RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Incorporation by Reference of the 2011 Edition of the Grade A Pasteurized Milk Ordinance (''PMO'')

I.D. No. AAM-29-13-00013-A
Filing No. 964
Filing Date: 2013-10-01
Effective Date: 2013-10-16

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

Action taken: Amendment of section 2.1(b)(1) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214-b

Subject: Incorporation by reference of the 2011 edition of the Grade A Pasteurized Milk Ordinance (''PMO'').

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the 2011 edition of the PMO.

Text or summary was published in the July 17, 2013 issue of the Register, I.D. No. AAM-29-13-00013-P.

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

Text of rule and any required statements and analyses may be obtained from: Casey McCue, Director, Division of Milk Control, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-42-13-00003-E
Filing No. 953
Filing Date: 2013-09-26
Effective Date: 2013-09-26

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

Action taken: Amendment of Subparts 166-1, 182-1, 182-2 and Part 180 of Title 9 NYCRR; and amendment of Parts 402, 414, 416, 417, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477, 489 and Subparts 418-1 and 418-2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, section 501(5); and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center will oversee and improve consistency in responses to incidents of abuse and neglect of vulnerable people. The Justice Center has been tasked with establishing standards for tracking and investigating complaints and enforcement against those who commit substantiated acts of abuse and neglect. The legislation requires the Office of Children and Family Services, as a state oversight agency of vulnerable persons, to develop standards consistent with the Justice Center. These standards are to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The Office of Children and Family Services must promulgate regulations to provide notice, guidance and standards to all facilities, provider agencies and employees who are affected by the legislation. The Justice Center takes effect June 30, 2013.

Facilities and provider agencies covered by the legislation include voluntary agencies that operate residential programs that are licensed or certified by the Office of Children and Family Services, runaway and homeless youth programs, family type homes for adults, detention programs, juvenile justice programs, institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out of state facilities.

As of June 30, 2013 reports of suspected child abuse or neglect in a residential program will no longer be part of the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in residential care must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facili-

ties, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the June 30, 2013 implementation of the Justice Center legislation.

Promulgating emergency regulations will ensure compliance with legislative requirements and provide the necessary guidance to affected persons. Absent the filing of emergency regulations, guidance, protections and processes will not be available to the aforementioned listed facilities and agencies.

Subject: Protection of Vulnerable Persons.

Purpose: Create a durable set of consistent safeguards for vulnerable persons that protect them against abuse, neglect and other conduct.

Substance of emergency rule: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The legislation requires the Office of Children and Family Services ("OCFS) to promulgate regulations consistent with the Justice Center oversight, regulations and enforcement. These regulations enact changes in line with the legislation to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The included additions and amendments allow OCFS to comply with the statutory requirements that become effective June 30, 2013.

Facilities and provider agencies that operate residential programs for children or adults that are affected are the following: runaway and homeless youth programs, family type homes for adults, detention programs, juvenile justice programs, institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out-of-state facilities. Regulations were added or amended to incorporate reporting, investigative, record keeping, record production, administrative, and personnel requirements, among others.

The first category of regulations added or amended address jurisdictional of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated residential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

The second category of regulations added or amended addresses requirements of mandated reporters and what mandated reporters will be required to report to the VCPR. Acts of abuse/neglect and significant incidents are defined and procedures regarding making a report to the VPCR are outlined.

The third category of regulations added or amended provides for the requirement of data collection by the facility or provider agencies in response to requests by the Justice Center and standards for release of that information by the Justice Center.

The fourth category of regulations added or amended provides for the creation of incident review committees to affected facilities and provider agencies.

Lastly, among other areas, criminal history background checks and checks of the Justice Center's list of substantiated category one reports of abuse and neglect prior to hiring certain employees, use of volunteers or contracts with certain entities have been added or amended.

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 December 24, 2013.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 490 of the SSL as found in Chapter 501 of the Laws of 2012 requires the Commissioner of OCFS to promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the justice center and addressing incident management programs required by the Chapter Law.

2. Legislative objectives:

The proposed change to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS is necessary to further the legislative objective that vulnerable persons be safe and afforded appropriate care.

3. Needs and benefits:

The proposed change to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS provides are in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on authorized agencies, family type homes for adults, or on the social services districts with regard to reporting and record keeping requirements. Current laws and regulations impose levels of reporting and record keeping. Authorized agencies in confirming and complying with the new statutory and regulatory requirements will necessarily have to reconfigure current utilization of staff and duties. The enhancement of services for the protections of Vulnerable Persons will incur additional costs.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Local Districts will be provided with an amended model contract for use in securing out of state residential services for children in foster care. This will replace a model contract already in existence and used by Local Districts.

6. Paperwork:

The proposed regulations do not require any additional paperwork. Requirements regarding documentation are currently in regulation. These regulations will require sharing such documentation with the Justice Center.

7. Duplication:

The proposed regulations do not duplicate any other State or federal requirements.

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

Social services districts and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Authorized agencies, facilities and mandated reporters currently report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Requirements in Social Services Law Section 490 and 491 now require mandated reporters to report all reportable incidents, which include but are not limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized agencies and facilities will maintain a current level of recordkeeping as it relates to prevention and remediation plans. Authorized agencies and facilities will have to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Executive Law Article 20.

3. Costs:

The proposed regulatory changes will require authorized agencies and facilities are currently subjected to reporting and record keeping requirements, costs would not be added to these current obligations. The statutory enhancements provided for by the Protection of People with Special Needs Act will create uniform standards across systems. There will be added costs with the implementation of standardization of responses and needs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and record keeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.

6. Small business and local government participation:

Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

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

Authorized agencies, facilities and mandated reporters employed by the same are currently required to report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, mandated reporters will be required to report all reportable incidents, which will include but not be limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments conform current practice to meet statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

An authorized agency or facility is currently subject to requirements governing reporting, record keeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.

5. Rural area participation:

Potential changes to the regulations governing implementation of the statutes and regulations governing the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of socials services districts, authorized agencies, including those that serve rural communities.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Limited Credit Time Allowance

I.D. No. CCS-31-13-00004-A
Filing No. 957
Filing Date: 2013-09-27
Effective Date: 2013-10-16

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

Action taken: Addition of Part 290 to Title 7 NYCRR.

Statutory authority: Correction Law, sections 112 and 803-b

Subject: Limited Credit Time Allowance.

Purpose: To promulgate rules that will codify DOCCS requirements and procedures for offenders to earn the Limited Credit Time Allowance.

Text or summary was published in the July 31, 2013 issue of the Register, I.D. No. CCS-31-13-00004-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Commercial and Recreational Regulations for Atlantic Menhaden

I.D. No. ENV-32-13-00004-A
Filing No. 965
Filing Date: 2013-10-01
Effective Date: 2013-10-16

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

Action taken: Amendment of section 40.1(f); and addition of section 40.1(x) to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105 and 13-0342

Subject: Commercial and recreational regulations for Atlantic menhaden.

Purpose: Establish commercial quota management, reporting requirements and a recreational possession limit for Atlantic menhaden.

Text or summary was published in the August 7, 2013 issue of the Register, I.D. No. ENV-32-13-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kamckown@gw.dec.state.ny.us

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The department received comments on two different aspects of the rule from one permit holder.

Comment: One comment recommended that the holders of certain permits (marine bait and lobster bait gillnet) be held to more restrictive daily trip limits then other permit holders.

DEC response: The rule establishes a quota management system which allows the department to establish different quotas and daily trip limits for different gears and/or permits. Since the proposed rule can address the permit holder's comment, the department feels there is no need to amend the text.

Comment: The permit holder also recommended that the recreational possession limit should be a five gallon bucket, not 100 fish. The permit holder felt that enforcement officers would not have the time to count 100 fish.

DEC Response: DEC Division of Law Enforcement has provided input on the rule making and has indicated that a number limit is easy to enforce. The department does not believe there is a need to amend the recreational possession limit.

Department of Financial Services

EMERGENCY RULE MAKING

Adjustment of the Subprime Threshold as Established in Banking Law Section 6-m

I.D. No. DFS-42-13-00005-E

Filing No. 961

Filing Date: 2013-09-30

Effective Date: 2013-09-30

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

Action taken: Addition of Part 42 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; and Banking Law, section 6-m

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

Specific reasons underlying the finding of necessity: Section 6-m of the Banking Law provides for the regulation of subprime home loans. Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than a specified number of percentage points the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage (the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. The FHA's revised policy has caused significantly more FHA-insured loans to exceed the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain FHA-insured loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04.

Subject: Adjustment of the subprime threshold as established in Banking Law Section 6-m.

Purpose: To adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

Text of emergency rule: *PART 42. SUBPRIME HOME LOANS – THRESHOLDS*

§ 42.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term "fully-indexed rate" is defined in Section 6-m(1)(b) to mean "(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the 'good faith estimate' required under 12 USC § 2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment."

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary. . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) Threshold Adjustment. Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC § 2601 et seq."

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

i. Title I Home Improvement Loans;

ii. Home Equity Conversion Mortgages; and

iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.

This Part shall be effective immediately.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires December 28, 2013.

Text of rule and any required statements and analyses may be obtained from: Harry Goberdhan, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1669, email: harry.goberdhan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary... to alleviate such unduly negative effects."

2. Legislative objectives.

Part 42 of the Superintendent's Regulations sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

3. Needs and benefits.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that a rule change by the FHA concerning the calculation of the annual MIP has effectively decreased the threshold for certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

5. Local government mandates.

This 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.

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

7. Duplication.

The proposed regulation does not duplicate, overlap, or conflict with any other regulations.

8. Alternatives.

The Department could choose not to adopt a regulation with respect to adjusting the subprime threshold as established in Banking Law Section 6-m. The emergency adoption of this regulation, however, will restore the availability of mortgage financing to the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP, which will benefit borrowers throughout New York State.

9. Federal standards.

There are no applicable federal standards.

10. Compliance schedule.

It is proposed that the regulation be effective upon filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulation of Subprime Home Loans

I.D. No. DFS-42-13-00006-P

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

Proposed Action: Addition of Part 43 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; and Banking Law, section 6-m

Subject: Regulation of Subprime Home Loans.

Purpose: To define the meaning of certain terms in Section 6-m of the Banking Law.

Text of proposed rule: *PART 43. SUBPRIME HOME LOANS – MEANING OF TERMS*

§ 43.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute.

Pursuant to the authority provided by Section 302(2) of the Financial Services Law, the Superintendent of Financial Services is authorized to interpret the provisions of the Banking Law, including Section 6-m. This Part is issued pursuant to this authority, and it applies to all subprime home loans as defined in the Banking Law.

§ 43.2 Meaning of Certain Terms.

The following interpretations shall be used in determining whether a loan is a subprime home loan:

a. The term "Week" referred to in the phrase the "week prior to the week in which the lender provides the 'good faith estimate'" used in Section 6-m(1)(c) shall in all cases mean the seven-day period from Friday through Thursday, the day in which the Federal Home Loan Mortgage Corporation publishes its Primary Mortgage Market Survey ("PMMS"). Therefore, the relevant PMMS for purposes of Section 6-m(1)(c) is the one published on the Thursday prior to receiving the good faith estimate. For example, if a lender provides a good faith estimate on any day including Friday, June 14 through Thursday, June 20, the relevant PMMS is the one published on Thursday, June 13. For a good faith estimate issued on Friday, June 21 through Thursday, June 27, the relevant PMMS is the one published on Thursday, June 20.

b. The term "Good Faith Estimate" referred to in the phrase '' 'good faith estimate' required under 12 USC § 2601 et seq." used in Section 6-m(1)(c) shall in all cases mean the good faith estimate used to establish the terms of the mortgage loan. This shall be the revised good faith estimate if one has been issued.

c. The term "Commitment" referred to in the phrase "the time the lender issues its commitment" used in Section 6-m(1)(b) shall in all cases where a commitment is not issued by the lender mean the "Good Faith Estimate".

§ 43.3 Effective Date.

This part shall be effective upon adoption.

Text of proposed rule and any required statements and analyses may be obtained from: Harry Goberdhan, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1669, email: Harry.Goberdhan@DFS.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Pursuant to the authority provided by Section 302(2) of the Financial Services Law, the Superintendent of Financial Services is authorized to interpret the provisions of the Banking Law, including Section 6-m. Part 43 is issued pursuant to this authority, and it applies to all subprime home loans as defined in Section 6-m of the Banking Law.

2. Legislative objectives.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. The purpose of this proposed regulation is to interpret the meaning of the term "Week" referred to in the phrase the "week prior to the week in which the lender provides the 'good faith estimate' '' used in Section 6-m(1)(c); the term "Good Faith Estimate" referred to in the phrase '' 'good faith estimate' required under 12 USC § 2601 et seq." used in Section 6-m(1)(c); and the term "Commitment" referred to in the phrase "the time the lender issues its commitment" used in Section 6-m(1)(b).

3. Needs and benefits.

Industry representatives and consumer groups have informed the Department that certain terms used in Section 6-m of the Banking Law are subject to more than one interpretation and requested clarification. Providing this clarification pursuant to statutory authority will benefit the industry and consumers alike by providing interpretations that can be uniformly applied when determining underwriting standards for subprime home loans.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply interprets the meaning of certain terms appearing in Section 6-m of the Banking Law.

5. Local government mandates.

This 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.

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply interprets the meaning of certain terms appearing in Section 6-m of the Banking Law.

7. Duplication.

The proposed regulation does not duplicate, overlap, or conflict with any other regulations.

8. Alternatives.

The Department could choose not to adopt a regulation with respect to interpreting certain terms appearing in Section 6-m of the Banking law. The proposed regulation, however, will provide clarity by providing interpretations that can be uniformly applied when determining underwriting standards for subprime home loans.

9. Federal standards.

There are no applicable federal standards.

10. Compliance schedule.

It is proposed that the regulation be effective upon Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of this proposed regulation is to interpret the meaning of the term "Week" referred to in the phrase the "week prior to the week in which the lender provides the 'good faith estimate' '' used in Section 6-m(1)(c); the term "Good Faith Estimate" referred to in the phrase '' 'good faith estimate' required under 12 USC § 2601 et seq." used in Section 6-m(1)(c); and the term "Commitment" referred to in the phrase "the time the lender issues its commitment" used in Section 6-m(1)(b). Pursuant to the authority provided by Section 302(2) of the Financial Services Law, the Superintendent of Financial Services is authorized to interpret the provisions of the Banking Law, including Section 6-m. Part 43 is issued pursuant to this authority, and it applies to all subprime home loans as defined in Section 6-m of the Banking Law. Since nothing in this proposed regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of this proposed regulation is to interpret the meaning of the term "Week" referred to in the phrase the "week prior to the week in which the lender provides the 'good faith estimate' '' used in Section 6-m(1)(c); the term "Good Faith Estimate" referred to in the phrase '' 'good faith estimate' required under 12 USC § 2601 et seq." used in Section 6-m(1)(c); and the term "Commitment" referred to in the phrase "the time the lender issues its commitment" used in Section 6-m(1)(b). Pursuant to the authority provided by Section 302(2) of the Financial Services Law, the Superintendent of Financial Services is authorized to interpret the provisions of the Banking Law, including Section 6-m. Part 43 is issued pursuant to this authority, and it applies to all subprime home loans as defined in Section 6-m of the Banking Law. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of this proposed regulation is to interpret certain terms appearing in Section 6-m of the Banking Law; specifically, the meaning of the term "Week" referred to in the phrase the "week prior to the week in which the lender provides the 'good faith estimate' '' used in Section 6-m(1)(c); the term "Good Faith Estimate" referred to in the phrase '' 'good faith estimate' required under 12 USC § 2601 et seq." used in Section 6-m(1)(c); and the term "Commitment" referred to in the phrase "the time the lender issues its commitment" used in Section 6-m(1)(b). The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

Department of Health

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-42-13-00001-E
Filing No. 951
Filing Date: 2013-09-25
Effective Date: 2013-09-25

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a–460-g, 461 and 461-a–461-h

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a–460-g, 461, 461-a–461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add new definitions of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian" "facility subject to the Justice Center" and "psychological abuse" to sections 487.2 and 488.2
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the number of the Justice Center incident reporting hotline
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the department and the Justice Center
- add new sections 487.14 and 488.13 to address reporting of certain incidents
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center

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 December 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

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different,

or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

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 have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Hospital Pediatric Care

I.D. No. HLT-07-13-00021-RP

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

Proposed Action: Amendment of Part 405 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Hospital Pediatric Care.

Purpose: To amend pediatric provisions and update various provisions to reflect current practice.

Substance of revised rule: This proposal will amend Part 405 (Hospitals – Minimum Standards), primarily with respect to pediatric provisions and also to update various provisions to reflect current practice. Hospitals, for the purposes of Part 405, pertain to general hospitals.

Proposed amendments to Section 405.1 (Introduction) specify that the requirements of Part 405 relating to patient care and services will apply to patients of all ages, including newborns, pediatric and geriatric patients.

Proposed amendments to Section 405.3 (Administration), which currently requires hospitals to provide to the State Education Department ("SED") a written report whenever enumerated professionals licensed by SED lose hospital employment or privileges for certain reasons, will require similar reporting to the Department of Health for certain individuals licensed by such Department.

Proposed amendments to Section 405.6 (Quality Assurance Program) will require hospital quality assurance processes to include a determination that the hospital is admitting only those patients for whom it has appropriate staff, resources and equipment and transferring those patients for whom the hospital does not have the capability to provide care, except under conditions of disasters or emergency surge that may require admissions to provide care to those patients.

A new subdivision (d) is added to Section 405.7 to require hospitals to post and provide a copy of a Parent's Bill of Rights, setting forth the rights of patients, parents of minors, legal guardians or other persons with decision-making authority to certain minimum protections required under other provisions of these regulations. In particular, the Parent's Bill of Rights would advise that patients may not be discharged from the hospital or the emergency room until any tests that could reasonably be expected to yield "critical value" results – results that suggest a life-threatening or otherwise significant condition such that it requires immediate medical attention – are reviewed by a physician, physician assistant (PA), and/or nurse practitioner (NP) and are communicated to the patient, his or her parents or other decision-makers as appropriate.

Proposed amendments to Section 405.9 (Admission/Discharge) specify that a hospital will be required to admit pediatric patients consistent with its ability to provide qualified staff, space and size appropriate equipment necessary for the unique needs of pediatric patients. If the hospital cannot meet these requirements, it will be required to develop criteria and policies and procedures for transfer of pediatric patients. This section also requires hospitals to develop policies and procedures permitting at least one parent/guardian to remain with a pediatric patient at all times, to the extent possible given the patient's health and safety. Proposed amendments will also require hospitals to develop and implement written policies and procedures pertaining to review and communication of laboratory and diagnostic test/service results to the patient and, if the patient is not legally capable of making decisions, the patient's parent, legal guardian, health care agent or health care surrogate, as appropriate and subject to all applicable confidentiality laws and regulations. Such policies and procedures must ensure that no discharge will occur while the results of a test that reasonably could be expected to yield a "critical value" are pending so as to assure appropriate care is provided to the patient. Further, all communication with the patient, parent, legal guardian, etc. must be clear and understandable to the recipient. In addition, the hospital must ask the patient or the patient's representative for the name of the patient's primary care provider, if known, and forward lab results to such provider.

This proposal also updates Section 405.12 (Surgical Services), which currently requires hospitals to develop and implement effective written policies and procedures, to provide that such policies and procedures include the performance of surgical procedures, the maintenance of safety controls and the integration of such services with other related services of the hospital to protect the health and safety of the patients in accordance with generally accepted standards of medical practice and patient care. The amendments will also require hospitals to assure that the privileges of each practitioner performing surgery are commensurate with his or her training and experience. Precautions must be clearly identified in written policies and procedures specific to the surgical service and post anesthesia care unit ("PACU") including appropriate resuscitation, airway and monitoring equipment including a resuscitation cart with age and size appropriate medications, equipment and supplies.

Updates to Section 405.13 (Anesthesia Services), which currently require hospitals to develop and implement effective written policies and procedures on matters such as the administration of anesthetics, the maintenance of safety controls and the integration of such services with other related services of the hospital. Under the amendments, such policies and procedures will have to be reviewed and updated at least biennially. In addition, hospitals will have to establish clinical competencies that are relevant to the care provided and, at a minimum, include instruction in safety precautions, equipment usage and inspections, infection control requirements and any patients' rights requirements pertaining to surgical/anesthesia consents. The amendments further provide that all equipment and services provided must be age and size appropriate.

Updates to Section 405.14 (Respiratory Care Services) will provide that orders for respiratory care services, in addition to specifying the type, frequency and duration of treatment, and as appropriate, the type and dose of medication, the type of diluent, and the oxygen concentration, must be consistent with generally accepted standards of care. The amendments further provide that all equipment and services provided must be age and size appropriate.

Updates to Section 405.15 (Radiologic and Nuclear Medicine Services) will specify that care must be provided in accordance with generally accepted standards of practice. The amendments will also require that policies and procedures regarding imaging studies for newborns and pediatric patients must include standards for clinical appropriateness, appropriate radiation dose and beam collimation, image quality and patient shielding. In addition, a policy and procedure must be developed to ensure that the practitioner's order for an imaging study is specific to the body part(s) that are to be imaged. Quality improvement audits must verify that these policies and procedures are being followed and must include a review of the adequacy of diagnostic images and interpretations. Radiation safety principles must be adequate to ensure compliance with all generally accepted standards of practice as well as pertinent laws, rules and regulations. The amendments also provide that the chief of radiology, in conjunction with the radiation safety officer, must ensure that all practitioners who utilize ionizing radiation equipment within the hospital are properly trained in radiation safety procedures for patients of all ages.

The amendments to Section 405.15 also will update the megavoltage ("MEV") requirements for therapeutic radiology or radiation oncology services to provide that they utilize six or more MEV unit with a source-axis distance of 100 or more centimeters as the primary unit in a multi-unit radiation oncology service. In addition, as amended, the regulations will require each therapeutic radiology service to have full time New York State licensed radiation therapists sufficient to meet the needs of the service and also a New York State licensed radiation therapy physicist who will be involved in treatment, planning and dosimetry as well as calibrating the equipment. The amendments will also change a reference to an MEV unit so that it instead refers to a linear accelerator. A computed tomography ("CT") scanner must be available within the radiation therapy program that is equipped for radiation oncology treatment planning or arrangements must be made for access to a CT scanner on an as needed basis. Provisions must be made for access to a magnetic resonance imaging ("MRI") scanner for treatment planning purposes on an as needed basis.

Updates to Section 405.17 (Pharmaceutical Services) will require hospital pharmacy directors, in conjunction with designated members of the medical staff, to ensure that for patients of all ages, weight must be measured in kilograms and that resources relating to drug interactions, drug therapies, side effects, toxicology, dosage, indications for use, and routes of administration are available to the professional staff. Pediatric dosing resources must include age and size appropriate fluid and medication administration and dosing. Dosing must be weight based and not exceed adult maximum dosage, or in emergencies, length based, with appropriate references for pediatric dosing available. The amendments will further require the director to ensure that the pharmacy quality assurance program include monitoring and improvement activities to identify, measure, prevent and/or mitigate adverse drug events, adverse drug reactions and medication errors in accordance with generally accepted standards and practices in the field of medication safety and quality improvement. All drugs and biologicals must be controlled and distributed in accordance with written policies and procedures to maximize patient safety and quality of care.

Updates to Section 405.19 (Emergency Services) provisions will require at least one clinician on every shift to have the skills to assess and manage a critically ill or injured pediatric patient and be able to resuscitate a child. The director of the hospital's emergency service, attending physicians, supervising nurses, registered professional nurses ("RNs"), physician assistants ("PAs") and nurse practitioners ("NPs") must satisfactorily complete and be current in Pediatric Advanced Life Support ("PALS") or have current training equivalent to PALS. Hospitals with less than 15,000 unscheduled emergency visits per year do not need to have the supervising or attending physician present, but such supervising or attending physician must be available within 30 minutes of "patient presentation" provided that at least one physician, NP, or PA is on duty in the emergency service 24 hours a day, seven days a week.

In addition, the amendments will require hospitals to develop and implement protocols specifying when supervising or attending physicians must

be present. In no event shall a patient be discharged or transferred to another hospital, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, PA or NP. Specifically, no discharge should occur while the results of a test that reasonably could be expected to yield a "critical value" are pending so as to assure appropriate care is provided. The amendments will also require hospitals to develop and implement written policies and procedures pertaining to review and communication of laboratory and diagnostic test/service results ordered for a patient receiving emergency services to the patient and, if the patient is not legally capable of making decisions, the patient's parent, legal guardian, health care agent or health care surrogate, as appropriate and subject to all applicable confidentiality laws and regulations. Further, policies and procedures must ensure that all communication with the patient, parent of a minor, legal guardian, etc. must be clear and understandable to the recipient. In addition, the hospital must ask the patient or the patient's representative for the name of the patient's primary care provider, if known, and lab results must be forwarded to such provider.

Section 405.20 (Outpatient Services) requires outpatient services, including ambulatory care services and extension clinics to be provided in a manner which safely and effectively meets the needs of all patients. Written policies must be in place for admission of patients whose postoperative status prevents discharge and necessitates inpatient admission to a hospital capable of providing the appropriate level of care.

Section 405.22 (Critical Care and Special Care Services) adds new provisions regarding Pediatric Intensive Care Unit (PICU) Services. A "PICU" is defined as a physically separate unit that provides intensive care to pediatric patients (infants, children and adolescents) who are critically ill or injured. It must be staffed by qualified practitioners competent to care for critically ill or injured pediatric patients. "Qualified practitioners" are practitioners functioning within his or her scope of practice according to State Education Law and who meets the hospital's criteria for competence, credentialing and privileging practitioners in the management of critically ill or injured pediatric patients. PICUs must be approved by the Department and the governing body must develop written policies and procedures for operation of the PICU in accordance with generally accepted standards of medical care for critically ill or injured pediatric patients. The PICU must have a minimum average annual pediatric patient number of 200/year. It must provide medical oversight for interhospital transfers of critically ill or injured patients during transfer to the receiving PICU.

The PICU must be directed by a board certified pediatric medical, surgical, anesthesiology or critical care/intensivist physician who must be responsible for the organization and delivery of PICU care and has specialized training and demonstrated competence in pediatric critical care. Such physician in conjunction with the nursing leadership responsible for the PICU must participate in administrative aspects of the PICU. All hospitals with PICUs must have a physician, notwithstanding emergency department staffing, in-house 24 hours per day who is available to provide bedside care to patients in the PICU. PICU physician and nursing staff must successfully complete and be current in pediatric advanced life support (PALS) or have current training equivalent to PALS.

The hospital must have an organized quality performance improvement program for PICU services and include monitoring of volume and outcomes, morbidity and all case mortality review, regular multidisciplinary conferences including all health professionals involved in the care of PICU patients. Failure to meet one or more regulatory requirements or inactivity in a program for a period of 12 months or more may result in actions, including, but not limited to, withdrawal of approval to serve as a PICU. No PICU can discontinue operation without first obtaining written approval from the department and must give written notification, including a closure plan acceptable to other department at least 90 days prior to planned discontinuance of PICU services. A hospital must notify the department in writing within 7 days of any significant changes in its PICU services, including, but not limited to: (a) any temporary or permanent suspension of services or (b) difficulty meeting staffing or workload requirements.

Section 405.28 (Social Services) is updated to current standards that care be provided under the direction of a qualified social worker who is licensed and registered by the New York State Education Department to practice as a licensed master social worker (LMSW) or licensed clinical social worker (LCSW), with the scope of practice defined in Article 154 of the Education Law.

Revised rule compared with proposed rule: Substantive revisions were made in sections 405.7(d), 405.9, 405.13, 405.15, 405.17, 405.19 and 405.22.

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

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

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

Revised Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law ("PHL") Sections 2800 and 2803 (2). PHL Article 28 (Hospitals), Section 2800 specifies that "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . . , the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services. . . ."

PHL Section 2803(2) authorizes the Public Health and Health Planning Council ("PHHPC") to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

These amendments are promulgated to update various Part 405 pediatric and general hospital provisions including surgical, anesthesia, radiology and pharmacy and emergency services. Pediatrics is a unique, distinct part of medicine which is very different than adult medicine. Historically, children have often been seen as small adults. This has changed over time and it is now recognized that certain areas of pediatric care such as emergency, critical care and medication dosing require specialized knowledge, skills and equipment.

Part 405 of Title 10 NYCRR sets forth general hospital minimum standards. In 2010, the New York State Emergency Medical Services for Children ("EMS-C") Advisory Committee recommended and the Department determined that Part 405 needed to be updated to address the unique needs of children. A comprehensive approach was necessary to make sure that hospitals are admitting children for whom it has appropriate staff, resources and equipment and that policies and procedures are in place for transferring those patients for whom the hospital does not have the capability to provide care, except under conditions of disasters and emergency surge situations. Many facilities that once had dedicated pediatric units have closed or reduced their units, resulting in a reduced focus on pediatric care. Currently, the pediatric provisions need strengthening as they do not specifically address minimum standards for pediatric critical or emergency care. Pediatric care has become much more sophisticated and requires highly trained staff with expertise in the particular requirements for caring for children. In addition, various Part 405 subdivisions have been updated for all patients including surgical, anesthesia, radiologic and nuclear medicine, pharmaceutical and emergency services to reflect current practice.

The Department, in conjunction with the EMS-C Advisory Committee, carefully reviewed Part 405 of Title 10 and proposes numerous updates and amendments. In particular, significant changes have been made to the Emergency, Radiology and Pharmacy provisions and new provisions are added regarding standards for Pediatric Intensive Care Units (PICUs). New provisions will require age appropriate equipment and supplies. The new provisions assure that personnel in the emergency department and pediatric intensive care unit have the skills to access and manage a critically ill or injured pediatric patient, including resuscitation. Changes in technology and equipment for diagnostic medical imaging and appropriate use of such equipment are addressed. Policies and procedures regarding imaging studies for newborns and pediatric patients are updated to include standards for clinical appropriateness, appropriate radiation dosage and beam collimation, image quality and patient shielding. Pharmacy and equipment requirements for pediatric patients are revised to assure age and size appropriate dosing. The regulations clarify that pediatric dosing must be weight based and all patients must be weighed in kilograms. Current regulations require Advanced Cardiac Life Support ("ACLS") training or current training equivalent to ACLS for adults but do not require Pediatric Advanced Life Support ("PALS") or current training equivalent to PALS for appropriate staff that will be caring for children within the hospital. These regulations address this inequity. This regulatory proposal attempts to strengthen minimum standards for the care of children that are flexible enough to fit the large tertiary care facilities as well as rural and community hospitals. This measure also requires that if laboratory and other diagnostic tests/services are ordered for a patient while receiving emergency services, the hospital must develop and implement written

policies and procedures pertaining to the review and communication of the laboratory and diagnostic test/service results to the patient, the patient's parent, legal guardian or health care agent, or surrogate, if known, and the patient's primary provider, if known.

These regulations, requiring hospitals provide patients and their parents or other medical decision makers with critical information about the patient's care and to provide and post a Parent's Bill of Rights, and another set of regulations requiring hospitals to adopt protocols to identify and treat sepsis, were inspired by the case of Rory Staunton, a 12-year old boy who died of sepsis in April of 2012. Both sets of regulations, together known as "Rory's Regulations," will help New York State set a "gold standard" for patient care.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Costs that may be incurred by the regulated parties could include PALS training, accommodations for parent(s) to stay with their child at all times, review and update of various policies and procedures, pharmacy requirements regarding weight based dosing and the requirement of a board certified pediatric medical, surgical, or anesthesiology critical care/intensivist physician who has demonstrated competence in pediatric critical care to direct PICU services. The cost of providing and posting the Parent's Bill of Rights should be minimal. Regulated parties must also ensure that their equipment is age and size appropriate.

PALS certification costs can range from $0-$300. Currently there are grant funded opportunities for PALS certification. Accommodations for parents may be able to be arranged with existing resources, but could also require additional furnishings. What accommodation costs would be incurred depends on the hospital involved. Review and update of the various policies and procedures and the pharmacy requirements could be accomplished with existing staff imposing little or no additional cost to the regulated parties. The "average" salary of a board certified medical, surgical, pediatric, or anesthesia intensivist to direct the PICU would be approximately $187,192. Hospitals will need to inventory their equipment and supplies to ensure that they are size and age appropriate and provide accordingly. Pediatric dosing resources must include age and size appropriate fluid and medication administration dosing information if not already currently provided.

Cost to State and Local Government:

There is no anticipated fiscal impact to State or local government as a result of these regulations, except that hospitals operated by the State or local governments will incur minimal costs as discussed above.

Cost to the Department of Health:

There will be no additional costs to the Department associated with the implementation of this regulation. Existing staff will be utilized to conduct surveillance of the regulated parties and monitor compliance with these provisions.

Local Government Mandates:

Hospitals operated by State or local governments will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

This measure will require facilities to develop various written policies and procedures with respect to: transfers of pediatric patients when unable to appropriately and safely care for them, enabling parents/guardians to stay with pediatric patients, assurance that staff privileges are commensurate with training and experience, assurance that various equipment is age and size appropriate, imaging studies and orders. In addition, monitoring and improvement activities to identify, measure, prevent or mitigate adverse drug events, and for a hospital that provides PICU services policies and procedures for the operation of the PICU in accordance with generally accepted standards of medical care for critically ill or injured pediatric patients.

For hospitals with less than 15,000 unscheduled emergency visits per year, the hospital must develop and implement protocols specifying when supervising or attending physicians must be present. (Such facilities must have at least one physician, nurse practitioner, or licensed physician assistant on duty in the emergency service 24 hours a day, seven days a week).

Duplication:

These regulations will not conflict with any state or federal rules.

Alternative Approaches:

There are no viable alternatives to this regulatory proposal. All general hospitals must be able to admit pediatric patients consistent with its ability to provide qualified staff, size and age appropriate equipment necessary for the unique needs of pediatric patients. If the hospital cannot meet these requirements, it will be required to develop criteria and policies and procedures for transfer of pediatric patients.

Consideration was made when developing the Pharmaceutical Services provisions in Section 405.17, that for pediatric patients only weight must be measured in kilograms. Upon further consideration it was determined that it was more appropriate to require that weight be measured in kilograms for patients of all ages.

When developing the Critical Care and Special Care Services for provisions for Pediatric Intensive Care Unit (PICU) services in Section 405.22 the Department initially considered a minimum bed standard of six beds. Upon further consideration it was determined that a minimum standard would not be a bed standard but instead require that a PICU must have a minimum average annual pediatric patient number of 200/per year.

Federal Requirements:

These regulations will not conflict with any state or federal rules.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York State Register, but general hospitals will have 90 days from such date to comply with these provisions.

Revised Regulatory Flexibility Analysis

Effect of Rule:

These regulations will apply to the 228 general hospitals in New York State. A recent survey conducted by the Department determined that 32 hospitals in New York State currently have a pediatric intensive care unit ("PICU"). The proposed amendments will apply Statewide, including 18 general hospitals operated by local governments. These hospitals will not be affected in any way different from any other hospital. The operation of a PICU is not mandated by the State but is at the option of the hospital.

Compliance Requirements:

The literature supports the regulatory changes made to general hospital minimum standards with respect to pediatric care. These provisions specify that general hospitals in New York State must ensure that at least one clinician on every shift in the emergency department has the skills to assess and manage a critically ill or injured pediatric patient and be able to resuscitate a child. This standard is supported by the American Academy of Pediatrics (see Pediatrics 1995; 96:526). This measure also states that policies and procedures regarding imaging studies for newborns and pediatric patients must include standards for clinical appropriateness, appropriate radiation dosage and beam collimation, image quality and patient shielding. Medical imaging policies must provide age and weight-appropriate dosing for children receiving studies involving ionizing radiation as supported by the American Academy of Pediatrics and the American College of Emergency Physicians (Pediatrics 2009; 124:1223). Pediatric pharmacy resources must include age and size appropriate fluid and medication administration and dosing. Dosing must be weight based and weight must be measured in kilograms as recommended by the American Academy of Pediatrics; (Pediatrics 2003;111:1120). Pediatric Advanced Life Support (PALS) or equivalent training will be required for appropriate staff that will be caring for children in the hospital, a practice supported by the American Academy of (Pediatrics 1995;96:526).

The PICU shall have a medical director who has received special training and has demonstrated competence in pediatric critical care as recommended by the American Academy of Pediatrics and Society of Critical Care Medicine (Pediatrics 2004; 114: 1114). PICU medical and nursing directors shall be responsible for promoting and verifying pediatric qualifications of staff, overseeing pediatric quality assurance and developing and reviewing PICU care policies consistent with recommendations of the American Academy of Pediatrics, Society of Critical Care Medicine, Pediatrics 2004; 114: 1114. PICUs must have a minimum average annual patient number of 200/year. This is consistent with the recommendation made in the American College of Surgeons' Resources for Optimal Care of the Injured Patient, 2006.

Cure Period:

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

Professional Services:

The majority of facilities have in-house staff that could make any required changes to the policies and procedures. Small facilities may contract with outside professional staff from the various disciplines to assist them.

Compliance Costs:

A hospital that wants to provide PICU services must have an intensivist who has received special training and has demonstrated competence in pediatric care to direct the PICU. Currently, the majority of PICUs in New York State already have an intensivist in their employ. According to JobsSalary.com, the average pediatric intensivist salary is $187,712, with a range from $100,651 to $280,000. PALS training ranges from $0-300.

Economic and Technological Feasibility:

This proposal is economically and technically feasible.

Minimizing Adverse Impact:

General hospitals will have 90 days from the effective date of these regulations to implement these provisions In addition, at present; grant funding is available for PALS certification.

Small Business and Local Government Participation:

This proposal has been discussed and reviewed by the EMS-C Advisory Committee, the Greater New York Hospital Association ("GNYHA"), the Healthcare Association of New York State ("HANYS"), the Iroquois Hospitals Association and the State Hospital Pharmacy Association.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published RAFA.

Revised Job Impact Statement

Nature of Impact:

These provisions will not have a significant impact on jobs. A PICU in any New York State general hospital must be directed by a board certified pediatric medical, surgical, anesthesiology or critical care/intensivist physician who must be responsible for the organization and delivery of PICU care. Such intensivist must have specialized training and demonstrated competence in critical care. Hospitals that want to provide PICU services may already have an intensivist to direct their unit.

Categories and Numbers Affected:

There are 32 hospitals in New York State the report that they have a PICU.

Regions of Adverse Impact:

There are no regions of adverse impact.

Minimizing Adverse Impact:

Hospitals will have 90 days from the effective date of these regulations to implement the provisions. In addition, at present, there is grant funding available for PALS certification.

Assessment of Public Comment

The Department received 8 comments during the public comment period. They came from: Institute for Safe Medicine Practices (ISMP), Jacobi Medical Center (Jacobi Clinical Laboratory Director), Orange Regional Medical Center (Orange County), Greater New York Hospital Association (GNYHA), Healthcare Association of New York State (HANYS), Rory Staunton Foundation, New York American College of Emergency Physicians (NY ACEP), and the New York State American Academy of Pediatrics, District II (AAP, District II).

Patients' Rights (Section 405.7)

COMMENT: Proposed rules regarding the Parent's Bill of Rights do not define circumstances where parents' rights are applicable.

RESPONSE: The intent of this regulation is that the Parent's Bill of Rights applies to the parents/guardians of minors. Regulatory language was changed to reflect that intent.

COMMENT: Add requirement that Parent's Bill of Rights be presented to the parent/guardian at triage/intake.

RESPONSE: The regulation has been changed to require that the Parent's Bill of Rights be provided to a pediatric patient's parent or other medical decision maker.

COMMENT: The requirement to allow at least one parent or guardian to remain "at all times" should include an exception for when it may not be safe, clinically appropriate or in the best interests of the child.

RESPONSE: Regulatory language was changed to reflect the same language used in similar provisions set forth in 405.9(b)(7)(v).

COMMENT: The requirement that all test results completed during admission or emergency room visit be reviewed by a physician, physician assistant (PA) or nurse practitioner (NP) familiar with the patient's presenting condition could result in significant discharge delays if the treating clinician is not present when the test results are returned. If it is intended to allow clinicians other than the treating clinician to review the test results, it should be stated explicitly in the regulation. Allowing results to be reviewed by a physician, PA, or NP "familiar" with the patient's presenting condition, could lower the standard of meaningful review required.

RESPONSE: It is intended that a practitioner involved with the patient's diagnosis and treatment – who is, thus, "familiar" with the patient's condition – be responsible to review the patient's test results. The Department does not view this requirement as lowering the standard of review. Rather, it emphasizes that a practitioner treating the patient should be reviewing this information.

COMMENT: Some tests are appropriately done to inform the patient's future plan of care and may not need to be completed before the patient can be safely discharged. Critical results are always called to the ordering physician, but routine results go to the chart pending review before the chart is closed. Those routine results get forwarded to the primary care physician. Putting the onus on the laboratory of insuring review prior to submitting to the primary physician would be cost prohibitive to the hospital.

RESPONSE: The ordering practitioner will need to consider the overall condition of the patient upon evaluation and use his or her best clinical judgment to determine which tests are relevant to the patient's presenting condition. It is recognized that in some situations some tests will not be completed during the patient's stay in the Emergency Department. Other practitioners (physician, PA, NP) can follow-up with the patient's plan of care as long as they are familiar with the patient's presenting condition.

COMMENT: The requirement that patients may not be discharged from the hospital or emergency room until any tests that could reasonably be expected to yield critical value results are completed and reviewed by medical staff should be revised to allow the treating clinician to use professional judgment in determining what lab tests are of such a critical nature that they would require holding a patient until they are completed and reviewed. The definition of critical lab result should be based on industry standards and be used consistently.

RESPONSE: The regulation includes a "reasonableness" component that allows for clinical judgment. The Department has reviewed the definition of "critical result" and has determined that it is clear as written.

COMMENT: Review the definitions and terms used by the Joint Commission and/or the College of American Pathologists.

RESPONSE: The Department has reviewed and considered these terms.

COMMENT: The provision that requires the communication of critical value results and the discussion of the discharge plan be accomplished in a manner that assures the patient, the parents and other medical decision makers have the capacity to obtain, communicate, process and understand the health information provided sets a high bar for the hospital and is inconsistent with the hospital's obligation to guarantee a certain level of capacity to understand information provided to patients at discharge. A requirement that patients be informed of specific test results may not contribute to the patient's understanding and increases documentation and notification issues surrounding critical values.

RESPONSE: The regulation has been revised to clarify that information must be communicated in a manner that reasonably assures a patient or a patient's parent/guardian understands.

COMMENT: The provision that requires hospitals to provide all lab results to the patient's primary care provider (PCP) is reasonable if the Department understands that hospitals are often provided inaccurate and/or incomplete information. This requirement could be difficult to operationalize because of patient preference, legal and confidentiality concerns. Language could specify that forwarding such results to the PCP may be done in a manner determined by the hospital medical staff. In the event that a patient's primary care provider is unknown or not practicing in the local area, a reasonable attempt should be allowed to be made to communicate the information. Requiring that all test results from an entire admission be transmitted en-masse to a PCP is an unworkable process. For those labs already part of an Electronic Medical Records system, "meaningful use" regulations already require that a patient be provided on request with a Continuity of Care Record which includes all test results.

RESPONSE: The regulation has been revised to clarify that information must be provided to the PCP, if known – i.e., when the patient has provided sufficient information that the transfer of information can occur. Hospitals must develop their own policies and procedures establishing how information will be provided.

Admission/Discharge (Section 405.9)

COMMENT: On discharge, the patient/parent, legal guardian, or health care agent should receive a checklist including: (1) a highlighted telephone number to call should complications or questions arise, (2) information about diagnoses that have been considered, (3) information about possible complications, (4) a discussion about tests ordered while in emergency care, and (5) a discussion of any contact with a PCP including when the PCP will receive lab results.

RESPONSE: The regulation has been revised to state that (i) a patient, his or her parent or medical decision maker has the right to request information about the diagnosis, possible diagnoses that were considered, possible complications and any contact with the patient's primary care provider and (ii) on discharge, a hospital must provide a phone number that could be called if complications/questions arise.

COMMENT: The language in 405.9(b)(7)(v) whereby the parent/guardian may stay with pediatric patients to the extent possible given the patient's health and safety should be used in 405.7(d)(iii).

RESPONSE: This language has been incorporated into section 405.7(d)(iii).

COMMENT: The requirement stating that, "If patient lacks decision making capacity, communication shall be to the patient's medical decision maker," should be amended to add "if known and can be contacted within a reasonable period of time prior to or after discharge."

RESPONSE: The regulation was not revised to include language. If a patient lacks decision making capacity, the hospital/provider should be communicating with some medical decision maker on discharge following admission to the hospital.

COMMENT: The requirement that all information be understood may be beyond the capability of even the most conscientious provider.

RESPONSE: The regulation has been revised to clarify that the information must be communicated in a manner that reasonably assures a patient or a patient's parent/guardian understands.

Pharmaceutical Services (Section 405.17)

COMMENT: Section 405.17 should reflect the broader designation of "metric" weights as the standard of practice instead of kilograms. Also, nursing personnel should be included in the requirement where the pharmacy director, in conjunction with designated members of the medical staff, must ensure that patients' weight must be measured in kilograms. The regulation should also include a definition of weight-based dosing as well as the final total calculated patient-specific dose.

RESPONSE: These changes have been made.

Emergency Services (Section 405.19)

COMMENT: Many of the comments on proposed revisions to Sections 405.7 and 405.9 also apply to Section 405.19.

RESPONSE: Any revisions to Sections 405.7 and 405.9 of Title 10 have been incorporated into 405.19.

COMMENT: For the requirement that practitioners be current in Advanced Trauma Life Support (ATLS), Advanced Cardiac Life Support (ACLS), and Pediatric Advanced Life Support (PALS), those practitioners who are board eligible or certified in emergency medicine already meet these requirements by virtue of such board eligibility or certification. Training in a non-emergency based specialty, however, should require additional training in these critical areas.

RESPONSE: The regulation was not changed. The Department intends that all practitioners, regardless of whether they are board-eligible or board-certified or have training in a non-emergency based specialty, be current in ATLS, ACLS and PALS.

COMMENT: Patients who lack decision-making capacity may present for emergency services without their decision maker. Language should be added stating that a "reasonable attempt must be made to contact a decision maker."

RESPONSE: The regulation has been changed to clarify that, for patients presenting for emergency services, decision makers are to be contacted "if known."

COMMENT: A policy and procedure requiring all "critical" laboratory/diagnostic tests/service results (rather than all results) be reviewed upon completion by a physician, physician assistant or nurse practitioner familiar with the patient's presenting condition would afford patients the protection they require. In the emergency department, other tests are often ordered that will be followed by practitioners in other areas, including inpatient units, of the hospital. In some situations, test results will be quite delayed and requiring real-time transmission of non-critical tests will result in delayed care.

RESPONSE: Clinical judgment must be used to determine which tests are pertinent to the patient's presenting condition. It is recognized that in some situations some tests will not be completed during the patient's stay in the Emergency Department. It is the Department's intent that other practitioners (physician, PA, NP) can follow-up with the patient's plan of care as long as they are familiar with the patient's presenting condition.

COMMENT: Lengthy discharge instructions are ineffective in communicating with patients, because critical information may be lost in a large volume of information.

RESPONSE: It is the intent of these provisions that patients be given what information is necessary for proper follow-up/post-care.

COMMENT: Staffing requirements for emergency services attending physicians should be amended to allow physicians who focus on teaching or administration to qualify.

RESPONSE: This issue is beyond the scope of this regulatory package.

COMMENT: Language in Section 405.19 regarding hospitals with less than 15,000 unscheduled emergency visits per year that specifies that an attending physician need not be present, but shall be available within 30 minutes of patient presentation should be amended to allow this physician response to be handled via telemedicine. Language in 405.19 (d) (2) (iii) should also be amended to update the qualifications for registered nurses working in Emergency Departments.

RESPONSE: The issues of telemedicine and nurse qualifications are beyond the scope of this regulatory package. Such issues need to be thoroughly reviewed by the medical community in light of their overall impact on the hospital system.

Critical Care Services (Section 405.22)

COMMENT: Pediatric Intensive Care Unit (PICU) Services provisions that require a 24-hour physician presence will force the closure of PICUs for economic reasons. The regulation should allow clinical coverage to be provided by properly trained and credentialed physician assistants and pediatric nurse practitioners acting under the direct supervision of a PICU attending.

RESPONSE: These provisions do not require the physician be directly in the PICU 24 hours a day, but available (excluding the ED physician) in the hospital 24 hours a day.

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-42-13-00002-E
Filing No. 952
Filing Date: 2013-09-26
Effective Date: 2013-09-26

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

Action taken: Repeal of Part 524 and addition of new Part 524; and amendment of Parts 501 and 550 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Last December, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OMH was not able to use the regular rule making process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. Therefore, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Section 501.5, entitled "Obsolete References," and then replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.
- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of "reportable incidents" as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions,

reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.

• Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

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 December 24, 2013.

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

Regulatory Impact Statement

1. Statutory authority: Chapter 501 of the Laws of 2012, i.e., "The Protection of People with Special Needs Act," establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: These new amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and benefits: The amendments include new and modified requirements for OMH regulations in 14 NYCRR Part 524 pertaining to incident management. Additional amendments are designed to add and revise requirements in Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as "The Protection of People with Special Needs Act," this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH's regulations. Consequently, the amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH's incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 creates the Justice Center, which will assume some designated functions which are now performed by OMH. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OMH. OMH will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

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 new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents." However, OMH chose to propose the continuation of protections associated with these events and situations.

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

10. Compliance schedule: The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH's requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is $25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing compliance or reporting requirements since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. The amendments include a penalty for violating the regulations of a fine not to exceed $1,000 per day or $15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OMH services are provided in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 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 amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH's current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Reimbursement of Prevocational Services Delivered in Sheltered Workshops

I.D. No. PDD-29-13-00014-E

Filing No. 956

Filing Date: 2013-09-27

Effective Date: 2013-09-29

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

Action taken: Amendment of section 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 43.02

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, which limit reimbursement of prevocational services delivered in sheltered workshops, is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

Working with the Federal government to transform its service delivery system, OPWDD made a number of commitments to the Centers for Medicare and Medicaid Services (CMS) as outlined in a transformation agreement. In this agreement, OPWDD made a specific commitment to no longer fund new admissions to sheltered workshops effective July 1, 2013. An essential component of fulfilling this commitment is the promulgation of regulations to limit reimbursement of prevocational services in sheltered workshops to only those individuals who were receiving these services before July 1, 2013.

OPWDD promulgated prior emergency regulations in order to meet its commitment to CMS and to prevent loss of the substantial federal funding that is contingent on this commitment. OPWDD must renew the prior emergency regulations on an emergency basis in order to continue meeting its commitment to CMS and to continue receiving the necessary funding from CMS. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Reimbursement of prevocational services delivered in sheltered workshops.

Purpose: To establish limits on the reimbursement of prevocational services delivered in sheltered workshops.

Text of emergency rule: Subdivision 635-10.5(e) is amended by the addition of a new paragraph (10) as follows:

(10) Reimbursement of prevocational services delivered in sheltered workshops.

(i) Effective July 1, 2013, reimbursement of prevocational services delivered in a sheltered workshop is limited to those individuals who were receiving prevocational services in a sheltered workshop on a regular basis as of June 30, 2013 and who continuously receive prevocational services in a sheltered workshop on a regular basis on and after July 1, 2013.

(ii) Reimbursement of prevocational services delivered in a sheltered workshop is limited to services delivered to the individuals specified in subparagraph (i) of this paragraph either:

(a) by the same provider which was providing services for the individual on a regular basis as of June 30, 2013; or

(b) by a different provider if the individual's receipt of the services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers.

Note: Current paragraphs (10) – (13) are renumbered to be paragraphs (11) – (14).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. PDD-29-13-00014-EP, Issue of July 17, 2013. The emergency rule will expire November 25, 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: RAU.Unit@opwdd.ny.gov

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 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, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory responsibility for setting Medicaid rates and fees for services in facilities licensed or operated by OPWDD pursuant to the New York State Mental Hygiene Law Section 43.02.

2. Legislative objectives: The emergency amendments further the legislative objectives embodied in sections 13.07, 13.09, 16.00, and 43.02 of the Mental Hygiene Law. The new amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

3. Needs and benefits: In striving to transform and enhance its service delivery system, OPWDD made a commitment to the Centers for Medicare and Medicaid Services (CMS) in the form of a transformation agreement. The transformation agreement identifies a series of shared goals between OPWDD and CMS, one of which is the goal to increase the number of individuals in competitive employment by 700 within a one year time period. Toward this goal, OPWDD committed to no longer fund new admissions to sheltered workshops effective July 1, 2013. Consequently, the emergency amendments limit reimbursement of prevocational services delivered in sheltered workshops to only those individuals who were receiving these services before July 1, 2013. These amendments are necessary for OPWDD to meet its commitment to CMS and to be eligible for federal funding that is critical for appropriate and effective service provision to individuals receiving services.

OPWDD's long-term goal is to eliminate funding for segregated employment settings such as sheltered workshops in order to better prepare individuals for competitive employment. The emergency amendments are an interim step in achieving its long-term goal. The amendments will prevent OPWDD funding for new individuals admitted into sheltered workshops in order to ensure that there is no growth in segregated employment settings. By not funding new admissions, OPWDD is encouraging people with developmental disabilities, especially students transitioning from high school to adult services, to explore options in more integrated settings. Prevocational services will continue to be funded by OPWDD if they are provided in integrated community services instead of segerated sheltered workshops. Further, OPWDD expects that individuals who might otherwise have been admitted to sheltered workshops will instead be more appropriately served through assistance with obtaining competitive employment or through other customized and more effective and efficient service options (e.g. pre-employment training, individual or group supported employment, volunteerism or retirement services).

Another important reason for the emergency amendments is that they further implement Governor Andrew M. Cuomo's Olmstead Plan for New York State. The Governor has made serving individuals with disabilities in the most integrated setting a top priority. By integrating individuals receiving services in the OPWDD system into competitive employment settings or customized services within the community, in lieu of serving individuals in segregated sheltered workshops, OPWDD is acting in line with the Governor's goal. Further, by stopping OWPDD funding of new admissions to a service that is not in an integrated setting, the emergency amendments are facilitating efforts to help individuals to live richer lives.

4. Costs:

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

The amendments will not result in any additional costs for New York State. Conversely, the promulgation of these regulations on an emergency basis will safeguard federal funding to NYS which is contingent on the satisfaction of commitments that OPWDD made to CMS.

These amendments will not have any fiscal impact on local governments. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

Prohibiting funding for new admissions of individuals into sheltered workshops will ultimately be cost-neutral for OPWDD as a provider of services. The lack of reimbursement for new admissions will be offset by the decrease in costs/expenditures that OPWDD as a provider would typically incur with new admissions.

b. Costs to private regulated parties:

There are no initial capital or investment costs. The emergency amendments will have the same fiscal impact on regulated parties as stated above in this section for state-operated services.

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

6. Paperwork: No additional paperwork is required by the emergency amendments.

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

8. Alternatives: OPWDD could have opted to require the closure of all sheltered workshops in its system instead of only ceasing payment for new admissions to sheltered workshops. OPWDD considered that it could best achieve its reform goals in the area of employment by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement.

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

10. Compliance schedule: The emergency rule is effective September 29, 2013. The emergency rule renews prior emergency regulations which were effective on July 1, 2013 and expired on September 28, 2013. It is expected that providers are already in compliance with the emergency rule since the regulations have been in effect since July 1, 2013. .

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are 95 agencies which operate a total of 126 sheltered workshops and which are required to comply with the emergency regulations. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency amendments have been reviewed by OPWDD in light of their impact on small businesses. These amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

2. Compliance requirements: The emergency amendments do not impose any additional compliance requirements on providers as the amendments only concern reimbursement for services provided.

The amendments will have no effect on local governments.

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

4. Compliance costs: There are no compliance costs, as the emergency amendments will not impose any additional compliance requirements on providers.

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

6. Minimizing adverse impact: The purpose of these emergency amendments is to prohibit OPWDD funding for new admissions into sheltered workshops, which are considered to be segregated employment settings. Although OPWDD expects that these amendments will be cost neutral as reimbursement is commensurate with costs/expenditures for services provided, there is a possibility that they may result in a minimal adverse impact on small business providers. Individuals who might otherwise have been admitted to a sheltered workshop operated by one provider may choose to receive other pre-employment services from another provider, or may obtain competitive employment. This will result in a loss of revenue to the sheltered workshop provider. However, OPWDD expects that, in these instances, losses acquired by sheltered workshop providers will be offset by gains acquired by other providers/businesses in the community, so that, overall, any adverse impact on regulated parties would be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). OPWDD could not establish different compliance timetables for small business providers because these amendments are necessary to fulfill a specific commitment to the Centers for Medicare and Medicaid Services (CMS) to no longer fund new admissions to sheltered workshops effective July, 1, 2013. Without these amendments, OPWDD would fail to meet its commitment to CMS and would risk loss of substantial federal funding which could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system. Since these amendments require no specific compliance response of regulated parties, the other approaches outlined in SAPA to minimize the adverse impact cannot be effectively applied.

Lastly, OPWDD determined that stopping the funding of new admissions to sheltered workshops would be the most optimal approach in meeting its employment goals for individuals receiving services to obtain competitive employment, and to receive pre-employment services in more integrated settings. OPWDD considered that it could best achieve these goals by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement, thereby minimizing any adverse impact on providers.

7. Small business participation: The emergency rule renews prior emergency regulations which were effective on July 1, 2013 and expired on September 28, 2013. Providers were notified of the prior emergency/proposed regulations and had the opportunity to comment.

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

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung,

Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The emergency amendments have been reviewed by OPWDD in light of their impact on rural areas. These amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

2. Compliance requirements: The emergency amendments do not impose any additional compliance requirements on providers as the amendments only concern reimbursement for services provided.

The amendments will have no effect on local governments.

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

4. Compliance costs: There are no compliance costs since the emergency amendments will not impose any additional compliance requirements on providers or local governments.

5. Minimizing adverse economic impact: The purpose of these emergency amendments is to prohibit OPWDD funding for new admissions into sheltered workshops, which are considered to be segregated employment settings. Although OPWDD expects that these amendments will be cost neutral as reimbursement is commensurate with costs/expenditures for services provided, there is a possibility that they may result in a minimal adverse impact on providers in rural areas. Individuals who might otherwise have been admitted to a sheltered workshop operated by one provider may choose to receive other pre-employment services from another provider, or may obtain competitive employment. This will result in a loss of revenue to the sheltered workshop provider. However, OPWDD expects that, in these instances, losses acquired by sheltered workshop providers will be offset by gains acquired by other providers in the community, so that, overall, any adverse impact on regulated parties would be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). OPWDD could not establish different compliance timetables for providers in rural areas because these amendments are necessary to fulfill a specific commitment to the Centers for Medicare and Medicaid Services (CMS) to no longer fund new admissions to sheltered workshops effective July, 1, 2013. Without these amendments, OPWDD would fail to meet its commitment to CMS and would risk loss of substantial federal funding which could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system. Since these amendments require no specific compliance response of regulated parties, the other approaches outlined in SAPA to minimize the adverse impact cannot be effectively applied.

Lastly, OPWDD determined that ceasing OPWDD funding of new admissions to sheltered workshops would be the most optimal approach in meeting its employment goals for individuals receiving services to obtain competitive employment, and to receive pre-employment services in more integrated settings. OPWDD considered that it could best achieve these goals by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement, thereby minimizing any adverse impact on providers.

6. Participation of public and private interests in rural areas: The emergency rule renews prior emergency regulations which were effective on July 1, 2013 and expired on September 28, 2013. Providers were notified of the prior emergency/proposed regulations and had the opportunity to comment.

Job Impact Statement

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

The emergency amendments establish limits on the reimbursement of prevocational services delivered in sheltered workshops. The amendments limit reimbursement of prevocational services delivered in sheltered workshops to only those individuals who were receiving these services before July 1, 2013, thereby prohibiting OPWDD payment for new admissions to sheltered workshops. OPWDD expects that any losses for sheltered workshop providers as a result of situations in which individuals migrate from sheltered workshop providers to other providers of pre-employment services, or to competitive employment, will be offset by gains for other providers of pre-employment services or businesses in the community. Consequently, overall, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-42-13-00004-E

Filing No. 954

Filing Date: 2013-09-26

Effective Date: 2013-09-26

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

Action taken: Amendment of Parts 624, 633 and 687; and addition of Part 625 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00; and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Last December, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

OPWDD filed emergency regulations effective June 30, 2013 to implement many of the provisions contained in the PPSNA. These regulations are now expiring. New emergency regulations are necessary to keep implementing regulations in force. If OPWDD did not file new emergency regulations effective September 26, 2013, regulatory requirements would revert to the regulations that were in effect prior June 30, 2013.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OWPDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making numerous revisions in the new emergency regulations, compared to the June 30, 2013 regulations, based on input from the field and the Justice Center, and experience with the new systems and requirements gained over the past three months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule: The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled "Reportable incidents and notable occurrences") to incorporate categories of "reportable incidents" as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report "reportable incidents" to the Vulnerable Persons' Central Register (VPCR), a part of the Justice Center for the

Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.

• Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.

• Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.

• A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).

• Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

• The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of "reportable incidents." Types of reportable incidents are "abuse," "neglect," and "significant incidents." The amendments also add definitions of "notable occurrences." Part 624 includes requirements for reporting and investigating these types of events.

• The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.

• A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.

• The amendments mandate the use of OPWDD's Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.

• The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigation report format that contains elements specified by OPWDD.

• The amendments make several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency's committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency's IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.

• The amendments expand on requirements for notification to service coordinators.

• The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with a recommendation within a month of the recommendation being made.

• When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

• The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.

• The amendments add requirements that agencies check the "Staff Exclusion List" of the Vulnerable Persons' Central Register as a part of the background check process.

• The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.

• In accordance with changes in Section 424-a of the Social Services Law, the amendments extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD. Prior to June 30, 2013, providers were only required to request an SCR check for those who have the potential for regular and substantial contact with children.

• Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.

• The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD's name change.

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 December 24, 2013.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., 3rd floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

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. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by "State Oversight Agencies," which include OPWDD.

b. 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.

c. 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).

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

2. Legislative objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD's system.

3. Needs and benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect, and significant incidents in accordance with the PPSNA's provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with

developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD's regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines developed by the Justice Center.

The amendments also make numerous changes to OPWDD's incident management process to strengthen the process and to provide further protection to people receiving serves from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that it will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost $25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

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 new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct on an annual basis. In addition, new paperwork is associated with the requirements for additional background checks (Staff Exclusion List, MHL 16.34 and Statewide Central Register of Child Abuse and Maltreatment). However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

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

10. Compliance schedule: The regulations will be effective on September 26, 2013 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations which were effective June 30, 2013 and expired on September 25, 2013.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, typically clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation; and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of em-

ployees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assume responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new requirements related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center. Currently the Justice Center is directing that reports be made either by telephone or by using a Web form, so the use of the Web form is optional.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has streamlined the required process concerning applicants with no employment or volunteer history in the OPWDD system. OPWDD has directed providers that such applicants are automatically deemed to have "no results" once the request has been submitted.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally,

OPWDD has posted extensive information about the new requirements on its website.

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

Rural Area Flexibility Analysis

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

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, typically clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation; and that all custodians with regular and direct contact in such programs must read and sign the code of conduct on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. Agencies are also required to request a check of the Staff Exclusion List maintained by the Justice Center.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based

incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has streamlined the required process concerning applicants with no employment or volunteer history in the OPWDD system. OPWDD has directed providers that such applicants are automatically deemed to have "no results" once the request has been submitted.

OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Participation of public and private interests in rural areas: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for these amendments because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-24-13-00013-A

Filing Date: 2013-09-30

Effective Date: 2013-10-01

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

Action taken: Replace the Authority's current ST-1B and ST-1 with the Schedule of Rates for the sale of Firm Market Power applicable to the Authority's Firm Market customers and amend ST WNY-1 applicable to Expansion and Replacement Power customers located in WNY.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: Replace the market power tariffs (ST-1B and ST-1) with ST-1C and amend ST WNY-1 to be consistent with other Authority tariffs.

Substance of final rule: FIRM MARKET POWER SERVICE TARIFF & WESTERN NEW YORK SERVICE TARIFF

The New York Power Authority's ("Authority") Notice of Proposed Rulemaking published on June 12, 2013 proposed to: (1) replace the current Direct Firm Power Service Tariffs with the Schedule of Rates for the sale of Firm Market Power applicable to certain Market Customers; and (2) to amend the Western New York Service Tariff applicable to its Expansion and Replacement Power customers located in Western New York.

No comments were received regarding the Direct Firm Power Service Tariffs and amendments were made to the Western New York Service Tariffs based on comments received. The changes in tariffs will be effective on filing and the tariffs will be applicable commencing October 1, 2013.

Final rule as compared with last published rule: Nonsubstantive changes were made in Paragrah 3.

Text of rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-42-13-00007-P

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

Proposed Action: Decrease the Fixed Costs Component of the Production Rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To recover the Authority's Fixed Costs.

Substance of proposed rule: The Power Authority of the State of New York (the "Authority") proposes to decrease the Fixed Costs component of the production rates for New York City Governmental Customers ("Customers"). Under the proposal, the Authority will decrease the Fixed Costs component of the production rate in 2014 by $8.1 million or 5.3% when compared to 2013. This decrease is based on the Preliminary 2014 Cost-of-Service and primarily driven by a Capital Cost reduction. The new production rates will become effective with the January 2014 billing period.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, NY 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

Regulatory Impact Statement, 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-42-13-00008-P

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

Proposed Action: Increase in Production Rates.

Statutory authority: Public Authorities Law, section 1005(6)

Subject: Rates for the Sale of Power and Energy.

Purpose: To align rates and costs.

Substance of proposed rule: The Power Authority of the State of New York (the "Authority") proposes to increase the production rates for Westchester County Governmental Customers ("Customers"). The Authority provides electricity to 103 Customers in Westchester County, including the County of Westchester, school districts, housing authorities, cities, towns and villages. Under the proposal, the 2014 production costs will increase by 12.67% when compared with 2013 costs. The increase, which is based on a pro forma Cost of Service for 2014, is largely due to expected increases in energy prices for electricity purchased from the NYISO market to serve these customers. The new production rates will become effective with the January 2014 billing period.

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 11-P, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

Regulatory Impact Statement, 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.

Public Service Commission

NOTICE OF ADOPTION

Denying the Petition of NYSEG to Implement a Vegetation Management Program and Recovery of Its Costs

I.D. No. PSC-15-13-00019-A

Filing Date: 2013-10-01

Effective Date: 2013-10-01

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

Action taken: On 9/19/13, the PSC adopted an order denying the petition of New York State Electric & Gas Corporation (NYSEG) to implement and recover the costs of a full-cycle distribution vegetation management program.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: Denying the petition of NYSEG to implement a vegetation management program and recovery of its costs.

Purpose: To deny the petition of NYSEG to implement a vegetation management program and recovery of its costs.

Substance of final rule: The Commission, on September 19, 2013, adopted an order denying New York State Electric & Gas Corporation's petition to implement and recover the costs of a full-cycle vegetation management program, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(13-E-0117SA1)

NOTICE OF ADOPTION

Approval of Petition of North 3rd Bedford Ave. LLC & North 3rd Berry St. LLC to Submeter Electricity at 155/129 North 3rd St

I.D. No. PSC-26-13-00009-A

Filing Date: 2013-09-25

Effective Date: 2013-09-25

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

Action taken: On 9/19/13, the PSC adopted an order approving the petition of North 3rd Bedford Avenue LLC & North 3rd Berry Street to submeter electricity at 155/129 North 3rd Street, Brooklyn located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of North 3rd Bedford Ave. LLC & North 3rd Berry St. LLC to submeter electricity at 155/129 North 3rd St.

Purpose: To approve the petition of North 3rd Bedford Ave. LLC & North 3rd Berry St. LLC to submeter electricity at 155/129 North 3rd St.

Substance of final rule: The Commission, on September 19, 2013 adopted an order approving the petition of North 3rd Bedford Avenue LLC and North 3rd Berry Street LLC to submeter electricity at 155 North 3rd Street/ 129 North 3rd Street, Brooklyn, 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: Deborah Swatling, Public Service

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

Assessment of Public Comment

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

(13-E-0237SA1)

NOTICE OF ADOPTION

Approval of Petition of 500 West 30th LLC to Submeter Electricity at 500 West 30th Street

I.D. No. PSC-26-13-00010-A

Filing Date: 2013-09-25

Effective Date: 2013-09-25

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

Action taken: On 9/19/13, the PSC adopted an order approving the petition of 500 West 30th LLC to submeter electricity at 500 West 30th Street, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of 500 West 30th LLC to submeter electricity at 500 West 30th Street.

Purpose: To approve the petition of 500 West 30th LLC to submeter electricity at 500 West 30th Street.

Substance of final rule: The Commission, on September 19, 2013 adopted an order approving the petition of 500 West 30th Street LLC to submeter electricity at 500 West 30th Street, New York, 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: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0238SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval to Modify Lease of Certain Real Property on Which a 2.5 MW Generator Is Located

I.D. No. PSC-42-13-00009-P

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

Proposed Action: The Public Service Commission is considering a Joint Petition by Fishers Island Electric Corporation and the Connecticut Municipal Electric Energy Cooperative for approval to modify a lease of real property on which a 2.5 MW electric generator is located.

Statutory authority: Public Service Law, sections 5, 68 and 70

Subject: Approval to modify lease of certain real property on which a 2.5 MW generator is located.

Purpose: To decide whether to approve the modification of a lease of certain real property on which is located a 2.5 MW generator.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Joint Petition by Fishers Island Electric Corporation (FIEC) and the Connecticut Municipal Electric Energy Cooperative (CMEC) (together the Parties) for approval to modify a lease of real property on which a 2.5 MW electric generator is located. The Commission, in Case 10-E-0282, approved the request of the Parties for lease by FIEC to CMEC of real property located within the existing utility yard of FIEC and construction and operation by CMEC of a 2.5 MW electric generator on the leased parcel. The project provides CMEC with peak sharing capacity and provides a local source of backup electric power to FIEC. The lease is scheduled to expire October 19, 2020, after an initial period of the (10) years, exclusive of a five year option to renew. The Parties are seeking approval to extend the initial term of the lease through February 9, 2039. The Commission may approve, modify, or reject, in whole or in part, the relief requested.

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

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

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

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

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

(13-E-0300SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Annual Reconciliation of Gas Expenses and Gas Cost Recoveries

I.D. No. PSC-42-13-00010-P

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

Proposed Action: The PSC is considering whether to approve, modify, or reject, in whole or part, the filings made by various local gas distribution companies (LDCs) and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

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

Subject: Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Purpose: The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

Substance of proposed rule: The Commission is considering whether to approve, modify, or reject, in whole or in part, the filings made by various local gas distribution companies (LDCs) and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. The Commission may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 476-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(13-G-0398SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Grid's Rule 16.6—Letter of Credit by Non-Residing Applicant

I.D. No. PSC-42-13-00011-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 approve, reject, in whole or in part, or modify a petition filed by The Enclave at Malta regarding the enforcement of Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) Tariff Rule 16.6 (PSC 220).

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

Subject: National Grid's Rule 16.6—Letter of Credit by Non-Residing Applicant.

Purpose: Determine whether there are special circumstances to warrant a waiver to the rule.

Substance of proposed rule: The Public Service Commission is considering whether to adopt, modify or reject a petition filed by The Enclave at Malta, LLC requesting a waiver of 16 NYCRR Section 100.3(b) deposits by applicants for new construction of underground facilities in residential subdivisions and National Grid's related tariff PSC 220 Section 16.6.3. Enclave is requesting an extension to the five year bond limit to complete the project, because property sales were disrupted due to National Grid natural gas construction crews and equipment on the property.

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

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

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

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

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

(13-G-0443SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Grant, Deny or Modify, in Whole or in Part, Con Edison's Petition for Rehearing

I.D. No. PSC-42-13-00012-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 grant, deny or modify, in whole or in part, Consolidated Edison Company of New York, Inc.'s (Con Edison) petition for rehearing seeking authority to recover certain PJM Open Access Transmission Tariff charges.

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

Subject: Whether to grant, deny or modify, in whole or in part, Con Edison's petition for rehearing.

Purpose: Whether to grant, deny or modify, in whole or in part, Con Edison's petition for rehearing.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition for rehearing dated March 18, 2013 by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) seeking rehearing of the Commission's Order dated February 14, 2013 denying the Company's petition for recovery of charges incurred under the PJM Open Access Transmission Tariff (PJM OATT) though the Monthly Adjustment Clause (MAC). Con Edison also seeks a determination that it is no longer required to show the propriety of recovering the PJM OATT costs in the current electric rate proceeding in Case 13-E-0030.

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

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

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

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

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

(09-E-0428SP7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Failure to Provide Escrow Information

I.D. No. PSC-42-13-00013-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 the closure of West Branch Acres, Inc. Escrow Account to cover the cost of unexpected maintenance due to its repeated failure to submit copies of all bank statements and complete accounting of the revenues and expenses.

Statutory authority: Public Service Law, section 89(c)

Subject: Failure to Provide Escrow Information.

Purpose: The closure of the Escrow Account.

Substance of proposed rule: The Commission is considering the closure of the Escrow Account Statement No. 2 to cover the cost of unexpected maintenance for West Branch Acres, Inc. due to a failure to comply with the provisions of the escrow account approved by the Public Service Commission requiring the company submit, within 30 days of the end of each calendar year, a report documenting its management of the escrow account. The Commission is taking this action under the authority granted to it under the Public Service Law.

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

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

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

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

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

(13-W-0446SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-42-13-00014-P

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

Proposed Action: The Public Service Commission is considering a petition by United Water New York Inc., requesting approval to implement a Long-Term Water Supply Surcharge to recover costs associated with the Haverstraw Water Supply Project.

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

Subject: Water rates and charges.

Purpose: Approval of Long-Term Water Supply Surcharge to recover costs associated with the Haverstraw Water Supply Project.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition with a related tariff amendment filed by United Water New York Inc. (UWNY or the Company) to implement a Long-Term Water Supply Surcharge (LTWSS Statement No. 2) to P.S.C. No. 1 – Water, to recover costs associated with the Haverstraw Water Supply Project, a major long-term water supply project. The proposed LTWSS Statement No. 2 had an effective date of

October 1, 2013 but was subsequently suspended through January 28, 2014.

The Company's proposed tariff is available on the Commission's Home Page on the World Wide Web (www.dps.ny.gov) located under Commission Documents – Tariffs under pending). The Commission may resolve related matters and may take this action for other utilities.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(13-W-0246SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Failure to Provide Escrow Information

I.D. No. PSC-42-13-00015-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 the closure of Whistle Tree Development Co., Inc. Repairs and Plant Replacement Escrow Account due to its repeated failure to submit copies of all bank statements and complete accounting of the revenues and expenses.

Statutory authority: Public Service Law, section 89(c)

Subject: Failure to Provide Escrow Information.

Purpose: The closure of the Escrow Account.

Substance of proposed rule: The Commission is considering the closure of the Repairs and Plant Replacement Escrow Account for Whistle Tree Development Corp. due to a failure to comply with the provisions of the escrow account approved by the Public Service Commission requiring the company submit, within 30 days of the end of each calendar year, a report documenting its management of the escrow account. The Commission is taking this action under the authority granted to it under the Public Service Law.

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

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

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

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

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

(13-W-0447SP1)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at State University Maritime College

I.D. No. SUN-28-13-00006-A
Filing No. 955
Filing Date: 2013-09-26
Effective Date: 2013-10-16

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

Action taken: Amendment of Part 576 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and Parking Regulations at State University Maritime College.

Purpose: To amend the traffic and parking regulations at State University Maritime College.

Text or summary was published in the July 10, 2013 issue of the Register, I.D. No. SUN-28-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, Office of General Counsel, University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Office of Victim Services

NOTICE OF ADOPTION

Necessary Updates to Office Regulations

I.D. No. OVS-33-13-00021-A
Filing No. 963
Filing Date: 2013-10-01
Effective Date: 2013-10-16

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

Action taken: Amendment of sections 525.3(d), 525.4, 525.12(g), (h), (i), 525.15(b), (c), 525.17(a), 525.23(c) and (g) of Title 9 NYCRR.

Statutory authority: Executive Law, section 623; and L. 2012, chs. 39 and 233 and L. of 2012, ch. 119

Subject: Necessary updates to Office regulations.

Purpose: To enact necessary updates pursuant to law, recent Chapters of the Laws of 2012 and 2013 and a change of address.

Text or summary was published in the August 14, 2013 issue of the Register, I.D. No. OVS-33-13-00021-P.

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

Text of rule and any required statements and analyses may be obtained from: John Watson, General Counsel, Office of Victim Services, AE Smith Office Bldg., 80 S. Swan Street, 2d Floor, Albany, NY 12210, (518) 457-8066, email: john.watson@ovs.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.