Public Health Law section 2807-c(35)(b) specifically provides the Commissioner of Health with authority to issue hospital inpatient rate-setting regulations as emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Reduction to Statewide Base Price.

Purpose: Continues a reduction to the statewide base price for inpatient services.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35)(b) of the Public Health Law, Subdivision (c) of section 86-1.16 of Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective May 1, 2012, to read as follows:

(c)(1) For the period effective July 1, 2011 through March 31, 2012, the statewide base price shall be adjusted such that total Medicaid payments are decreased by \$24,200,000.

(2) For the period May 1, 2012 through March 31, 2013, the statewide base price shall be adjusted such that total Medicaid payments are decreased for such period by \$19,200,000.

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 January 23, 2013.

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

Regulatory Impact Statement

Statutory Authority:
The requirement to implement a modernized Medicaid reimbursement system for hospital inpatient services based upon 2005 base year operating costs pursuant to regulations is set forth in Section 2807-c(35) of the Public Health Law, which states that the Commissioner has the authority to set emergency regulations for general hospital inpatient rates and such regulations shall include but not be limited to a case-mix neutral Statewide base price. Such Statewide base price will exclude certain items specified in the statute and any other factors as may be determined by the Commissioner.

Legislative Objectives:
The Legislature and Medicaid Redesign Team adopted a proposal to reduce unnecessary cesarean deliveries to promote quality care and reduce unnecessary expenditures. Due to industry concerns with the initial proposal, it was determined that a more clinically sound method needed to be developed. To generate immediate savings, however, a \$24.2 million gross (\$12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop a more clinically sound approach to meet Legislative objectives. Based on the results of workgroup meetings, a new proposal was developed which achieved less savings than required by the Financial Plan (\$5 million gross/\$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at \$19.2 million gross (\$9.6 million State share) to account for the difference through March 31, 2013.

Needs and Benefits:
The proposed amendment appropriately implements the provisions of Public Health Law section 2807-c(35)(b)(xii), which authorizes the Commissioner to address the inappropriate use of cesarean deliveries. Cesarean deliveries are surgical procedures that inherently involve risks; however, elective cesarean deliveries increase the risks unnecessarily. Therefore, high rates of cesarean deliveries are increasingly viewed as indicative of quality of care issues.

Due to industry concerns with the initial proposal, it was determined that a more clinically sound approach to meeting Legislative objectives needed to be developed. To generate immediate savings, however, a \$24.2 million gross (\$12.1 million State share) reduction in the statewide base price was implemented for 2011-12 while an obstetrical workgroup worked to develop such an approach. Based on the results of those meetings, a new proposal was developed which achieved less savings than required by the Financial Plan (\$5 million gross/\$2.5 million State share). Therefore, this emergency amendment continues the base price reduction at \$19.2 million gross (\$9.6 million State share) to account for the difference through March 31, 2013.

COSTS:
Costs to State Government:
There are no additional costs to State government as a result of this amendment.

Costs of Local Government:
There will be no additional cost to local governments as a result of these amendments.

Costs to the Department of Health:
There will be no additional costs to the Department of Health as a result of this amendment.

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

Paperwork:
There is no additional paperwork required of providers as a result of these amendments.

Duplication:
These regulations do not duplicate existing State and Federal regulations.

Alternatives:
No significant alternatives are available at this time. In collaboration with the hospital industry, the State developed a more clinically sound method to achieve savings. However, this amount was less than was required by the Financial Plan. Thus, there is no option to not act on this initiative since the Enacted Budget assumed savings that total \$24.2 million.

Federal Standards:
This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:
Section 86-1.16 requires that the statewide base price be reduced by \$19,200,000 for the period May 1, 2012, through March 31, 2013.

Regulatory Flexibility Analysis
Effect on Small Business and Local Governments:
For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Health care providers subject to the provisions of this regulation under section 2807-c(35) of the Public Health Law will see a minimal decrease in funding as a result of the reduction in the statewide base price. This rule will have no direct effect on Local Governments.

Compliance Requirements:
No new reporting, recordkeeping or other compliance requirements are being imposed as a result of these rules. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.

Professional Services:
No new or additional professional services are required in order to comply with the proposed amendments.

Compliance Costs:
As a result of the new provision of 86-1.16, overall statewide aggregate hospital Medicaid revenues for hospital inpatient services will decrease in an amount corresponding to the total statewide base price reduction.

Economic and Technological Feasibility:
Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:
The proposed amendments reflect statutory intent and requirements.

Small Business and Local Government Participation:
Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis
Types and Estimated Numbers of Rural Areas:
This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Compliance Requirements:
 No new reporting, recordkeeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:
 No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:
 No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:
 The proposed amendments reflect statutory intent and requirements.

Rural Area Participation:
 This amendment is the result of discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed emergency regulation revises the final statewide base price for the period beginning May 1, 2012, through March 31, 2013.

**EMERGENCY
 RULE MAKING**

Episodic Pricing for Certified Home Health Agencies (CHHAs)

I.D. No. HLT-46-12-00005-E
Filing No. 1080
Filing Date: 2012-10-29
Effective Date: 2012-10-29

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

Action taken: Amendment of section 86-1.44 of Title 10 NYCRR.
Statutory authority: Public Health Law, section 3614(13)
Finding of necessity for emergency rule: Preservation of public health.
Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure an appropriate level of reimbursement to those Certified Home Health Agencies (CHHAs) that provide services to a special needs population of medically complex children, adolescents and young disabled adults and to those CHHAs that serve primarily patients who are eligible for OPWDD services.

Section 111 of Part H of Chapter 59 of the Laws of 2011 provides the Commissioner of Health with authority to issue regulations such as these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of the associated Medicaid State Plan Amendment.

Subject: Episodic Pricing for Certified Home Health Agencies (CHHAs).
Purpose: To exempt services to a special needs population from the episodic payment system for CHHAs.

Text of emergency rule: Subdivisions (a) and (c) and the opening paragraph of subdivision (b) of section 86-1.44 of title 10 of NYCRR are amended to read as follows:

- (a) Effective for services provided on and after [April 1] May 2, 2012, Medicaid payments for certified home health care agencies (“CHHA”), except for such services provided to children under eighteen years of age and except for services provided to a special needs population of medically complex and fragile children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department, shall be based on payment amounts calculated for 60-day episodes of care.
- (b) An initial statewide episodic base price, to be effective [April 1] May 2, 2012, will be calculated based on paid Medicaid claims, as determined by the Department, for services provided by all certified home

health agencies in New York State during the base period of January 1, 2009 through December 31, 2009.

(c) The base price paid for 60-day episodes of care shall be adjusted by an individual patient case mix index as determined pursuant to subdivision (f) of this section; and also by a regional wage index factor as determined pursuant to subdivision (h) of this section. *Such case mix adjustments shall include an adjustment factor for CHHAs providing care primarily to a special needs patient population coming under the jurisdiction of the Office of People With Developmental Disabilities (OPWDD) and consisting of no fewer than two hundred such patients.*

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 January 26, 2013.

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

Regulatory Impact Statement

Statutory Authority:
 The authority for implementation of an episodic payment system for Certified Home Health Agency services pursuant to regulations is set forth in section 3614(13) of the Public Health Law. This same statute also exempts the application of the episodic payment system to Medicaid reimbursement for “children under eighteen years of age and other discrete groups as may be determined by the commissioner pursuant to regulations”.

Legislative Objectives:
 The Legislature chose to address the issue of over-utilization of Certified Home Health Agency services as a result of the recommendations submitted by the Medicaid Redesign Team and accepted by the Governor. Pursuant to statute, an episodic payment system based on 60-day episodes of care, with payments tied to patient acuity, was chosen as one of the vehicles to address this issue. The legislation also exempted Medicaid payments for children from the new payment system and, further, gave the Commissioner of Health authority to exempt other discrete groups through regulation.

Needs and Benefits:
 The proposed amendment will exempt services provided to a special needs population of medically complex children, adolescents and young disabled adults by a CHHA operating under a pilot program approved by the Department from the episodic payment system and will also provide for an adjustment of the case mix index for CHHAs serving primarily patients who are eligible for OPWDD services when such CHHAs have over 200 such patients. This amendment reflects a Health Department determination that the more stringent cost containment mechanism of episodic pricing, already deemed by the legislature to be an inappropriate reimbursement mechanism for CHHA services for children, is also not appropriate for special needs populations consisting of young adults as well as children and adolescents being cared for pursuant to an approved pilot program. This further amendment will thus help assure that agencies primarily serving certain special needs populations will receive a level of reimbursement from the Medicaid system to maintain both adequate access and quality of care for members of these populations.

Costs:
 The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment. It is anticipated there will be a slight decrease to the total state fiscal savings which were budgeted for the Episodic Payment System.

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

Paperwork:
 There is no additional paperwork required of providers as a result of this amendment.

Duplication:
 These regulations do not duplicate existing state or federal regulations.

Alternatives:
 No significant alternatives are available that will protect the special needs populations identified in this amendment.

Federal Standards:
 This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:
 There are no significant actions which are required by the affected providers to comply with the rule change.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the *NYS Register*.

Medicaid Managed Care Programs

I.D. No.	Proposed	Expiration Date
HLT-43-11-00019-P	October 26, 2011	October 25, 2012

Department of Law**NOTICE OF ADOPTION****Determining When Funds Escrowed in Connection with the Offer or Sale of Cooperative Interests in Realty May be Released**

I.D. No. LAW-50-11-00002-A

Filing No. 1064

Filing Date: 2012-10-26

Effective Date: 2012-11-14

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

Action taken: Amendment of sections 18.3(b)(p), 20.3(o), 21.3(l), 22.3(c)(k), 23.3(q), 24.3(m) and 25.3(l) of Title 13 NYCRR.

Statutory authority: General Business Law, section 352-e(2)(b) and (6)

Subject: Determining when funds escrowed in connection with the offer or sale of cooperative interests in realty may be released.

Purpose: Elimination of the Attorney General's role in adjudicating such disputes.

Substance of final rule:

The proposed amendments eliminate the Attorney General's role in adjudicating contractual disputes between sponsors of cooperatives, condominiums, homeowners' associations, timeshares, and senior residential communities and contract vendees, thereby leaving such matters to be adjudicated in court, as is done in the case of analogous disputes concerning contracts to purchase private homes and transactions between non-sponsor sellers and purchasers. The non-substantive changes made to the rules as published in the September 5, 2012 New York State Register are as follows: (1) by separate Notice of Adoption, also published in the September 5, 2012 New York State Register, the Department of Law (DOL) clarified that escrowed funds may be deposited in multiple accounts; the rules as adopted herein have been conformed to reflect that change; (2) certain language in the existing regulation concerning retention of funds in escrow was inadvertently omitted from the previously posted revised version of 13 N.Y.C.R.R. § 18.3; it has been restored; and (3) certain language requiring the submission of an executed escrow agreement and bank forms was omitted from 13 N.Y.C.R.R. § § 18.3, 20.3, 22.3, 23.3, and 25.3, but not from § § 21.3 and 24.3. It has been eliminated in all sections.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 18.3, 20.3, 21.3, 22.3, 23.3, 24.3 and 25.3.

Revised rule making(s) were previously published in the State Register on May 16, 2012 and September 5, 2012.

Text of rule and any required statements and analyses may be obtained from: Lewis A. Polishook, New York State Department of Law, 120 Broadway, 23rd Floor, New York, N.Y. 10271, (212) 416-8372, email: lewis.polishook@ag.ny.gov

Revised Regulatory Impact Statement

The revisions to the adopted version of the proposed revised regulations published on September 5, 2012, do not alter the amended regulations' impact on compliance obligations, economic or technical feasibility, jobs, small business, local government participation, impact on professional services, or costs in any way. The revisions merely change certain references from singular to plural, restore language inadvertently omitted from one section of the proposed revised regulations, and eliminate unnecessary requirements for submission of documents from two other sections of the proposed revised regulations.

Revised Regulatory Flexibility Analysis

The revisions to the adopted version of the proposed revised regulations published on September 5, 2012, do not alter the amended regulations' impact on compliance obligations, economic or technical feasibility, jobs, or small business or local government participation. The revisions merely change certain references from singular to plural, restore language inadvertently omitted from one section of the proposed revised regulations, and eliminate unnecessary requirements for submission of documents from two other sections of the proposed revised regulations.

Revised Rural Area Flexibility Analysis

The revisions to the adopted version of the proposed revised regulations published on September 5, 2012, do not alter the amended regulations' impact on reporting, record keeping, and other compliance requirements in rural areas or rural area participation. The revisions merely change certain references from singular to plural, restore language inadvertently omitted from one section of the proposed revised regulations, and eliminate unnecessary requirements for submission of documents from two other sections of the proposed revised regulations.

Assessment of Public Comment

Changes Made Based on Comments on the December 14, 2012, Notice of Proposed Rule Making

The Department of Law (DOL) received comments from two individuals in connection with the initial Notice of Proposed Rule Making. As described in the Notice of Revised Rule Making published in the May 16, 2012 New York State Register, the DOL made the following changes to its original proposals:

First, the proposed revised regulations clarified that all existing offering plans were to be amended to eliminate the Attorney General's dispute resolution function, but that (a) amendments updating the escrow language of offering plans should not be submitted before September 4, 2012; and (b) the Attorney General would continue to have jurisdiction to entertain applications concerning disputes where the purchase agreement was signed before September 4, 2012.

Second, the DOL modified the language of the subsections governing the release of funds. The revised proposed amendments track the standard form contracts (the "Form Contracts") for cooperative, condominium, and home sales prepared by the New York City and New York State Bar Associations by providing that the escrow agent may release funds to the sponsor upon prior written notice to the purchaser unless the purchaser provides timely notice of objection to the release of funds, in which case the escrow agent must retain the funds in escrow until receipt of a further written directive signed by the parties to the purchase agreement or final non-judicial adjudication of the merits of the dispute.

Third, as noted in the May 16, 2012 Notice of Revised Rule Making, the DOL has seen several situations in which purchasers were unaware of the impending release of funds or may even have been misled by ongoing settlement negotiations. For this reason, both the original proposed amendments and the revised proposed amendments required written notice 30 days before the release of escrowed funds.

Changes Made In the Second Notice of Revised Rule Making, Dated September 5, 2012

The DOL received comments from one individual and one law firm in response to the Notice of Revised Rule Making. In response to those comments, the DOL revised its proposal to reflect that notice of at least 30 days must be given by the escrow agent to the parties before releasing the funds only if the escrow agent proposes to release funds without a judgment, determination of the Attorney General, closing, or written directive of all parties.

In addition, the DOL made the following changes, that were not based on any specific public comments:

First, the revised proposed regulations will not apply to existing

purchase agreements. Sponsors were given additional time to update their offering plans, escrow agreements, and form purchase agreements to conform to the new regulations, and should do so when they submit their next substantive update amendment after the adoption of the proposed regulations. As revised, the proposed regulations provide that the Attorney General will continue to adjudicate escrow disputes concerning the disposition of down payments for purchase agreements that provide for dispute resolution by the Attorney General that were signed on or before March 1, 2013. After the proposed regulation is adopted, sponsors may, after they have filed an amendment conforming their offering plans to the revised regulations, enter into purchase agreements that do not call for dispute resolution by the Attorney General. For disputes arising in connection with purchase agreements that provide for dispute resolution by the Attorney General and were signed before March 1, 2013, the previous version of these regulations will remain in effect.

Second, the proposed revised regulations give additional guidance as to those matters by specifying key terms that must be included in the escrow agreements, and provides that those mandatory terms are legally binding on the parties even if omitted from the escrow agreement.

Third, the revised proposal also replaces the previous bilateral escrow agreement between sponsors and escrowees with a requirement that all parties to the escrow agreement--sponsor, purchaser, and escrowee--must sign the escrow agreement, and clarifies that this agreement may be included in the purchase agreement itself, as is commonly done in real estate transactions not regulated by the Attorney General.

Fourth, the further revised proposal also clarifies the existing requirement that the escrow agent and escrow account signatories be independent of the sponsor.

Comments to the September 5, 2012 Notice of Revised Rule Making

The DOL received two sets of comments to the September 5, 2012 Notice of Revised Rule Making, but has made no changes in response to these comments. The DOL has made minor non-substantive changes to the rules as adopted; those changes are described in the "Terms and Identification of Rule" section of this Notice of Adoption.

The first commenter points out that the regulations do not explicitly authorize funds pursuant to an arbitral award, and suggests that "funds should also be permitted to be released in accordance with a decision issued by JAMS or the American Arbitration Association in the County of New York State in which the condominium is located by the rules then in effect," because, in the commenter's view, "[a]rbitration has proven to be a legitimate, less costly alternative to litigation."

The second commenter raised several issues:

First, he points out that the maximum coverage of federal deposit insurance is \$250,000, not \$100,000.

Second, the commenter suggests that the obligation of the escrowee to give the purchaser notice of deposit of the funds should run from the date of delivery of the escrow agreement or purchase agreement.

Third, the commenter suggests that rescission should not be available merely for failure to give notice of deposit of the funds.

Fourth, the commenter suggests that the regulations should allow sponsors and purchasers to opt out of dispute resolution by the Attorney General even in those purchase agreements for which the revised regulation continues to authorize such dispute resolution.

Fifth, the commenter suggests that 30 days between notice and release of funds is too long, and proposes 15 days as a more reasonable time limit.

Department of Law Response to Comments

Arbitration: As the DOL stated in its assessment of public comment published on May 16, 2012, the issue of the interplay between the Department's dispute resolution regulations and arbitration clauses in purchase agreements is outside the scope of this rule making. That issue may be addressed in a separate rule making. However, to the extent otherwise permitted by law, an escrow agent may, consistent with the revised escrow regulations adopted in this rule making, release funds pursuant to an arbitral award that has been confirmed by a court pursuant to CPLR 7510 or is no longer reviewable pursuant to CPLR 7511(a).

Federal Deposit Insurance: The DOL adopted amendments to its regulations on September 5, 2012, eliminating references to outdated amounts for federal deposit insurance. The proposed revised revisions were made when the previous version of the DOL's regulations was still in effect, giving the incorrect appearance that the outdated language would continue.

Delivery of Purchase Agreement vs. Execution of Escrow Agreement: The proposed revised regulations define "escrow agreement" as either a separate escrow agreement or a part of the purchase agreement. Hence, the commenter's suggestion that the proposed revised regulations refer to "10 business days after the escrow agreement or purchase agreement is signed" is superfluous. The DOL disagrees with the suggestion that the 10-day period commence with delivery of the executed agreement to the purchaser, as this would allow a sponsor or escrow agent to delay notice of deposit of the escrowed funds by delaying the delivery of a fully-executed agreement.

Rescission for Failure to Give Notice: The current regulations allow the

Attorney General to require an offer of rescission for failure to inform purchasers of the deposit of funds, but further provide that "[r]escission may not be afforded where proof satisfactory to the Attorney General is submitted establishing that the escrowed funds were timely deposited in accordance with these regulations and requisite notice was timely mailed to the purchaser." The proposed revised regulations do not change this provision, but merely change the means by which purchasers should contact the DOL to reflect the fact that the DOL will no longer adjudicate escrow disputes. The DOL does not believe that the current regulation imposes unfair or undue burdens, given the importance placed on the proper maintenance of escrowed funds, but further notes that it has seen relatively few issues arise under this provision, and that the issues that have arisen have been resolved expeditiously.

Opting out of Dispute Resolution: The proposed revised regulations allow sponsors to modify their offering plans to eliminate dispute resolution before the DOL for purchase agreements signed after the regulation is adopted. The DOL has not previously authorized sponsors to opt out of dispute resolution before the DOL, and does not believe that this option should be given to sponsors for purchase agreements calling for DOL dispute resolution. The DOL notes that purchasers and escrowees still have the option to choose not to seek to resolve their disputes before the DOL even under purchase agreements calling for dispute resolution by the DOL.

Notice Before Release of Funds: The DOL previously considered and rejected a comment that the 30-day notice period before release of funds was too long. The DOL has seen several situations in which purchasers were unaware of the impending release of funds or may even have been misled by ongoing settlement negotiations. Further, the time that elapses between execution of a purchase agreement and closing is typically much longer in sponsor-purchaser sales than it is in resale transactions. Consequently, it makes sense to require a longer notice period for sponsor sales. The DOL further notes that it has previously clarified that the 30-day notice requirement does not apply when the funds are released at closing or pursuant to stipulation, court order, or determination by the Attorney General.

Long Island Power Authority

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Recharge New York Power Program Provisions of the Authority's Tariff

I.D. No. LPA-46-12-00006-EP

Filing Date: 2012-10-29

Effective Date: 2012-10-29

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

Proposed Action: Amendment of LIPA's Tariff for Electric Service.

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

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

Specific reasons underlying the finding of necessity: The Tariff modification is being implemented on a temporary basis pursuant to the expedited procedures of Section 202(6) of the State Administrative Procedure Act in furtherance of the general welfare in order to minimize the hardship experienced by participants related to the higher electric costs incurred than would otherwise have been charged under the Program. Permanent adoption will be subject to further notice, a full administrative proceeding (including a public comment period) and Board approval in January 2013.

Subject: Recharge New York Power Program provisions of the Authority's Tariff.

Purpose: To amend the Tariff with regard to the Recharge New York Power Program.

Public hearing(s) will be held at: 10:00 a.m., Jan. 7, 2013 at National Grid Corporate Services LLC, 25 Hub Dr., Rm. ER-111, Melville, NY; and 2:00 p.m., Jan. 7, 2013 at Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within rea-

sonable 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 emergency/proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to: 1) modify and further discount LIPA's Delivery Charge for Recharge New York Power Program participants retroactively; and 2) authorize LIPA's Recharge New York Program participants to purchase their supplemental power needs from either LIPA or Energy Services Companies under the Long Island Choice program.

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 January 26, 2013.

Text of rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Authority's Tariff for Electric Service

I.D. No. LPA-46-12-00007-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 make miscellaneous changes.

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

Subject: Authority's Tariff for Electric Service.

Purpose: To make miscellaneous Tariff changes.

Public hearing(s) will be held at: 10:00 a.m., Jan. 7, 2013 at National Grid Corporate Services LLC, 25 Hub Dr., Rm. ER-111, Melville, NY; and 2:00 p.m., Jan. 7, 2013 at Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, 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 make miscellaneous changes to: (1) clarify that non-residential fuel cells are eligible for net metering under Service Classification No. 12; (2) clarify the eligibility criteria for Small General Service Classification No. 2; (3) explicitly state the requirement for deposits from new non-residential customers; and (4) make housekeeping changes that eliminate redundant or outdated language.

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, NY 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 for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Smoking Policy Inside and on Grounds of OPWDD Operated and Certified Settings

I.D. No. PDD-46-12-00016-EP

Filing No. 1083

Filing Date: 2012-10-30

Effective Date: 2012-11-01

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

Proposed Action: Addition of sections 633.23, 635-7.3(c)(8) and 635-7.4(b)(4) to Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in residential, day program, and clinic facilities that are certified or operated by OPWDD.

The Centers for Disease Control and Prevention has estimated that the adverse health effects from cigarette smoking account for an estimated 443,000 deaths, or nearly one of every five deaths, each year in the United States. Smoking not only harms the smoker's body but it also causes harm to non-smokers from exposure to secondhand smoke. Smoking is also a leading cause of fires.

The emergency/proposed regulations prohibit smoking inside all day programs and clinics, and inside nearly all residential sites, that are certified or operated by OPWDD. While smoking in some of these facilities is already prohibited by the New York State Clean Indoor Air Act (CIAA), the CIAA does not fully prohibit smoking inside all facilities certified or operated by OPWDD. The regulations also exceed the CIAA by imposing limitations on smoking on the grounds of residential, day, and clinic facilities. The restrictions on outdoor smoking will protect individuals from second-hand smoke in outdoor environments and protect against fires.

OPWDD has issued an Administrative Memorandum (ADM) which includes many of the requirements in the emergency/proposed regulations, but the regulations exceed the ADM requirements in several important ways to further limit smoking, and promote smoking safety and smoking cessation. The regulations require policies and procedures to address exemptions to the smoking prohibition in supportive living environments and to address smoking safety and smoking cessation efforts for individuals in all certified residential facilities (except family care) who continue to smoke.

OPWDD expects that the imposition of the requirements in these emergency/proposed regulations will lead to a general reduction in smoking by individuals who receive services that are operated or certified by OPWDD, especially those who live in certified residential facilities. These changes will benefit individuals who smoke and others in their environments who might be exposed to second-hand smoke. OPWDD also considers that these requirements will enhance fire safety and reduce the potential for fires, which can obviously endanger the health, safety, and welfare of individuals receiving services and staff.

If these regulations were not promulgated on an emergency basis, OPWDD considers that the health, safety and welfare of individuals who smoke, and those exposed to second hand smoke and/or fire safety risks due to smoking, would be compromised during the period of time required by the State Administrative Procedure Act for the regular rulemaking process. The promulgation of these regulations on an emergency basis will enhance the health, safety, and welfare of individuals and staff without delay. Any delay will result in continued exposure to avoidable health and safety risks.

Subject: Smoking policy inside and on grounds of OPWDD operated and certified settings.

Purpose: To prohibit smoking at OPWDD operated and certified settings and to delineate the exceptions to the prohibition.

Text of emergency/proposed rule: • A new section 633.23 is added to Part 633 as follows:

633.23 Smoking: Health and Safety Protections

(a) This section applies to all facilities that are operated or certified by OPWDD, excluding family care homes. This section does not apply to non-certified services.

(b) Smoking is defined in this section as the inhaling or tasting of smoke produced by a burning substance, most commonly tobacco, in the form of a cigarette, cigar, pipe tobacco, or other form that can be smoked.

(c) Smoking is prohibited inside:

(1) all residential facilities certified or operated by OPWDD, except family care homes, supportive Individualized Residential Alternatives (IRAs), and supportive Community Residences (CRs);

(2) all day program facilities certified or operated by OPWDD;

(3) all clinic treatment facilities certified or operated by OPWDD; and

(4) the diagnostic and research clinic operated by OPWDD.

(d) An agency may prohibit smoking on the grounds of any or all of its certified facilities, including supportive IRAs and supportive CRs. If an agency permits smoking on the grounds of its facilities, the agency must restrict smoking on grounds that the agency is authorized to control, as follows:

(1) Location of designated smoking areas:

(i) Designated outdoor smoking areas must be at least 30 feet from the building which houses a facility that is operated or certified by OPWDD; or

(ii) if there is no available space for a designated smoking area at least 30 feet from the building, the designated area must be as far from the building as is practical without infringing on neighboring properties and without putting individuals, or others, in an unsafe location (e.g., in the street).

(2) Any designated outdoor smoking area must be equipped with an appropriate and properly maintained non-combustible disposal receptacle in accordance with paragraphs 635-7.3(c)(8) or 635-7.4(b)(4) of this Title.

(e) Effective January 1, 2013, agencies that operate supportive IRAs and/or supportive CRs must develop and implement policies and procedures to address smoking and safe disposal of smoking remnants inside the supportive IRAs and supportive CRs. The policies and procedures must either:

(1) prohibit smoking at all supportive sites; or

(2) prohibit smoking at all supportive sites except sites where one or more of the facility residents smokes. In order to permit smoking at a particular site, a site-specific decision shall be based on an appraisal of circumstances presented at that site. The results of these site-specific appraisals must be documented in the CR policy and procedure manual or in the IRA site-specific plan for protective oversight. The site-specific appraisal must include, at minimum, a review of:

(i) local laws;

(ii) building policies and lease agreements;

(iii) the smoking practices of the facility resident(s); and

(iv) each resident's interest in or objection to smoking at the site.

(f) Effective January 1, 2013, agencies that operate residential facilities serving individuals who smoke must develop policies and procedures to address smoking safety, and smoking related health care issues, for each facility resident who smokes. These policies and procedures must be fully implemented by July 1, 2013 and must include:

(1) mechanisms to evaluate smoking habits, as well as health and safety risks, for each individual who smokes, at least annually and as changes occur;

(2) mechanisms to develop, implement, and monitor individualized smoking safeguards; and

(3) mechanisms to offer and provide individuals who smoke with services and supports to actively promote smoking cessation.

• A new paragraph 635-7.3(c)(8) is added as follows:

(8) Smoking is prohibited inside all residential, day program, and clinic facilities that are operated or certified by OPWDD (except supportive CRs and IRAs), but may be permitted on the grounds of facilities, in accordance with section 633.23 of this Title. When smoking is permitted in designated outdoor smoking areas, these areas must be:

(i) equipped with appropriate non-combustible disposal receptacles for ashes, tobacco, and other smoking remnants; and

(ii) properly maintained, with routine emptying of disposal receptacles and removal of potential fire hazards (e.g., cigarette butts and paper products).

• A new paragraph 635-7.4(b)(4) is added as follows:

(4) Smoking is prohibited inside supervised IRAs. Smoking may be permitted on the grounds of supervised and supportive IRAs, in accordance with section 633.23 of this Title. When smoking is permitted in designated outdoor smoking areas, these areas must be:

(i) equipped with appropriate non-combustible disposal receptacles for ashes, tobacco, and other smoking remnants; and

(ii) properly maintained, with routine emptying of disposal receptacles and removal of potential fire hazards (e.g., cigarette butts and paper products).

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 January 27, 2013.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director of Regulatory Affairs (RAU), OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

b. OPWDD has the statutory 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).

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

2. Legislative objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law. The emergency/proposed amendments concern limitations on smoking inside and on the grounds of OPWDD operated and certified settings.

3. Needs and benefits: The Centers for Disease Control and Prevention has estimated that the adverse health effects from cigarette smoking account for an estimated 443,000 deaths, or nearly one of every five deaths, each year in the United States. Smoking not only harms the smoker's body but it also causes harm to non-smokers from exposure to secondhand smoke. One of OPWDD's core values is to promote the health and well-being of individuals with developmental disabilities and those who support them. The emergency/proposed regulations prohibit smoking and exposure to second hand smoke inside all day programs and clinics and inside nearly all residential sites certified or operated by OPWDD. The regulations also impose limitations on smoking on the grounds of these facilities.

The regulations allow for exceptions to the smoking prohibition and limitations in supportive residential facilities, which do not provide twenty-four hour supervision to facility residents. The rationale for any exemption must be based on a site-specific appraisal, including a review of local laws, building policies and lease agreements, the smoking practices of the facility resident(s), and each resident's interest in or objection to smoking at the site. These exceptions allow agencies the flexibility of balancing health and safety risks with respect for individual choices, as well as accommodating any other applicable requirements.

The regulations also require agencies to develop policies and procedures to address smoking safety, and smoking related health care issues, for each facility resident who smokes. These policies and procedures must include mechanisms to evaluate individuals' smoking habits (as well as health and safety risks); to develop, implement, and monitor individualized smoking safeguards; and to offer and provide smoking cessation services. This will address the particular needs of individuals who smoke and further enhance the health and safety of individuals receiving services.

Finally, the regulations address smoking on the grounds of facilities. The regulations require designated smoking areas to be located at least 30 feet from the facility, if possible, and require the use of non-combustible disposal receptacles. This will help prevent fires.

With the implementation of the emergency/proposed regulations OPWDD is proactively promoting healthier and safer environments for individuals receiving services and for the employees and volunteers providing those supports and services.

4. Costs:

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

The emergency/proposed amendments do not change reimbursement levels. Most of the new requirements contained in the emergency/proposed regulations were previously imposed by OPWDD through an Administra-

tive Memorandum, which addressed smoking in residential facilities and certified day programs. However, the emergency/proposed regulations also include new requirements mandating policies and procedures to address exemptions to the smoking prohibition in supportive living environments and to address smoking safety and smoking cessation efforts for individuals in all certified residential facilities (except family care) who continue to smoke. The development and implementation of these policies and procedures will have some impact on staff time in OPWDD operated facilities; however, OPWDD expects that the changes can be accomplished using existing staff.

Regarding the requirement for use of non-combustible receptacles in designated outdoor smoking areas, it is expected that the vast majority of OPWDD operated facilities already have the required receptacles and that it will result in the need to purchase a receptacle in very few circumstances.

There are no costs to local governments.

b. Costs to private regulated parties:

The emergency/proposed amendments do not change reimbursement levels. Most of the new requirements contained in the emergency/proposed regulations were previously imposed by OPWDD through an Administrative Memorandum, which addressed smoking in residential facilities and certified day programs. However, the emergency/proposed regulations also include new requirements mandating policies and procedures to address exemptions to the smoking prohibition in supportive living environments and to address smoking safety and smoking cessation efforts for individuals in all certified residential facilities (except family care) who continue to smoke. The development and implementation of these policies and procedures will have some impact on staff time in not-for-profit provider agencies; however, OPWDD expects that the changes can be accomplished using existing staff.

Regarding the requirement for use of non-combustible receptacles in designated outdoor smoking areas, it is expected that the vast majority of agencies already have the required receptacles and that it will result in the need to purchase a receptacle in very few circumstances.

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

6. Paperwork: The emergency/proposed amendments may result in modest additional paperwork to develop and implement policy and procedures in accordance with new requirements.

7. Duplication: Smoking is already prohibited in some facilities by the New York State Clean Indoor Air Act (CIAA), but the CIAA does not fully prohibit smoking inside all facilities that are certified or operated by OPWDD. The emergency/proposed regulations prohibit smoking in all day program and clinic facilities and in all supervised residential facilities (as well as many supportive residential facilities). The regulations also impose limitations on smoking on the grounds of residential, day, and clinic facilities and impose policy and procedure requirements that are not included in the CIAA.

There is no duplication of federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD considered extending the scope of the regulation to include restrictions on the use of all tobacco products (e.g., chewing and dipping tobacco). However, OPWDD decided against regulating personal choices, such as use of tobacco products that present risk to the user but do not affect the well-being of others, at this time. The emergency/proposed regulations address the fire safety and health care risks associated with smoking that affect the health and safety of others.

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

10. Compliance schedule: OPWDD has issued these regulations as emergency regulations and is planning to finalize the proposed regulations as soon as possible consistent with the timeframes set forth in the State Administrative Procedure Act. A number of the new requirements, including prohibitions and limitations on indoor and outdoor smoking, were previously mandated by policy and therefore have already been implemented. Some of the new requirements contain delayed effective dates in order to allow providers additional time to come into compliance with the requirements.

Regulatory Flexibility Analysis

1. Effect on small business: The emergency/proposed regulations, which place limitations on smoking, apply to residential, day program, and clinic facilities that are certified by OPWDD.

OPWDD has determined, through a review of the certified cost reports, that most OPWDD certified services are provided by non-profit agencies that employ more than 100 people overall; however, there are some smaller agencies that employ fewer than 100 employees which would be classified as small businesses. Currently, there are approximately 700 agencies providing services that are certified by OPWDD; however,

OPWDD cannot estimate the portion of these providers that may be considered small businesses.

The emergency/proposed amendments have been reviewed by OPWDD in light of their impact on small businesses and on local government. The regulations prohibit smoking inside most residential facilities and all clinic and day program facilities that are certified by OPWDD, and place limitations on smoking on the grounds of these facilities. The regulations also include smoking-related policy and procedures requirements and fire safety precautions. The limitations on smoking are being instituted in order to protect the health and safety of individuals receiving services, and those who support them, in facilities that are certified by OPWDD. OPWDD has determined that the emergency/proposed amendments will not cause undue hardship to small business providers due to increased costs or increased compliance requirements. The development and implementation of policies and procedures in accordance with the new requirements may result in some minimal costs to the provider agencies, but these costs are far outweighed by the long-term health and fire safety benefits that will result from implementation of the requirements.

The emergency/proposed regulations result in no new costs for local government.

2. Compliance requirements: Most of the new requirements contained in the emergency/proposed regulations were previously imposed by OPWDD through an Administrative Memorandum, which addressed smoking in residential facilities and certified day programs. OPWDD expects that providers are already in compliance with these requirements and therefore no new compliance activities are necessary concerning those provisions. The emergency/proposed regulations exceed the requirements that were previously imposed in several ways. First, the emergency/proposed regulations require agencies to develop policies and procedures if they operate supportive residences that serve individuals who smoke. In the event that an agency chooses to allow smoking inside a particular supportive residence, it must conduct an appraisal of the circumstances presented at that site. Further, when an agency that operates any type of certified residential facility (except family care) serves individuals who smoke, the agency must develop policies and procedures to address smoking safety, and smoking related health care issues, for each facility resident who smokes. These policies and procedures must incorporate specified mechanisms, such as mechanisms to offer and provide services and supports to promote smoking cessation. The emergency/proposed regulations also require that if an agency designates an outdoor smoking area, it must equip the area with a non-combustible receptacle.

OPWDD anticipates that agencies will use current staff to develop and implement the required policies. Agencies may also need to purchase new receptacles, if the agencies do not already have appropriate receptacles. OPWDD has determined that the proposed amendments will not cause undue hardship to small business providers due to increased costs or increased compliance requirements.

The proposed amendments contain no compliance requirements for local governments.

3. Professional services: No additional professional services are required as a result of these emergency/proposed regulations and the regulations will have no impact on the professional service needs of local governments.

4. Compliance costs: The limitations on smoking are being instituted in order to protect the health and safety of individuals receiving services, and those who support them, in certified settings. OPWDD has determined that the proposed amendments will not cause undue hardship to small business providers due to increased costs or increased compliance requirements. The development and implementation of policies and procedures in accordance with the new requirements may result in some minimal costs to the provider agencies, but these costs are far outweighed by the long-term health and fire safety benefits that will come from the implementation of the requirements. Regarding the requirement that agencies use non-combustible receptacles for designated outdoor smoking areas, OPWDD expects that the vast majority of agencies already have the required receptacles and that it will result in the need to purchase a receptacle in very few circumstances. In any case, the cost of receptacles is minimal and the benefit of avoiding fires outweighs the minimal costs.

There are no compliance costs to local governments.

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

6. Minimizing adverse economic impact: The emergency/proposed regulations impose minimal adverse economic impact on small businesses and no adverse economic impact on local governments. OPWDD has reviewed and considered the approaches for minimizing the adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified the emergency/proposed regulations to delay the effective date for the development of policies and procedures in order to enable providers to have adequate lead time for this activity and

use existing staff to implement the changes. Further, OPWDD considers that the minimal adverse economic impact is more than justified by the enhancement to the health and safety of the individuals served in these facilities. In addition, OPWDD expects that agencies will realize savings in the future associated with fire prevention and improvement in the health of the individuals served.

7. Small business participation: A proposed revision to the OPWDD policy on fire safety, which included prohibitions and limitations on smoking, was shared with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), and discussed at Provider Association meetings on March 27, 2012 and April 23, 2012. (NYSACRA represents a variety of non-profit agencies throughout the state; some of these agencies employ fewer than 100 employees and qualify as small businesses. NYSACRA representatives participate in Provider Association meetings.) The emergency/proposed regulations were developed, in part, based on the policy revision and comments from NYSACRA and other provider representatives at the March 27, 2012 and April 23, 2012 meetings. The specific provisions of the emergency/proposed regulations were discussed at a Provider Association meeting on May 21, 2012. Recommendations made at that meeting were incorporated into the regulations.

Rural Area Flexibility Analysis

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

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The regulations prohibit smoking inside most residential facilities and all clinic and day program facilities that are certified or operated by OPWDD, and place limitations on smoking on the grounds of these facilities. The regulations also include smoking-related policy and procedures requirements and fire safety precautions. The limitations on smoking are being instituted in order to protect the health and safety of individuals receiving services, and those who support them, in facilities that are certified or operated by OPWDD. OPWDD has determined that the emergency/proposed amendments will not cause undue hardship to provider agencies in rural areas due to increased costs or increased compliance requirements. The development and implementation of policies and procedures in accordance with the new requirements may result in some minimal costs to the provider agencies, but these costs are far outweighed by the long-term health and fire safety benefits that will result from implementation of the requirements.

The emergency/proposed regulations result in no new costs for local governments.

2. Compliance requirements: Most of the new requirements contained in the emergency/proposed regulations were previously imposed by OPWDD through an Administrative Memorandum, which addressed smoking in residential facilities and certified day programs. OPWDD expects that providers are already in compliance with these requirements and therefore no new compliance activities are necessary concerning those provisions. The emergency/proposed regulations exceed the requirements that were previously imposed in several ways. First, the emergency/proposed regulations require agencies to develop policies and procedures if they operate supportive residences that serve individuals who smoke. In the event that an agency chooses to allow smoking inside a particular supportive residence, it must conduct an appraisal of the circumstances presented at that site. Further, when an agency that operates any type of certified residential facility (except family care) serves individuals who smoke, the agency must develop policies and procedures to address smoking safety, and smoking related health care issues, for each facility resident who smokes. These policies and procedures must incorporate specified mechanisms, such as mechanisms to offer and provide services and supports to promote smoking cessation. The emergency/proposed regulations also require that if an agency designates an outdoor smoking area, it must equip the area with a non-combustible receptacle.

OPWDD anticipates that agencies will use current staff to develop and implement the required policies. Agencies may also need to purchase new receptacles, if the agencies do not already have appropriate receptacles. OPWDD has determined that the proposed amendments will not cause undue hardship to provider agencies in rural areas due to increased costs or increased compliance requirements.

The proposed amendments contain no compliance requirements for local governments.

3. Professional services: No additional professional services are required as a result of these emergency/proposed regulations and the regulations will have no impact on the professional service needs of local governments.

4. Compliance costs: The limitations on smoking are being instituted in order to protect the health and safety of individuals receiving services, and those who support them, in the certified settings. OPWDD has determined that the proposed amendments will not cause undue hardship to provider agencies in rural areas due to increased costs or increased compliance requirements. The development and implementation of policies and procedures in accordance with the new requirements may result in some minimal costs to the provider agencies, but these costs are far outweighed by the long-term health and fire safety benefits that will come from the implementation of the requirements. Regarding the requirement that agencies use non-combustible receptacles for designated outdoor smoking areas, OPWDD expects that the vast majority of agencies already have the required receptacles and that it will result in the need to purchase a receptacle in very few circumstances. In any case the cost of receptacles is minimal and the benefit of avoiding fires outweighs the minimal costs.

There are no compliance costs to local governments.

5. Minimizing adverse economic impact: The emergency/proposed regulations impose minimal adverse economic impact on provider agencies in rural areas and no adverse economic impact on local governments. OPWDD has reviewed and considered the approaches for minimizing the adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified the emergency/proposed regulations to delay the effective date for the development of policies and procedures in order to enable providers to have adequate lead time for this activity and use existing staff to implement the changes. Further, OPWDD considers that the minimal adverse economic impact is more than justified by the enhancement to the health and safety of the individuals served in these facilities. In addition, OPWDD expects that agencies will realize savings in the future associated with fire prevention and improvement in the health of the individuals served.

6. Participation of public and private interests in rural areas: A proposed revision to the OPWDD policy on fire safety, which included prohibitions and limitations on smoking, was shared with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), and discussed at Provider Association meetings on March 27, 2012 and April 23, 2012. (NYSACRA represents a variety of non-profit agencies throughout New York State, including provider agencies from rural areas. NYSACRA representatives participate in Provider Association meetings) The emergency/proposed regulations were developed, in part, based on the policy revision and comments from NYSACRA and other provider representatives at the March 27, 2012 and April 23, 2012 meetings. The specific provisions of the emergency/proposed regulations were discussed at a Provider Association meeting on May 21, 2012. Recommendations made at that meeting were incorporated into the regulations.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rule making because the rule making does not have a substantial adverse impact on jobs or employment opportunities.

The regulations prohibit smoking inside most residential facilities and all clinic and day program facilities that are operated or certified by OPWDD, and place limitations on smoking on the grounds of these facilities. The regulations also include smoking-related policy and procedures requirements and fire safety precautions.

Most of the new requirements contained in the emergency/proposed regulations were previously imposed by OPWDD through an Administrative Memorandum, which addressed smoking in residential facilities and certified day programs. However, the emergency/proposed regulations also include new requirements mandating policies and procedures to address exemptions to the smoking prohibition in supportive living environments and to address smoking safety and smoking cessation efforts for individuals in all certified residential facilities (except family care) who continue to smoke. The development and implementation of these policies and procedures will have some impact on staff time in facilities that are certified or operated by OPWDD; however, OPWDD expects that the changes can be accomplished using existing staff.

One of OPWDD's core values is to promote the health and well-being of individuals with developmental disabilities and those who support them. The new requirements may have a positive impact on employee health and wellbeing, but OPWDD does not anticipate any substantial impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Modification of the 7/20/2011 Order to Modify the Rate Calculation Methodology for Submetered Electric Service

I.D. No. PSC-06-12-00008-A

Filing Date: 2012-10-24

Effective Date: 2012-10-24

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

Action taken: On 10/18/12, the PSC adopted an order approving the request of 4615 East Coast LLC for modification of the 7/20/2011 Order to modify the rate calculation methodology for submetered electric service at 4615 Center Boulevard, Long Island City, New York.

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

Subject: Modification of the 7/20/2011 Order to modify the rate calculation methodology for submetered electric service.

Purpose: To approve the modification of the 7/20/2011 Order to modify the rate calculation methodology for submetered electric service.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving the request of 4615 East Coast LLC for modification of the July 20, 2011 Order to modify the rate calculation methodology for submetered electric service at 4615 Center Boulevard, Long Island City, New York located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0430SA2)

NOTICE OF ADOPTION

To Increase the Performance Standard for the Small Commercial and Industrial Satisfaction Survey Index

I.D. No. PSC-26-12-00013-A

Filing Date: 2012-10-24

Effective Date: 2012-10-24

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

Action taken: On 10/18/12, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition to increase the performance standard for the small commercial and industrial satisfaction survey index to be effective on 1/1/12.

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

Subject: To increase the performance standard for the small commercial and industrial satisfaction survey index.

Purpose: To approve an increase of the performance standard for the small commercial and industrial satisfaction survey index.

Substance of final rule: The Commission, on October 18, 2012 adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition to increase the performance standard for the small commercial and industrial satisfaction survey index to be effective on January 1, 2012, 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, 3 Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann.ayer@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0050SA12)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Regarding Capacity Limits for Net Metered Electrical Generating Systems

I.D. No. PSC-46-12-00008-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered generating systems in New York State Electric and Gas Corporation's service territory under PSL 66-j and 66-l.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Tariff regarding capacity limits for net metered electrical generating systems.

Purpose: To increase availability of net metering in New York State Electric and Gas Corporation's service territory.

Substance of proposed rule: The Commission is considering whether to increase the capacity limits for net metered electric generating systems in New York State Electric and Gas Corporation's (NYSEG) service territory pursuant to Public Service Law (PSL) § 66-j and § 66-l. The minimum capacity limitation established under PSL § 66-j (3)(a)(iii) is one percent of the electric corporation's electric demand for the year 2005 - in NYSEG's territory 110.82 MW. The minimum capacity limitation established under PSL § 66-l (3)(a)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in NYSEG's territory, 33.25 MW. Pursuant to its authority under PSL § 66-j (3)(b) and § 66-l (3)(b), the Commission will consider whether to increase the percent limits and may direct NYSEG to file tariff amendments providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

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

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

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

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

(12-E-0486SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Cost Recovery Fee Requirements

I.D. No. PSC-46-12-00009-P

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

Proposed Action: The Commission is considering whether to adopt, modify, or reject, in whole or in part, or to take any other action regarding a NYSERDA petition for approval to use interest earned on ConEd Gas Program Funds to pay the state's Cost Recovery Fee.

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

Subject: New York State Cost Recovery Fee requirements.

Purpose: To approve NYSERDA's request to use interest earned on ConEd EEPS gas program funds to pay share of State Cost Recovery Fee.

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 a January 3, 2012 petition from the New York State Research and Development Authority (NYSERDA). The petition requests authorization to use \$287,404, and any such additional amounts may be necessary, in available interest earned on Consolidated Edison Company of New York, Inc. (Con Ed) Gas Program funds, to pay the share of the State Cost Recovery Fee that is allocable to the Con Ed Gas Programs authorized by the Commission.

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

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

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

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

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

(06-G-1332SP4)

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

Tariff Regarding Installed Capacity Limits for Net Metered Electrical Generating Systems

I.D. No. PSC-46-12-00010-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered generating systems in Orange and Rockland Utilities, Inc.'s service territory under PSL 66-j and 66-l.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Tariff regarding installed capacity limits for net metered electrical generating systems.

Purpose: To increase net metering availability in Orange and Rockland Utilities Inc.'s service territory.

Substance of proposed rule: The Commission is considering whether to increase the capacity limits for net metered electric generating systems in Orange and Rockland's (O&R) service territory pursuant to Public Service Law (PSL) § 66-j and § 66-l. The minimum capacity limitation established under PSL § 66-j (3)(a)(iii) is one percent of the electric corporation's electric demand for the year 2005 - in O&R's territory 10.4 MW. The minimum capacity limitation established under PSL § 66-l (3)(a)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in O&R's territory, 3.10 MW. Pursuant to its authority under PSL § 66-j (3)(b) and § 66-l (3)(b), the Commission will consider whether to increase the percent limits and may direct O&R to file tariff amendments providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(12-E-0488SP1)

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

Tariff Regarding Installed Capacity Limits for Net Metered Electrical Generating Systems

I.D. No. PSC-46-12-00011-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered generating systems in Consolidated Edison Company of New York, Inc.'s service territory under PSL 66-j and 66-l.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Tariff regarding installed capacity limits for net metered electrical generating systems.

Purpose: To increase net metering availability in Consolidated Edison Company of New York, Inc.'s service territory.

Substance of proposed rule: The Commission is considering whether to increase the capacity limits for net metered electric generating systems in Consolidated Edison Company of New York, Inc.'s (Con Edison) service territory pursuant to Public Service Law (PSL) § 66-j and § 66-l. The minimum capacity limitation established under PSL § 66-j(3)(a)(iii) is one percent of the electric corporation's electric demand for the year 2005 - in Con Edison's territory 110.82 MW. The minimum capacity limitation established under PSL § 66-l(3)(a)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in Con Edison's territory, 33.25 MW. Pursuant to its authority under PSL § 66-j(3)(b) and § 66-l(3)(b), the Commission will consider whether to increase the percent limits and may direct Con Edison to file tariff amendments providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

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

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

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

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

(12-E-0485SP1)

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

Tariff Regarding Installed Capacity Limits for Net Metered Electrical Generating Systems

I.D. No. PSC-46-12-00012-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered generating systems in Rochester Gas and Electric Corporation's service territory under PSL 66-j and 66-l.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Tariff regarding installed capacity limits for net metered electrical generating systems.

Purpose: To increase net metering availability in Rochester Gas and Electric Corporation's service territory.

Substance of proposed rule: The Commission is considering whether to

increase the capacity limits for net metered electric generating systems in Rochester Gas and Electric Corporation's (RG&E) service territory pursuant to Public Service Law (PSL) § 66-j and § 66-l. The minimum capacity limitation established under PSL § 66-j(3)(a)(iii) is one percent of the electric corporation's electric demand for the year 2005 - in RG&E's territory 16.24 MW. The minimum capacity limitation established under PSL § 66-l(3)(a)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in RG&E's territory, 4.88 MW. Pursuant to its authority under PSL § 66-j(3)(b) and § 66-l(3)(b), the Commission will consider whether to increase the percent limits and may direct RG&E to file tariff amendments providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

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

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

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

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

(12-E-0489SP1)

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

Tariff Regarding Installed Capacity Limits for Net Metered Electrical Generating Systems

I.D. No. PSC-46-12-00013-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered generating systems in Niagara Mohawk Power Corporation's service territory under PSL 66-j and 66-l.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Tariff regarding installed capacity limits for net metered electrical generating systems.

Purpose: To increase net metering availability in Niagara Mohawk Power Corporation's service territory.

Substance of proposed rule: The Commission is considering whether to increase the capacity limits for net metered electric generating systems in Niagara Mohawk Power Corporation's (Niagara Mohawk) service territory pursuant to Public Service Law (PSL) § 66-j and § 66-l. The minimum capacity limitation established under PSL § 66-j (3)(a)(iii) is one percent of the electric corporation's electric demand for the year 2005 - in Niagara Mohawk's territory 65.26 MW. The minimum capacity limitation established under PSL § 66-l (3)(a)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in Niagara Mohawk's territory, 19.61 MW. Pursuant to its authority under PSL § 66-j (3)(b) and § 66-l (3)(b), the Commission will consider whether to increase the percent limits and may direct Niagara Mohawk to file tariff amendments providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

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

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

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

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

(12-E-0487SP1)

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

Central Hudson Tariff Regarding Net Metering of Residential, Non-Residential, and Farm Service Wind Electric Generating Systems

I.D. No. PSC-46-12-00014-P

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

Proposed Action: The Commission is considering whether to increase the installed capacity limits for net metered residential, non-residential, and farm wind electric generating systems in Central Hudson Gas and Electric Corporation's service territory under PSL 66-l.

Statutory authority: Public Service Law, section 66-l

Subject: Central Hudson tariff regarding net metering of residential, non-residential, and farm service wind electric generating systems.

Purpose: To increase the capacity limits for net metered residential, non-residential, and farm service wind electric generating systems.

Substance of proposed rule: The Commission is considering whether to increase the capacity limits for net metered residential, non-residential, and farm service wind electric generating systems in Central Hudson Gas and Electric Corporation's (Central Hudson) service territory pursuant to Public Service Law (PSL) § 66-l. The minimum capacity limitation established under PSL § 66-l (a)(3)(iii) is three-tenths of one percent of the electric corporation's electric demand for the year 2005, in Central Hudson's territory, 3.60 MW. Pursuant to its authority under PSL § 66-l (2)(b), the Commission will consider whether to increase the percent limit and may direct Central Hudson to file a tariff amendment providing for additional net metering capacity if it determines such an increase is in the public interest. The Commission may apply aspects of its decision here to the requirements for tariffs of other utilities. The Commission may grant, deny, modify or take other action related to the petition.

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

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

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

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

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

(12-E-0490SP1)

Department of State

EMERGENCY RULE MAKING

Address Confidentiality Program

I.D. No. DOS-46-12-00001-E

Filing No. 1063

Filing Date: 2012-10-25

Effective Date: 2012-10-25

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

Action taken: Addition of Part 134 to Title 19 NYCRR.

Statutory authority: Executive Law, section 108

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

Specific reasons underlying the finding of necessity:

This emergency rule is necessary to implement the Address Confidentiality Program required by Executive Law § 108.

Subject: Address Confidentiality Program.

Purpose: To implement the Address Confidentiality Program required by Executive Law section 108.

Substance of emergency rule: The new 19 NYCRR part 134 sets forth the practices and procedures of the Secretary of State relative to Executive Law section 108, Address Confidentiality Program ("ACP"). The proposed regulations would implement the ACP statute by defining key terms and establishing rules for applications, cancellation appeals, certification and training of application assistants, handling of confidential information and waiver requests by state and local agencies, agency release of participant information and acceptance of service of process by the Secretary of State.

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 January 22, 2013.

Text of rule and any required statements and analyses may be obtained from: Gary Trechel, NYS Department of State, 99 Washington Avenue, Albany, NY 12231, (518) 473-2278, email: Gary.Trechel@dos.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Executive Law § 108 (L. 2011, ch. 502, as amended by S.7638, L. 2012, ch. 491) requires the Department of State to establish an "Address Confidentiality Program" ("ACP") and directs the Secretary of State to promulgate rules and regulations to implement the program consistent with the statute.

2. Legislative objectives:

The Legislature enacted legislation to establish the ACP in order to provide additional protections for victims of domestic violence. As required by Executive Law § 108, the ACP will provide a substitute address for victims of domestic violence, and their household members, who have left their homes due to safety concerns, with the ACP receiving mail for and forwarding it to program participants. The legislation requires state and local government agencies to accept the ACP substitute address (private entities may, but are not required to do so), and allows the Secretary of State to grant waivers to agencies under narrowly defined circumstances set forth in the statute. The legislative sponsors have indicated that they view the statute as authorizing waivers in only very limited circumstances in order to reduce the likelihood that a program participant's actual address would be disclosed.

The proposed regulations would implement the ACP statute by defining key terms and establishing rules for applications, cancellation appeals, certification and training of application assistants, handling of waiver requests by state and local agencies, releasing participant information and accepting of service of process by the Secretary of State.

3. Needs and benefits:

These proposed emergency regulations implement Executive Law § 108.

4. Costs:

These proposed emergency regulations do not impose any additional costs beyond the requirements of Executive Law § 108. The costs to comply with Executive Law § 108 will be minimal, and will fall primarily on state agencies.

5. Local government mandates:

Executive Law § 108 requires all local government agencies to accept the ACP substitute address unless they have received waivers from the Secretary of State that would allow them to confidentially maintain actual address information for program participants. These proposed emergency regulations implement this statute, including defining a process for requesting waivers, but do not impose additional requirements.

6. Paperwork:

These proposed emergency regulations do not impose any reporting requirements.

7. Duplication:

These proposed regulations do not duplicate any existing requirements of the state and federal governments.

8. Alternatives:

No significant alternatives were considered.

9. Federal standards:

The federal government does not have any minimum standards for this or similar programs.

10. Compliance schedule:

State and local government agencies will be required to begin accepting the ACP substitute address only when ACP participants personally request that they do so. The ACP will begin accepting participant applications upon the approval of S.7638 of 2012 (L. 2012, ch. 491, amending Executive Law § 108).

Regulatory Flexibility Analysis

1. Effect of rule:

Executive Law § 108 requires all state and local government agencies to accept the Address Confidentiality Program ("ACP") substitute address provided to participating domestic violence victims and household members. The new 19 NYCRR Part 134 will implement this statutorily-required program.

2. Compliance requirements:

Local governments, including those in rural areas, are required to accept the ACP substitute address unless they have received waivers from the Secretary of State. Acceptance of the substitute address may require modest changes to some record-keeping processes, the extent of which will vary depending on the nature of the implicated government agency records. Government agencies that opt to seek waivers to confidentially maintain actual address information for ACP participants will be required to prepare and submit applications to the Secretary of State.

3. Professional services:

Compliance with 19 NYCRR Part 134 is not expected to require any local government to seek outside services.

4. Compliance costs:

These proposed emergency regulations do not impose any additional costs beyond the requirements of Executive Law § 108. The costs to comply with Executive Law § 108 will be minimal, and will fall primarily on state agencies.

5. Economic and technological feasibility:

Compliance with Executive Law § 108 and 19 NYCRR Part 134 is expected to be economically and technologically feasible for all local governments.

6. Minimizing adverse impact:

Executive Law § 108 applies to all local governments in the state, and 19 NYCRR Part 134 will implement this statute. Any adverse impacts of this statutory program on local governments are statutorily required and cannot be minimized.

7. Small business and local government participation:

Local governments were not consulted prior to this emergency rulemaking, but will be invited to comment during the formal rulemaking process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Executive Law § 108 requires all state and local government agencies to accept the Address Confidentiality Program ("ACP") substitute address provided to participating domestic violence victims and household members. This statutory requirement, to be implemented by 19 NYCRR Part 134, will apply to local governments in all rural areas of the state.

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

Local governments, including those in rural areas, are required to accept the ACP substitute address unless they have received waivers from the Secretary of State. Acceptance of the substitute address may require modest changes to some record-keeping processes, the extent of which will vary depending on the nature of the implicated government agency records. Government agencies that opt to seek waivers to confidentially maintain actual address information for ACP participants will be required to prepare and submit applications to the Secretary of State. These functions are not expected to require any local governments to seek outside services.

3. Costs:

These proposed emergency regulations do not impose any additional costs beyond the requirements of Executive Law § 108. The costs to comply with Executive Law § 108 will be minimal, and will fall primarily on state agencies.

4. Minimizing adverse impact:

Executive Law § 108 applies to all local governments in the state, including those in rural areas, and 19 NYCRR part 134 will implement this statute. Any adverse impacts of this statutory program on local governments will not be confined to rural areas and cannot be minimized.

5. Rural area participation:

Local governments in rural areas were not consulted prior to this emergency rulemaking, but will be invited to comment during the formal rulemaking process.

Job Impact Statement**1. Nature of impact:**

The addition of Part 134 implements Executive Law § 108, which requires all state and local government agencies, including those in rural areas, to accept the Address Confidentiality Program (ACP) substitute address provided to participating domestic violence victims and household members unless they have received waivers from the Secretary of State.

2. Categories and numbers affected:

The promulgation of Part 134 is not anticipated to have any long-term effects on the number of current jobs or future employment opportunities throughout New York State.

3. Regions of adverse impact:

The proposed Part 134 is a statewide regulation. This regulation is not expected to impose adverse economic impact, reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. It does not impact any region or area of the state disproportionately in terms of jobs or employment opportunities.

4. Minimizing adverse impacts:

The Department does not expect any adverse impacts on jobs in New York State based on the proposed addition of Part 134. This is a statewide regulation. The requirements are the same for all participants, and will not impact job opportunities in the State.