

# 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.

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## Education Department

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

#### Continuing Education Requirements for Licensed Master Social Workers and Licensed Clinical Social Workers

I.D. No. EDU-07-14-00002-P

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

**Proposed Action:** Addition of section 74.10 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 212(3), 6504 (not subdivided), 6507(2)(a), 7710(1), (2), (3); and L. 2013, ch. 443

**Subject:** Continuing education requirements for Licensed Master Social Workers and Licensed Clinical Social Workers.

**Purpose:** To require licensed master social workers and licensed clinical social workers to complete 36 hours of mandatory continuing education when registering to practice in New York State, effective January 1, 2015.

**Substance of proposed rule (Full text is posted at the following State website:** <http://www.regents.nysed.gov/meetings/2014/January2014/114ppcd1.pdf>):

The Commissioner of Education proposes to add a new section 74.10 to the Regulations of the Commissioner of Education, relating to mandatory continuing education for licensed master social workers (“LMSW”) and licensed clinical social workers (“LCSW”). The following is a summary of the substance of the proposed regulation:

A new section 74.10 is added to the regulations of the Commissioner of Education establishing continuing education requirements for LMSWs and LCSWs.

Subdivision (a) of section 74.10 defines the terms acceptable accrediting agency, higher education institution, and psychotherapy institute.

Subdivision (b) of section 74.10 establishes the applicability of the continuing education requirements and exemptions from, and adjustments to, the requirements.

Paragraph (1) of subdivision (b) of section 74.10 states that each LMSW or LCSW, who is required to register with the New York State Education Department (“Department”) to practice in New York State (“State”), must comply with the mandatory continuing education requirements prescribed in subdivision (c).

Subparagraph (i) of paragraph (2) of subdivision (b) of section 74.10 provides an exemption from the requirement for a licensee who is in the triennial registration period during which he or she is first licensed to practice in the State; or a licensee who is not engaged in social work practice, as evidenced by not being registered to practice in the State, except as otherwise prescribed in subdivision (e) of section 74.10.

Subparagraph (ii) of paragraph (2) of subdivision (b) of section 74.10 allows the Department to adjust the requirement for the licensee who documents good cause that prevents compliance, such as poor health or a specific physical or mental disability, or extended active duty with the Armed Forces of the United States, or other good cause beyond the licensee’s control, in the judgment of the Department.

Subdivision (c) of section 74.10 establishes the mandatory continuing education requirement. Subparagraph (i) of paragraph (1) of subdivision (c) of section 74.10 requires at least 36 hours of continuing education acceptable to the Department for each triennial registration period. Any licensee whose first registration following January 1, 2015, is less than three years from that date will be required to complete one hour of acceptable continuing education per month beginning January 1, 2015 up to the first registration date thereafter. Such continuing education must be completed during the period beginning January 1, 2015 and ending before the first day of the new registration period.

Subparagraph (ii) of paragraph (1) of subdivision (c) of section 74.10 sets the continuing education requirement during each registration period of less than three years as one hour for each month in the registration period. Subparagraph (iii) of paragraph (1) of subdivision (c) of section 74.10 states that an LCSW who is also registered to practice as an LMSW during the same registration period will not be required to take more than 36 hours in the triennial registration period or one hour per month for periods other than 36 months.

Paragraph (2) of subdivision (c) of section 74.10 defines continuing education that is acceptable to the Department. Such continuing education must be in the subjects prescribed in subparagraph (i) of paragraph (2) of subdivision (c) of section 74.10 and be the types of learning activities prescribed in subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 and subject to the prohibitions contained in subparagraph (iii) of paragraph (2) of subdivision (c) of section 74.10.

Subparagraph (i) of paragraph (2) of subdivision (c) of section 74.10 defines acceptable continuing education subjects as contributing to professional social work practice. Such acceptable continuing education must have as its focus one or more of the subjects prescribed in clauses (a) through (j) of subparagraph (i) of paragraph (2) of subdivision (c) of section 74.10. Subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 defines the types of learning activities. Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 requires that acceptable courses of learning and other education activities must be taken from a provider who has been approved by the Department, on the basis of an application and fee pursuant to subdivision (i) of section 74.10. Formal courses of learning include, but are not limited to, university and college credit and non-credit courses, and professional development programs and technical sessions related to the practice of social work. Clause (b) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 defines other acceptable education activities. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 allows the Department, in its discretion and as needed to contribute to the health and welfare of the public, to require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

Subparagraph (iii) of paragraph (2) of subdivision (c) of section 74.10 states that any continuing education designed for the sole purpose of personal development, marketing, business practices, and maximizing profits for the social work practice of an LMSW or LCSW will not be considered by the Department as acceptable continuing education.

Subdivision (d) of section 74.10 provides that at each re-registration, the LMSW and LCSW must certify to the Department his or her compliance with the continuing education requirements or that he or she is subject to an exemption or adjustment of the requirements. Paragraph (1) of subdivision (d) of section 74.10 prohibits a licensee who has not satisfied the continuing education requirement from practicing until the requirements have been met and a registration certificate issued by the Department, except where a licensee has been issued a conditional registration, as provided in subdivision (f) of section 74.10. Paragraph (2) of subdivision (d) of section 74.10 prohibits the transfer of continuing education hours completed during one registration period to the subsequent registration period.

Subdivision (e) of section 74.10 prescribes the requirements for a licensee returning to practice as an LMSW or LCSW after a lapse in practice, as evidenced by not being registered to practice in New York State. A licensee whose first registration date after a lapse in practice occurs less than three years from January 1, 2015 will be required to meet the requirements in paragraph (1) of subdivision (e) of section 74.10. Except as defined in paragraph (1) of subdivision (e) of section 74.10, a licensee returning to practice, who has not practiced lawfully in another jurisdiction throughout the lapse period must complete the requirements in paragraph (2) of subdivision (e) of section 74.10. Except as defined in paragraph (1) of subdivision (e) of section 74.10 a licensee returning to practice, who has practiced lawfully in another jurisdiction throughout the lapse period must complete the requirements in paragraph (3) of subdivision (e) of section 74.10.

Paragraph (1) of subdivision (f) of section 74.10 authorizes the Department to issue a conditional registration to an LMSW or LCSW who attests to or admits to noncompliance with the continuing education requirement, provided that the licensee meets the requirements of the paragraph. Paragraph (2) of subdivision (f) of section 74.10 states the duration of a conditional registration will not exceed one year and will not be renewed or extended.

Subdivision (g) of section 74.10 requires the LMSW or LCSW to maintain or ensure access by the Department to records of completed continuing education as specified in that subdivision.

Subdivision (h) of section 74.10 provides for the measurement of continuing education study, specifically, that a minimum of 50 minutes of study will equal one hour of continuing education credit and that continuing education credit for other educational activities will be awarded as prescribed by the Department.

Subdivision (i) of section 74.10 establishes the requirements for Department approval of continuing education providers.

Paragraph (1) of subdivision (i) of section 74.10 states that an entity seeking Department approval as a provider of continuing education to LMSWs and LCSWs must submit the fee prescribed in subdivision (j) of section 74.10 and meet the requirements of paragraphs (2) and (3) of subdivision (i) of section 74.10.

Paragraph (2) of subdivision (i) of section 74.10 identifies an entity eligible to apply to be a provider of continuing education to include, but not be limited to: (1) a higher education institution that offers programs that are registered pursuant to Part 52 of the Regulations of the Commissioner of Education as leading to licensure as an LMSW or LCSW or a higher education institution that is accredited by an acceptable accrediting agency and that offers graduate coursework that is directly related to the enhancement of social work practice, skills and knowledge; (2) a psychotherapy institute, as defined in paragraph (3) of subdivision (a) of section 74.10 that offers coursework that is directly related to the enhancement of social work practice, skills and knowledge; (3) a national social work organization or other professional organization; (4) a New York State social work organization; (5) a national organization of jurisdictional boards of social work; (6) an entity operated under an operating certificate appropriately issued in accordance with articles sixteen, thirty-one or thirty-two of the Mental Hygiene Law; or (7) an entity, hospital or health facility as defined in section 2801 of the Public Health Law.

Paragraph (3) of subdivision (i) of section 74.10 establishes the standards for the Department review of applications from prospective continuing education providers. Prospective continuing education providers must: (1) offer coursework in one or more of the subjects prescribed as acceptable continuing education; (2) be organized, as defined in paragraph (2) of subdivision (i) of section 74.10, or be another entity that employs LMSWs or LCSWs and that meets the requirements of subdivision (i) of section 74.10; (3) provide instructors who are qualified to teach the courses; (4) have a method to assess the learning of participants; (5) maintain records for at least six years from the date of completion of coursework, which

includes the information listed in paragraph (3) of subdivision (i) of section 74.10.

Subparagraph (iii) of paragraph (3) of subdivision (i) of section 74.10 states that providers that meet the requirements of paragraph (3) of subdivision (i) of section 74.10 will be approved for a three-year term. Subparagraph (iv) of paragraph (3) of subdivision (i) of section 74.10 allows the Department to conduct site visits or request information from an approved provider to ensure compliance. Subparagraph (v) of paragraph (3) of subdivision (i) of section 74.10 states that a determination by the Department that an approved provider is not meeting the requirements will result in the denial or termination of the provider's approved status. Subparagraph (vi) of paragraph (3) of subdivision (i) of section 74.10 requires an instructor who engages in the practice of licensed master social work and licensed clinical social work to be appropriately licensed or authorized under the Education Law, when the instruction occurs in the State.

Subdivision (j) of section 74.10 establishes fees authorized by the statute. Paragraph (1) of subdivision (j) of section 74.10 establishes a \$45 mandatory continuing education fee to be paid by each licensee, in addition to the registration fees required by sections 6507-a and 7704 of the Education Law. Paragraph (2) of subdivision (j) of section 74.10 establishes a fee to be paid by a licensee applying for a conditional registration, pursuant to subdivision (f) of section 74.10, that is the same as and in addition to any applicable fee for the triennial registration, in addition to the \$45 mandatory continuing education fee. Paragraph (3) of subdivision (j) of section 74.10 establishes an application fee of \$900 to be paid by an organization requesting the issuance of a permit from the Department to become an approved provider of a formal continuing education program. A fee of \$900 must accompany an application for a three-year renewal of this permit.

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

**Data, views or arguments may be submitted to:** Office of the Professions, Office of the Deputy Commissioner, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 486-1765, email: opdepcom@mail.nysed.gov

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

#### **Regulatory Impact Statement**

##### **1. STATUTORY AUTHORITY:**

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

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department ("Department") to determine and set fees for certifications and permits.

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

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

Paragraph (a) of subdivision (1) of section 7710 of the Education Law, as added by Chapter 443 of the Laws of 2013, requires licensed master social workers and licensed clinical social workers to complete mandatory continuing education as a condition for registration to practice in New York State and provides an exception to this requirement for licensees with conditional registration certificates.

Paragraph (b) of subdivision (1) of section 7710 of the Education Law allows licensed master social workers and licensed clinical social workers to be exempt from the mandatory continuing education requirement for the triennial registration period during which they are first licensed. It also authorizes the Department to adjust the requirement in certain cases.

Paragraph (c) of subdivision (1) of section 7710 of the Education Law provides an exemption from the continuing education requirement for licensees not engaged in the practice of licensed master social work and licensed clinical social work and directs the Department to establish continuing education requirements for licensees reentering the profession.

Paragraph (d) of subdivision (1) of section 7710 of the Education Law provides that a licensed clinical social worker who is also licensed and registered to practice as a licensed master social worker in the same triennial registration period, shall not be required to complete more than 36 hours of continuing education in the triennial registration period or one hour per month for a registration period other than 36 months.

Subdivision (2) of section 7710 of the Education Law provides that a licensed master social worker or licensed clinical social worker must complete the mandatory continuing education requirements to be registered to practice in New York State, and establishes the continuing education hour requirement and a prorated formula for licensees whose first

registration date follows the January 1, 2015 effective date and occurs less than three years from such effective date.

Paragraph (a) of subdivision (3) of section 7710 of the Education Law authorizes the Department to issue conditional registrations for licensed master social workers or licensed clinical social workers who do not meet the regular continuing education requirements, to establish requirements for such licensees under conditional registration, and to charge a fee for such conditional registration in addition to the fee for triennial registration.

Paragraph (b) of subdivision (3) of section 7710 of the Education Law defines acceptable continuing education as formal courses of learning and educational activities which contribute to professional practice in licensed master social work and licensed clinical social work and which meet the standards prescribed in the Regulations of the Commissioner of Education.

Paragraph (b) of subdivision (3) of section 7710 of the Education Law also requires that continuing education courses must be taken from a provider who has been approved by the Department, based upon an application and fee, pursuant to Regulations of the Commissioner of Education. This subdivision also authorizes the Department to require the completion of continuing education courses in specific subjects to fulfill the continuing education requirement, as needed to contribute to the health and welfare of the public.

Paragraph (b) of subdivision (3) of section 7710 of the Education Law also requires licensed master social workers and licensed clinical social workers to maintain adequate documentation of compliance with the continuing education requirements and provide such documentation at the request of the Department.

Paragraph (c) of subdivision (3) of section 7710 of the Education Law authorizes the Department to charge licensed master social workers and licensed clinical social workers a mandatory continuing education fee.

Section 2 of Chapter 443 of the Laws of 2013 authorizes the Department to add, amend, and/or repeal any rule or regulation necessary to timely implement the new law requiring the completion of continuing education by licensed master social workers and licensed clinical social workers.

## 2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the intent of Chapter 443 of the Laws of 2013 that amended Article 154 of the Education Law by adding a new section 7710, which requires the completion of continuing education by licensed master social workers and licensed clinical social workers and establishes standards for such continuing education. Specifically, the proposed rule establishes appropriate standards for what constitutes acceptable continuing education, continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, recordkeeping requirements applicable to licensees, and standards for the approval of continuing education providers for licensed master social workers and licensed clinical social workers and recordkeeping requirements applicable to said approved providers.

## 3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to ensure continued competency by practicing licensed master social workers and licensed clinical social workers by establishing continuing education requirements that must be completed in order to be registered to practice in New York State and to establish requirements for the approval of providers of such continuing education. The proposed rule is necessary to conform Regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013.

As required by statute, the proposed rule is also needed to establish continuing education requirements when there is a lapse in practice, and requirements for licensees under conditional registration. In addition, the proposed rule is needed to establish fees for both the mandatory continuing education for each licensed master social worker and licensed clinical social worker and the Department's review of providers of courses of learning or educational activities in order to defray the cost of such review.

## 4. COSTS:

(a) Costs to State government. The proposed rule implements statutory requirements and establishes standards as directed by statute. The rule will not impose any additional cost on State government, over and above the cost imposed by the statutory requirements.

(b) Costs to local government. There are no additional costs to local governments.

(c) Cost to private regulated parties. As authorized by Education Law section 7710(3)(c), the proposed rule includes a mandatory continuing education fee for licensed master social workers and licensed clinical social workers at each triennial registration; this mandatory continuing education fee is set at \$45. Statutory provisions also require that licensed master social workers and licensed clinical social workers complete a prescribed number of hours of acceptable continuing education. The proposed rule establishes a \$900 fee for the Department's review of prospective continuing education providers for approval to offer continuing education in the form of courses of learning or educational activities for a three-year term.

(d) Cost to the regulatory agency. The proposed rule does not impose additional costs on the Department beyond those imposed by statute.

## 5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of section 7710 of the Education Law relating to mandatory continuing education requirements for licensed master social workers and licensed clinical social workers. It does not impose any program, service, duty, or responsibility upon local governments.

## 6. PAPERWORK:

The proposed rule requires each licensee to maintain, or ensure access by the Department to, a record of completed continuing education for six years, which includes: the type of educational activity if an educational activity, the title of the course if a course, the subject of the continuing education, the number of hours completed, the provider's name and any identifying number (if applicable), attendance verification if a course, participation verification if another educational activity, a copy of any article or book for which continuing education credit is claimed with proof of publication, and the date and location of the continuing education. In addition, the proposed rule requires providers of continuing education, approved by the Department, to maintain records for at least six years which includes: the name and curriculum vitae of the faculty, a record of attendance of licensed master social workers or licensed clinical social workers in the course, if a course, a record of participation of licensed master social workers or licensed clinical social workers in the self-instructional course, if a self-instructional course, an outline of the course, date and location of the course, and the number of hours for completion of the course.

## 7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of this amendment. Therefore, the proposed rule does not duplicate other existing State or Federal requirements and is necessary to implement Chapter 443 of 2013.

## 8. ALTERNATIVES:

The proposed rule is necessary to conform the regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013. There are no significant alternatives to the proposed rule and none were considered.

## 9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for the continuing education of licensed master social workers or licensed clinical social workers, the proposed rule does not exceed any minimum federal standards for the same or similar subject areas.

## 10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the regulations of the Commissioner of Education to Chapter 443 of the Laws of 2013. Licensed master social workers and licensed clinical social workers must comply with the continuing education requirements on the effective date of the authorizing statute, January 1, 2015. The statute and proposed rule establish a phase-in period during which the licensee will be required to complete less than the full 36 hours of continuing education based upon a proration formula. It is anticipated that licensees will be able to comply with the proposed rule by the effective date so that no additional period of time will be necessary to enable regulated parties to comply.

## *Regulatory Flexibility Analysis*

### (a) Small Businesses:

#### 1. EFFECT OF RULE:

The purpose of the proposed rule is to implement Chapter 443 of the Laws of 2013 which establishes mandatory continuing education requirements for licensed master social workers and licensed clinical social workers registered to practice in New York State. This continuing education will be offered by providers approved by the State Education Department ("Department"), some of which may be small businesses. The Department does not know the exact number of providers that will be small businesses, but estimates that number based on its experience with similar requirements in the profession of public accountancy as set forth in the methodology below.

Individuals licensed in public accountancy have been subject to mandatory continuing education requirements since 1985, and providers of such continuing education must be approved by the Department, after a Department review. In accounting, about 800 providers of continuing education are approved by the Department. There is an approximately equal number of licensed social workers (53,754) (combination of 27,085 licensed master social workers and 26,669 licensed clinical social workers) as there are individuals licensed in public accountancy (53,567) in this State. Using these numbers, the Department calculates that there will be a need for about 800 providers of continuing education for licensed master social workers and licensed clinical social workers. Of these, based upon a survey of the providers in accounting, the Department estimates that about 75 percent or 600 will be small businesses.

The proposed rule does not distinguish Department review of small business entities that seek to provide continuing education to licensed master social workers and licensed social workers, and Department review of any other entity that seeks to offer such coursework and/or programs.

## 2. COMPLIANCE REQUIREMENTS:

There are compliance requirements for providers seeking approval to offer continuing education to licensed master social workers and licensed clinical social workers. An entity must submit an application for advance approval as a provider at least 90 days prior to the date of commencement of the continuing education coursework and/or program for review by the Department. The applicant must document in the application: curricular areas of offerings; its organizational status as an educational entity or expertise in the professional area; the qualifications of course instructors; methods for assessing the learning of participants; and recordkeeping procedures. Approved applicants will be permitted to offer continuing education to licensed master social workers and licensed clinical social workers for a three-year term and must apply for a permit every three years.

## 3. PROFESSIONAL SERVICES:

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

## 4. COMPLIANCE COSTS:

An organization seeking approval as a provider of continuing education to licensed master social workers and licensed clinical social workers through a Department review would be required to pay the Department a fee of \$900 to defray the cost of its review. Such fee would be paid once every three years, upon submission of the organization's application. Therefore, the annualized cost is \$300.

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

An approved provider of continuing education to licensed master social workers and licensed clinical social workers would charge fees to those licensees who participate in its approved learning activities which would generate revenue for the provider. Although the fees would vary based on the type and form of the approved learning activities, in a majority of, if not all, cases, the compliance costs would be more than offset by fees paid to an approved provider by those licensees who participate in its approved learning activities.

## 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

## 6. MINIMIZING ADVERSE IMPACT:

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

## 7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Social Work, many of whom have experience in a small business environment, provided input in the development of the proposed rule. In addition, staff of the Department worked with the statewide and national professional associations and councils that represent licensed master social workers and licensed clinical social workers by disseminating information concerning the proposed regulation to these organizations and seeking their input. These organizations include members who own and operate small businesses.

### (b) Local Governments:

The proposed rule establishes continuing education requirements for licensed master social workers and licensed clinical social workers and standards for providers of such continuing education. It will not impose any reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact on local governments. Because it is evident from the nature of the proposed rule that it will not adversely affect local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

### *Rural Area Flexibility Analysis*

#### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule will apply to all licensed master social workers and licensed clinical social workers in New York State. The proposed rule implements the provisions of section 7710 of the Education Law, as added by Chapter 443 of the Laws of 2013 that, effective January 1, 2015, require each licensed master social worker and licensed clinical social worker to complete 36 hours of continuing education during each three-year registration period. It also establishes standards for both acceptable continuing education to meet this statutory requirement and the State Education Department's ("Department") approval of continuing education providers. The proposed rule will apply to licensed master social workers and

licensed clinical social workers located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. All 27,085 licensed master social workers and 26,669 licensed clinical social workers who are registered by the State Education Department to practice in New York State will be subject to the requirements of the proposed rule. Of these, 2,671 licensed master social workers (9.75%) and 2,901 licensed clinical social workers (10.88%) report that their permanent address of record is in a rural county of the State.

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

As required by section 7710 of the Education Law, the proposed rule will require licensed master social workers and licensed clinical social workers, including those that reside or work in rural areas, to complete 36 hours of acceptable continuing education to be registered to practice in New York State. The proposed rule defines acceptable continuing education subjects and other types of educational activities that the Department will accept to satisfy the statutorily mandated continuing education requirements. The proposed rule requires licensees to certify that they have met the requirements upon applying for renewal of registration to practice in New York State. The proposed rule requires each licensee to maintain prescribed information concerning completed acceptable continuing education for six years from the date of completion of said education.

The proposed rule also establishes standards for the Department's approval of prospective continuing education providers desiring to offer acceptable continuing education in the form of courses of learning and/or self-study programs, including providers, who may be located in rural areas. The proposed rule requires such approved providers to maintain specified records related to the offering of the courses of learning and self-study programs for a six-year period from the date of completion of the coursework and/or programs.

The proposed rule does not impose any professional services requirements on entities in rural areas.

## 3. COSTS:

The proposed rule implements provisions in the statute that authorize the Department to establish a continuing education fee on each licensed master social worker and licensed clinical social workers and a fee for the Department review and approval of entities seeking to become an approved provider of continuing education for a three-year term. These fees are set at \$45 and \$900 respectively, consistent with the fees charged in other professions.

## 4. MINIMIZING ADVERSE IMPACT:

The proposed rule implements and clarifies the continuing education requirements for licensed master social workers and licensed clinical social workers found in section 7710 of the Education Law. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Thus, the Department has determined that the proposed rule's requirements should apply to all licensed master social workers and licensed clinical social workers, regardless of their geographic location, to help ensure a uniform standard of continuing competency across the State. The Department has also determined that uniform standards for the Department's review of providers are necessary to ensure quality offerings in all parts of the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

## 5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of licensed master social work and licensed clinical social work. Included in this group was the State Board for Social Work and professional associations representing the social work profession. These groups have members who live or work in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 443 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

### *Job Impact Statement*

Section 7710 of the Education Law, as added by Chapter 443 of the Laws of 2013, establishes mandatory continuing education requirements

for licensed master social workers and licensed clinical social workers registered to practice in New York State. The proposed rule implements the requirement of Chapter 443 of the Laws of 2013 that each licensed master social worker and licensed clinical social worker complete 36 hours of continuing education during each three-year registration period and establishes standards for both acceptable continuing education to meet this statutory requirement and the Department's approval of continuing education providers.

Because, the proposed regulation implements specific statutory requirements and directives, any impact on jobs and employment opportunities created by establishing a continuing education requirement for licensed master social workers and licensed clinical social workers is attributable to the statutory requirement, not the proposed rule, which simply establishes standards that conform with the requirements of the statute. In any event, similar statutory continuing education requirements were established for individuals licensed as physical therapists in 2009 and licensed massage therapists in 2012, and the Department is not aware that those requirements significantly affected jobs or employment opportunities in those professions. In addition, the statutory continuing education requirement for licensed master social workers and licensed clinical social workers may increase job and employment opportunities for prospective approved continuing education providers and their current and potential employees.

Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Reciprocity Requirements for Classroom Teachers

**I.D. No.** EDU-07-14-00003-P

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

**Proposed Action:** Amendment of Part 80 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b), 3007(1), (2) and 3009(1)

**Subject:** Reciprocity requirements for classroom teachers.

**Purpose:** To establish a standardized reciprocity process for the review of teaching candidates from other jurisdictions.

#### **Text of proposed rule:**

1. Paragraph (39) of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education shall be amended, effective May 14, 2014, to read as follows:

(39) Teacher means the holder of a valid teacher's certificate issued by the Commissioner of Education [or a valid regional credential].

2. Section 80-1.4 of the Regulations of the Commissioner of Education shall be amended, effective May 14, 2014, to read as follows:

Section 80-1.4 Required study in child abuse identification and reporting, and school violence prevention and intervention.

All candidates for a certificate or license valid for administrative or supervisory service, classroom teaching service or school service shall have completed at least two clock hours of coursework or training regarding the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of sections 3003(4) and 3004 of the Education Law. In addition, all candidates for a certificate or license valid for administrative or supervisory service, classroom teaching service or school service, who apply for a certificate or license on or after February 2, 2001, shall have completed at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a registered program leading to certification pursuant to section 52.21 of this Title or other approved provider pursuant to Subpart 57-2 of this Title. [An individual making application for a provisional or an initial certificate pursuant to section 3030 of the Education Law and/or section 80-2.2(e) of this Part shall satisfy the requirements of this section upon application for the permanent or professional certificate.]

3. Paragraph (2) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education is repealed and paragraphs (3) through (6) are renumbered as paragraphs (2) through (5) of subdivision (a) of section 80-2.9 of the Regulations of the Commissioner of Education, effective May 14, 2014.

4. Paragraph (3) of subdivision (d) of section 80-3.2 of the Regulations

of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

(3) The certificate, license or credential forms for supplemental school personnel, teaching in nonregistered evening schools[, regional credential,] and internship certificate shall be those prescribed in Subpart 80-5 of this Part.

5. Paragraph (3) of subdivision (e) of section 80-3.2 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

(3) The certificate, license or credential titles for supplemental school personnel, teachers of adult, community and continuing education, [regional credential,] and internship certificate shall be those prescribed in Subpart 80-5 of this Part.

6. Paragraph (1) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is repealed and a new paragraph (1) is added to subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education, effective May 1, 2014, to read as follows:

(1) Education. The candidate shall meet the education requirement by holding a baccalaureate degree from a regionally accredited institution of higher education or a higher education institution that the commissioner deems substantially equivalent or from an institution authorized by the Regents to confer degrees and whose programs are registered by the department, and shall satisfactorily complete a program registered pursuant to section 52.21 of this Title, which leads to the certificate sought, or its equivalent.

7. Subparagraph (i) of paragraph (1) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (i) of paragraph (1) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is added, effective May 14, 2014, to read as follows:

(i) Education. The candidate shall meet the education requirement by satisfactorily completing an associate degree program registered pursuant to section 52.21(b)(3)(xiii) of this Title as leading to an initial certificate under option A, or its equivalent.

8. Subparagraph (i) of paragraph (2) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is repealed and a new subparagraph (i) of paragraph (2) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education is added, effective May 14, 2014, to read as follows:

(i) Education. The candidate shall meet the education requirement by satisfactorily completing an program registered pursuant to section 52.21(b)(3)(xiii) of this Title as leading to an initial certificate under option B, or its equivalent.

9. Subclause (2) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 of the Regulations of the Commissioner of Education is repealed and subclause (3) is renumbered as subclause (2) of clause (a) of subparagraph (ii) of paragraph (1) of subdivision (a) of section 80-3.10 of the Regulations of the Commissioner of Education, effective May 14, 2014.

10. Section 80-5.8 of the Regulations of the Commissioner of Education is repealed and a new section 80-5.8 is added, effective May 14, 2014, to read as follows:

Section 80-5.8 Endorsement of certificates for service as a teacher in the classroom teaching service and recognition of substantially equivalent out-of-state teacher education programs for service as a teacher in the classroom teaching service in New York State.

(a) Endorsement of certificates for service as a teacher in the classroom teaching service.

(1) The commissioner may endorse the certificate or an equivalent authorization to practice from another state or territory of the United States or the District of Columbia for service as a teacher in the classroom teaching service, provided that the candidate meets the following requirements:

(i) The candidate shall hold a valid certificate or equivalent authorization to practice from another state or territory of the United States or the District of Columbia that is equivalent to the title and type of the certificate sought.

(ii) The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, and school violence prevention and intervention; section 80-1.13 relating to coursework or training in harassment, bullying and discrimination prevention and intervention; and section 80-1.1 relating to a criminal history check.

(iii) The candidate shall either:

(a) have completed a teacher education program from a regionally accredited institution of higher education or a higher education institution that the Commissioner deems substantially equivalent, provided that such program leads to an initial certificate, or a similar certificate title and type, in the jurisdiction in which the higher education institution is located; or

(b) have at least three years of satisfactory experience in a public school (grades birth-12) in another state or territory of the United States or the District of Columbia in a position that would have required the equivalent of an initial or professional certificate in the certificate title sought as a teacher in the classroom teaching service for employment in New York State and while under a certificate issued by such other state authorizing such service, such experience must have been completed within 5 years immediately preceding the application for endorsement of the out-of-state certificate; or the candidate shall have equivalent experience as determined by the Commissioner.

(iv) Degree. The candidate shall hold a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems substantially equivalent. Candidates shall have achieved a 2.5 cumulative grade point average, or its equivalent, in the program leading to the degree.

(v) Examination. The candidate shall meet the examination requirements for the title and type of certificate sought in this State.

(2) Such candidate who meets the endorsement requirements in paragraph (1) of this subdivision shall be issued an initial certificate as a teacher in the classroom teaching service pursuant to the requirements of this Part.

(3) If a candidate meets all of the requirements for endorsement set forth in paragraph (1) of this subdivision, except the teacher performance assessment, if required for the certificate type and title sought, the candidate shall be issued a one-year nonrenewable conditional initial certificate, provided that the candidate meets the requirements of section 80-5.17 of this Subpart.

(b) Recognition of substantially equivalent teacher education programs for service as a teacher in the classroom teaching service.

(1) The Commissioner may recognize and issue an initial certificate to an out-of-state candidate who completes a teacher education program at a regionally accredited institution of higher education or a higher education institution that the commissioner deems substantially equivalent from another state or territory of the United States or the District of Columbia that leads to certification in the title and type of certificate sought in the jurisdiction where the higher education institution is located if the candidate also meets the following requirements:

(i) General Requirements. The candidate shall meet the general requirements for certificates prescribed in Subpart 80-1 of this Part, including but not limited to the requirements of section 80-1.3 relating to citizenship, section 80-1.4 relating to study in child abuse identification and reporting, and school violence prevention and intervention; section 80-1.13 relating to coursework or training in harassment, bullying and discrimination prevention and intervention; and section 80-1.1 relating to a criminal history check.

(ii) Degree. The candidate holds a baccalaureate or higher degree from a regionally accredited institution or a higher education institution that the commissioner deems substantially equivalent. Candidates shall have achieved a 2.5 cumulative grade point average, or its equivalent, in the program leading to the degree.

(iii) Examination. The candidate shall receive a satisfactory passing score on all examinations required for the title and type of certificate sought in this State.

(2) A candidate who meets the requirements for recognition of an out-of-state teacher education program in paragraph (1) of this subdivision shall be issued an initial certificate as a teacher in the classroom teaching service pursuant to the requirements of this Part.

11. Section 80-5.11 of the Regulations of the Commissioner of Education is amended, effective May 14, 2014, to read as follows:

Section 80-5.11. Certificate of qualification.

The commissioner shall not issue certificates of qualification with issuance dates on or after September 2, 1998. Holders of certificates of qualification with issuance dates prior to September 2, 1998 may retain the certificate as evidence that the holder is eligible for a provisional certificate. At the commencement of regular employment in any public school in the State, during the period of validity of the certificate of qualification, the holder shall deliver such certificate to the chief school officer of the district offering employment, who shall forward such certificate to the commissioner for the issuance of a provisional certificate. The certificate of qualification is evidence that the holder is eligible for employment as a substitute teacher. Permanent certification will be issued upon completion of the requirements for permanent certification in effect at the time of issuance of the certificate of qualification [or regional certificate].

12. Section 80-5.17 of the Regulations of the Commissioner of Education is repealed a new section 80-5.17 of the Regulations of the Commissioner of Education shall be amended, effective May 14, 2014, to read as follows:

Section 80-5.17 Conditional initial certificate.

(a) Conditional initial certificate in the classroom teaching service.

(1) For out-of-state candidates applying for initial certification on or

after May 1, 2014 and prior to May 1, 2017 in a certificate title in the classroom teaching service for which this Part requires completion of a teacher performance assessment, the commissioner may issue to a candidate who has received a satisfactory passing score on all other required examination requirements, as required for the title and type of certificate sought in this State, a one-year nonrenewable conditional initial certificate, notwithstanding that the candidate has not received a satisfactory passing score on the teacher performance assessment, and deem that all other requirements for the initial certificate in the certificate title sought have been met, provided that the candidate holds a valid regular teacher's certificate or an authorization to practice that the commissioner deems equivalent in the same or an equivalent title by another state or territory of the United States and otherwise meets the requirements for endorsement as set forth in subdivision (a) of section 80-5.8 of this Title, except the teacher performance assessment, if required, and the candidate has not already taken and received an unsatisfactory score on the teacher performance assessment.

(b) Conditional initial certificate in the title school building leader. The commissioner may issue a two-year nonrenewable conditional initial certificate in the title school building leader to a candidate who applies for the certificate after September 1, 2006 and meets the following requirements:

(1) . . .

(2) the candidate holds a valid regular certificate or an authorization to practice that the commissioner deems equivalent in an equivalent title to the title school building leader issued by [a state which has contracted with the State of New York pursuant to section 3030 of the Education Law, the interstate agreement on qualifications of educational personnel, or] another state or country provided that the commissioner determines that the certificate issued by the other state or country evidences knowledge, skills and abilities comparable to those required for certification in New York State.

(c) . . .

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

**Data, views or arguments may be submitted to:** Peg Rivers, NYS Education Department, Office of Higher Education, Room 979, Washington Avenue, Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

#### Regulatory Impact Statement

##### 1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Paragraph (1) of section 3004 of the Education Law authorizes the Commissioner to prescribe, subject to approval by the Board of Regents, regulations governing the examination and certification of teachers employed in the public schools of this State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Paragraphs (1) and (2) of section 3007 of the Education Law authorizes the Commissioner to endorse the diploma issued by a normal school or teachers college of another state or a certificate issued by the chief educational officer or state board of another state.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

##### 2. LEGISLATIVE OBJECTIVES:

The amendment carries out the legislative objectives of the above-referenced statutes by establishing requirements for the reciprocity of candidates holding out-of-state certificates and the recognition of out-of-state teacher education preparation programs and amending the requirements for a conditional initial certificate for these candidates.

##### 3. NEEDS AND BENEFITS:

###### Interstate Agreement

Pursuant to Section 3030 of the Education Law, New York State was a party to the Interstate Agreement on the Qualifications of Educational Personnel until 2010. Created through the National Association of State

Directors of Teacher Education and Certification (NASDTEC), this compact permits a State to enter into an agreement with another state for the acceptance of educational personnel where the other state's programs of education, certification standards or other qualifications were sufficiently comparable to the primary state. In 2010, NASDTEC asked each state to undertake a review of all of the other states' teacher education programs and licensure requirements to determine if they were comparable to their state before entering into a new agreement. At that time it was determined that the Office of Teaching Initiatives (OTI) did not have the resources to complete this comprehensive review and/or to continue to review changes made to such requirements over the period of the agreement. Instead, OTI created a standardized reciprocity process for the review of candidates coming from other states.

Currently, there are three options for reciprocity in New York State which are posted on the Department's website and are largely based on the guidelines of the prior interstate compact.

#### Proposed New Regulations:

The proposed new regulations take into account the new certification requirements, changes to the administration of the exams, and make the requirements clear and transparent for the field and candidates seeking to be certified in New York State.

With the implementation of the new teacher certification requirements taking effect May 1, 2014, it is important to re-evaluate our current practice and consider the potential ramifications of the new certification examinations and how these examinations will be administered.

In the past, many qualified professionals from out-of-state could not start work as a teacher in New York simply because they could not access the required certification exams in a timely manner. To address this situation, efforts were made, as described in our current policies, to determine when a candidate coming from another state had the necessary and equivalent training and preparation to be permitted, on a temporary basis, to teach in New York until they had an opportunity to take and pass all teacher certification examinations required for employment in this profession.

One of the important changes in the administration of the new certification examinations affecting out-of-state candidates is computer-based testing. With testing centers located throughout the country, out-of-state candidates will no longer have to wait significant periods of time or need to travel to New York to take the computer-based exams. Certification examinations are now offered with greater frequency, many on a daily or weekly basis.

However, as part of the new teacher certification requirements, all candidates will also need to take and pass the edTPA. This performance-based assessment requires all candidates to video tape themselves providing instruction in an actual classroom. This requirement has the potential to be a significant barrier for many qualified out-of-state candidates.

As a result of the aforementioned changes to New York's certification requirements, the Department recommends that the existing practice for out-of-state candidates be discontinued after May 1, 2014 and that new regulations be adopted that clarify, under the new teacher certification requirements, how an out-of-state candidate qualifies for a Conditional Initial Certificate. The proposed regulations also changes existing practice to require candidates to pass the ALST, EAS and CST(s) prior to receiving a Conditional Initial Certificate. The proposed amendment also decreases the time validity of a Conditional Initial Certificate from two years to one year. In addition, the proposed amendment establishes a sunset date of May 1, 2017 for the issuance of a Conditional Initial Certificate.

#### 4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government including the State Education Department.

(b) Costs to local governments: The amendment will not impose any additional costs on local governments.

#### 5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

#### 6. PAPERWORK

There are no additional paperwork requirements beyond those currently imposed.

#### 7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements.

#### 8. ALTERNATIVES:

No alternatives were considered.

#### 9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

#### 10. COMPLIANCE SCHEDULE:

It is anticipated that the proposed amendment will be adopted at the April Regents meeting and will become effective on May 14, 2014.

#### *Regulatory Flexibility Analysis*

The purpose of the proposed amendment is clarify the reciprocity requirements for candidates seeking to be certified in New York State with an out-of-state teaching certificate and to recognize certain out-of-state teacher preparation programs for candidates seeking to be licensed in New York and to discontinue the current requirements for conditional initial certificates for out-of-state candidates seeking reciprocity in New York State and instead require that an out-of-state candidate pass the ALST, EAS and CST(s) prior to receiving a Conditional Initial Certificate. In addition, the proposed amendment establishes a sunset date of May 1, 2017 for the issuance of a Conditional Initial Certificate.

The proposed rule does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

#### *Rural Area Flexibility Analysis*

##### 1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect out-of-state candidates who seek reciprocity and/or recognition of their out-of-state teacher preparation program and apply a conditional initial certificate in order to be employed in all school districts, BOCES of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

###### Interstate Agreement

Pursuant to Section 3030 of the Education Law, New York State was a party to the Interstate Agreement on the Qualifications of Educational Personnel until 2010. Created through the National Association of State Directors of Teacher Education and Certification (NASDTEC), this compact permits a State to enter into an agreement with another state for the acceptance of educational personnel where the other state's programs of education, certification standards or other qualifications were sufficiently comparable to the primary state. In 2010, NASDTEC asked each state to undertake a review of all of the other states' teacher education programs and licensure requirements to determine if they were comparable to their state before entering into a new agreement. At that time it was determined that the Office of Teaching Initiatives (OTI) did not have the resources to complete this comprehensive review and/or to continue to review changes made to such requirements over the period of the agreement. Instead, OTI created a standardized reciprocity process for the review of candidates coming from other states.

Currently, there are three options for reciprocity in New York State which are posted on the Department's website and are largely based on the guidelines of the prior interstate compact.

#### Proposed New Regulations:

The proposed new regulations take into account the new certification requirements, changes to the administration of the exams, and make the requirements clear and transparent for the field and candidates seeking to be certified in New York State.

With the implementation of the new teacher certification requirements taking effect May 1, 2014, it is important to re-evaluate our current practice and consider the potential ramifications of the new certification examinations and how these examinations will be administered.

In the past, many qualified professionals from out-of-state could not start work as a teacher in New York simply because they could not access the required certification exams in a timely manner. To address this situation, efforts were made, as described in our current policies, to determine when a candidate coming from another state had the necessary and equivalent training and preparation to be permitted, on a temporary basis, to teach in New York until they had an opportunity to take and pass all teacher certification examinations required for employment in this profession.

One of the important changes in the administration of the new certification examinations affecting out-of-state candidates is computer-based testing. With testing centers located throughout the country, out-of-state candidates will no longer have to wait significant periods of time or need

to travel to New York to take the computer-based exams. Certification examinations are now offered with greater frequency, many on a daily or weekly basis.

However, as part of the new teacher certification requirements, all candidates will also need to take and pass the edTPA. This performance-based assessment requires all candidates to video tape themselves providing instruction in an actual classroom. This requirement has the potential to be a significant barrier for many qualified out-of-state candidates.

As a result of the aforementioned changes to New York's certification requirements, the Department recommends that the existing practice for out-of-state candidates be discontinued after May 1, 2014 and that new regulations be adopted that clarify, under the new teacher certification requirements, how an out-of-state candidate qualifies for a Conditional Initial Certificate. The proposed regulations also changes existing practice to require candidates to pass the ALST, EAS and CST(s) prior to receiving a Conditional Initial Certificate. The proposed amendment also decreases the time validity of a Conditional Initial Certificate from two years to one year. In addition, the proposed amendment establishes a sunset date of May 1, 2017 for the issuance of a Conditional Initial Certificate.

### 3. COSTS:

There are no additional costs imposed beyond those imposed by statute.

### 4. MINIMIZING ADVERSE IMPACT:

The State Education Department does not believe that making this change for candidates who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

### 5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

### Job Impact Statement

The purpose of the proposed amendment is clarify the reciprocity requirements for candidates seeking to be certified in New York State with an out-of-state teaching certificate and to recognize certain out-of-state teacher preparation programs for candidates seeking to be licensed in New York and to discontinue the current requirements for conditional initial certificates for out-of-state candidates seeking reciprocity in New York State and instead require that an out-of-state candidate pass the ALST, EAS and CST(s) prior to receiving a Conditional Initial Certificate. In addition, the proposed amendment establishes a sunset date of May 1, 2017 for the issuance of a Conditional Initial Certificate.

Therefore, the proposed rule will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed rule that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

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## Department of Health

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### NOTICE OF ADOPTION

#### School Immunization Requirements

**I.D. No.** HLT-36-13-00007-A

**Filing No.** 114

**Filing Date:** 2014-02-03

**Effective Date:** 2014-07-01

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

**Action taken:** Amendment of Subpart 66-1 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 2164 and 2168

**Subject:** School Immunization Requirements.

**Purpose:** To amend and update NYS school entry immunization requirements.

**Substance of final rule:** This proposal will amend Subpart 66-1 (School Immunization Requirements) to update regulations so that they comply with current immunization recommendations and medical knowledge. The regulations would be effective July 1, 2014.

Proposed amendments to Section 66-1.1 provide that a child will be considered fully-immunized when (i) the child has received an adequate

dosage and number of doses of an immunizing agent commensurate with his or her age or (ii) the child has otherwise demonstrated immunity to measles, mumps, rubella, hepatitis B, poliomyelitis (all three serotypes) and varicella through a positive serologic test or, for varicella only, disease as verified by a physician, nurse practitioner or physician's assistant. For those immunizations required by Public Health Law (PHL) § 2164 only, the number of doses that a child should have at any given age, and the minimum intervals between these doses, is determined by the Recommended Immunization Schedule for Persons Aged 0 Through 18 Years issued by the Advisory Committee on Immunization Practices (ACIP). If a child is not fully immunized, immunization must take place according to the Catch-Up Schedule of the ACIP.

For all vaccinations except poliomyelitis and varicella, children shall be assessed upon school entry or attendance, and annually thereafter, and be found to be fully immunized commensurate with their age. For poliomyelitis vaccination beginning on or after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must be fully immunized commensurate with their age. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against poliomyelitis. For varicella vaccination beginning on and after July 1, 2014, children shall be assessed upon entry or attendance to kindergarten and sixth grade, and/or their equivalent grades, and must have received two adequate doses of vaccine. As the students enrolling in kindergarten and sixth grade move up a grade level each year, the students enrolling in those higher grades, or grade equivalent, must be appropriately immunized against varicella.

The proposed amendments also provide that a child will be considered "in process" of receiving necessary immunizations if he or she has received at least the first dose in each required immunization series and has age appropriate appointments to complete the immunization series or is obtaining serologic tests and has appointments to complete the immunization series within 30 days of notification that serologic tests are negative. Children who are not fully immunized can only continue to attend school if they are in the process of completing the ACIP catch up schedule. If a child does not receive subsequent doses of vaccine in an immunization series according to the age appropriate ACIP catch-up schedule, the child is no longer in process and must be excluded from school, if not otherwise exempt from immunization requirements.

Proposed amendments to Section 66-1.2 update the definitions in the regulation to conform to changes in the New York State Immunization Information System (NYSIIS) statute (PHL § 2168), to account for the implementation of NYSIIS that has occurred since 2008, and to include references to the New York City Immunization Registry (CIR). The proposed amendments also expand upon the definition of authorized users as well as the types of information to be reported to NYSIIS or the CIR to include race, ethnicity, telephone numbers, birth order (if multiple birth), birth state/country, Vaccines for Children Program eligibility and Medicaid number.

Proposed amendments to Section 66-1.3 provide that a school shall not admit a child without receipt of a certificate of immunization from a health care practitioner, or from NYSIIS or the CIR, documenting that the child has been fully immunized, documentation that the child is "in process," a signed medical exemption, or a completed religious exemption. The proposed changes state that a principal or person in charge of a school shall not refuse to admit a child to school, based on immunization requirements, if that child is in process. The proposed changes also require that a medical exemption must be reissued annually and must contain sufficient information to identify a medical contraindication to a specific immunization and specify the length of time the immunization is medically contraindicated. For both medical and religious exemptions, the principal or person in charge of the school may require additional information supporting the exemption.

Proposed amendments to Section 66-1.4 clarify that the 14 calendar day period for continued school attendance may be extended to not more than 30 calendar days for an individual student who is transferring from out-of-state or from another country and can show a good faith effort to obtain the necessary evidence of immunization.

Proposed amendments to Section 66-1.6 provide that the certificate of immunization shall be prepared by the health practitioner who administers the immunizing agents and shall specify the products administered and the dates of administration. It may also show physician, nurse practitioner, or physician assistant-verified history of varicella disease and/or laboratory evidence of immunity to measles, mumps, rubella, varicella, Hepatitis B and all 3 serotypes of poliomyelitis contained in the polio vaccines.

Proposed amendments to Section 66-1.7 provide that every school shall annually provide the Commissioner of Health, or in the city of New York, the New York City Commissioner of Health, a summary regarding compliance with immunization requirements. For all schools, excluding public schools within New York City, the summary will be provided in the form of the yearly school survey conducted by the Department of Health.

Proposed amendments to Sections 66-1.8 and 66-1.9 clarify the obligation of the school to notify the local health authority, when a child has been excluded because of lack of acceptable evidence of immunization or exemption, and the obligation of the local health authority to arrange for a suitable health practitioner to administer immunizations.

Proposed amendments to Section 66-1.10 provide that, for those diseases listed in PHL § 2164, in the event of an outbreak of disease in a school, the Commissioner, or his or her designee, or in the City of New York, the New York City Commissioner of Health may order the exclusion of children who have been exempted from immunization or are “in process” of receiving required immunizations. Any exclusion shall continue until the Commissioner, or his or her designee, or the New York City Commissioner of Health (as appropriate), determines that the danger of disease transmission has passed. The proposed changes also require schools to maintain a current list of susceptible students who should be excluded from attendance in the event of an outbreak of vaccine-preventable disease.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 66-1.2(a)(2), (d)(1)(i), 66-1.6 and 66-1.10.

**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: regsqa@health.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

#### **Assessment of Public Comment**

Comment:

In proposed § 66-1.2(a)(2), the Citywide immunization registry is defined to include “those persons 19 years and older with written consent in accordance with the New York City Health Code.” Because the requirement for written consent was removed pursuant to a recent State legislative change, the word “written” should be deleted.

Response:

Regulatory language has been revised to incorporate this change.

Comment:

Proposed § 66-1.2 (a)(7) defines school as “any agency or entity required by law or regulation to verify immunization status for participants.” Because the applicable existing laws and regulations do not specifically refer to verification, it is recommended that the reference to verification be removed. Proposed § 66-1.2(a)(8)(v) also refers to schools and incorporates this definition.

Response:

The regulations were not revised to include this change. Applicable existing law at Public Health Law (PHL) § 2168(8)(d)(i) does refer to school verification of immunization status for eligibility for admission.

Comment:

The definition of who is an authorized user of the registry should be expanded to encompass the person who administers the vaccine.

Response:

The regulations were not revised to include this change. Authorized users of the registry already include an ordering provider’s “designee.” One type of individual who could be an ordering provider’s designee is the individual administering the vaccine.

Comment:

The reference to “CIR” in § 66-1.2(d)(1)(i) regarding allowance for a time-limited deferral on electronic data submission to the registry should be stricken. NYCDOHMH does not provide deferrals to such electronic submission.

Response:

Regulatory language has been revised to incorporate this change.

Comment:

In § 66-1.3(c), add the word “recognized” before the term “medical contraindication.”

Response:

The regulations were not revised to include this change as the term “medical contraindication” is clear and does not require further modification.

Comment:

In § 66-1.3(c), revise regulations so that the “local health authority” has the authority to require additional information supporting an exemption.

Response:

The regulations were not revised to include this change. Under PHL § 2164(7), the responsibility to exclude a non-compliant student from school lies with the principal, teacher, owner or person in charge of the school. As such, the principal or person in charge of the school has the authority to require additional information relevant to making this decision.

Comment:

In § 66-1.3(c), revise the regulation so that the local health authority has the authority to order a school to exclude a child who has not complied with immunization requirements.

Response:

The regulations were not revised to include this change. Under PHL § 2164(7), the authority to exclude a non-compliant student from school lies with the principal, teacher, owner or person in charge of the school.

Comment:

In § 66-1.6, revise the regulation to clarify that a record issued by the New York State Immunization Information System or Citywide Immunization Registry may be accepted as a certificate of immunization.

Response:

Regulatory language has been revised to incorporate this change.

## NOTICE OF ADOPTION

### Reduction to Statewide Base Price

**I.D. No.** HLT-45-13-00004-A

**Filing No.** 116

**Filing Date:** 2014-02-04

**Effective Date:** 2014-02-19

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

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

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

**Subject:** Reduction to Statewide Base Price.

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

**Text or summary was published** in the November 6, 2013 issue of the Register, I.D. No. HLT-45-13-00004-P.

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

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

#### **Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

### Statewide Pricing Methodology for Nursing Homes

**I.D. No.** HLT-45-13-00006-A

**Filing No.** 112

**Filing Date:** 2014-02-03

**Effective Date:** 2014-02-19

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

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

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

**Subject:** Statewide Pricing Methodology for Nursing Homes.

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

**Text or summary was published** in the November 6, 2013 issue of the Register, I.D. No. HLT-45-13-00006-P.

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

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

#### **Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Empire Clinical Research Investigator Program (ECRIP)****I.D. No.** HLT-46-13-00003-A**Filing No.** 118**Filing Date:** 2014-02-04**Effective Date:** 2014-02-19

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

**Action taken:** Addition of section 86-1.46 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2807-m

**Subject:** Empire Clinical Research Investigator Program (ECRIP).

**Purpose:** The redesigned ECRIP will continue individual physician research awards and provide larger center awards to teaching hospitals.

**Text or summary was published in** the November 13, 2013 issue of the Register, I.D. No. HLT-46-13-00003-P.

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

**Text of rule and any required statements and analyses may be obtained**

**from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

**Assessment of Public Comment**

The Department received only one comment during the notice of proposed rulemaking comment period and it relates to the timing of ECRIP awards, not to the express terms of the proposed regulations or methodology therein.

**COMMENT:** The commenter expressed concern over the January 15, 2014 deadline to hire research fellows for first year awards and requested consideration be given to coordinating the hiring deadline with the academic calendar and graduate medical education program completion date of June 30 which is when graduating physicians are likely to consider fellowship opportunities. This would enable institutions the opportunity to recruit quality fellows before they commit to out-of-state programs.

**RESPONSE:** The January date was chosen in order to make first year awards prior to the end of the State fiscal year, March 31, 2014, otherwise awardees would have lost an entire year of funding. Now that regulations governing the program have been adopted, the timing of future awards will be improved and institutions will have ample time to recruit quality fellows. There is no hiring deadline in regulation, so the express terms of the proposed regulations do not need to be revised to incorporate this comment.

## NOTICE OF ADOPTION

**Capital Projects for Federally Qualified Health Centers (FQHCs)****I.D. No.** HLT-46-13-00005-A**Filing No.** 115**Filing Date:** 2014-02-04**Effective Date:** 2014-02-19

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

**Action taken:** Amendment of section 86-4.16 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2807-z(9)

**Subject:** Capital Projects for Federally Qualified Health Centers (FQHCs).

**Purpose:** Capital Projects with a total budget of less than \$3 million shall be exempt from Certificate of Need (CON) requirements.

**Text or summary was published in** the November 13, 2013 issue of the Register, I.D. No. HLT-46-13-00005-P.

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

**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

**Revised Regulatory Impact Statement**

**Statutory Authority:**

The statutory authority for this regulation is contained in Public Health Law (PHL) § 2807-z(9), which authorizes the Commissioner to promulgate regulations implementing the provisions of PHL § 2807-z, which, among other things, exempts diagnostic and treatment centers (DTCs) which are federally qualified health centers (FQHCs) from certificate of

need (CON) requirements for capital projects which are budgeted at under \$3 million. The rate regulation revisions presented here are set forth in section 86-4.16(d) of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR) and allows certain Medicaid rate adjustments related to such CON exempt capital projects.

**Legislative Objectives:**

PHL § 2807-z exempts FQHCs from having to seek CON review and approval for certain capital projects with budgeted costs under \$3 million. This will allow such projects to go forward more quickly. The proposed regulation amendment implements this statute by deleting the requirement in § 86-4.16(d) for CON approval as a condition for FQHCs to secure Medicaid rate adjustments associated with such now CON exempt capital projects.

**Needs and Benefits:**

The proposed regulation implements the provisions of PHL Section 2807-z, which exempts certain types of diagnostic and treatment centers from CON review for capital projects under \$3 million. As specified in PHL § 2807-z(6) and (7), the exempted facilities are those which receive federal grant funding reflecting their designation by the federal government as FQHCs or as rural health centers.

**COSTS:**

**Costs to Private Regulated Parties:**

There will be no additional costs to private regulated parties.

**Costs to State Government:**

The enacted state budget for SFY 2012-13 does not include any state share annually to cover the anticipated 12 month total incremental cost to the Medicaid Program for providing reimbursement related to eligible capital projects. As the FQHC payment rate was not effective until after January 1, 2013, less spending occurred in the 2012-13 fiscal year due to the nine month delay in implementation.

**Costs of Local Government:**

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

**Costs to the Department of Health:**

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

**Local Government Mandates:**

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

**Paperwork:**

No additional paperwork is required to be filed by FQHCs.

**Duplication:**

This regulation does not duplicate any existing federal, state or local government regulation.

**Alternatives:**

No significant alternatives are available. The enhanced reimbursement available to FQHCs as a result of this proposed regulation ensures that their Medicaid rates reflect appropriate adjustments related to CON exempt capital projects and are therefore, are reasonable to meet the needs of the diverse patient populations they serve.

**Federal Standards:**

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

**Compliance Schedule:**

The proposed regulation conforms Medicaid rate regulations with the provisions of enacted provisions of the Public Health Law. There is no period of time necessary for regulated parties to achieve compliance with the regulation.

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Episodic Pricing for Certified Home Health Agencies (CHHAs)****I.D. No.** HLT-46-13-00006-A**Filing No.** 117**Filing Date:** 2014-02-04**Effective Date:** 2014-02-19

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

**Action taken:** Amendment of section 86-1.44 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 3614(13)

**Subject:** Episodic Pricing for Certified Home Health Agencies (CHHAs).

**Purpose:** To exempt services to a special needs population from the episodic payment system for CHHAs.

**Text or summary was published in** the November 13, 2013 issue of the Register, I.D. No. HLT-46-13-00006-P.

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

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

#### Assessment of Public Comment

The Department received one comment to this regulatory initiative. The response to Home Care Association of NYS (HCA) letter of December 17, 2013 follows:

1) In response to the comments from HCA that the OASIS – C assessment instrument does not adequately capture the needs of the overall Medicaid home care population, the Department has determined that in applying risk adjustment to a population it is important to use the same measurement set for all individuals in the analysis. The OASIS data set is being employed because its use is mandated for all CHHAs by the federal government and it is thus the best available data that covers all patients across all CHHAs.

2) In response to the comments about changing the current regulatory criteria used to determine the providers eligible to receive an episodic payment exemption or case mix adjustment, the Department has determined that the existing regulatory criteria continue to be effective in insuring adequate reimbursement for providers who serve a predominantly special needs non-geriatric and/or OPWDD patient population. The Department has determined that the existing regulatory criteria are adequate to insure services for this targeted population of high needs patients.

### NOTICE OF ADOPTION

#### Assisted Living Residences (ALRs) and Adult Care Facilities (ACFs)

**I.D. No.** HLT-47-13-00013-A

**Filing No.** 113

**Filing Date:** 2014-02-03

**Effective Date:** 2014-02-19

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

**Action taken:** Amendment of sections 487.4 and 488.4 of Title 18 NYCRR; and section 1001.7 of Title 10 NYCRR.

**Statutory authority:** Social Services Law, section 461; and Public Health Law, section 4662

**Subject:** Assisted Living Residences (ALRs) and Adult Care Facilities (ACFs).

**Purpose:** To simplify the pre-admission and annual resident medical evaluation process for ALRs and ACFs.

**Text or summary was published in** the November 20, 2013 issue of the Register, I.D. No. HLT-47-13-00013-P.

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

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

#### Assessment of Public Comment

The agency received no public comment.

## Lake George Park Commission

### NOTICE OF ADOPTION

#### Mandatory Inspection of Trailered Vessels for Aquatic Invasive Species Prior to Launching into Lake George

**I.D. No.** LGP-34-13-00001-A

**Filing No.** 111

**Filing Date:** 2014-01-31

**Effective Date:** 2014-05-15

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

**Action taken:** Addition of Subpart 646-9 to Title 6 NYRR.

**Statutory authority:** Environmental Conservation Law, sections 43-0117(4), 43-0107(8) and (32)

**Subject:** Mandatory inspection of trailered vessels for aquatic invasive species prior to launching into Lake George.

**Purpose:** To minimize the introduction and spread of aquatic invasive species into Lake George.

**Text or summary was published in** the August 21, 2013 issue of the Register, I.D. No. LGP-34-13-00001-P.

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

**Revised rule making(s) were previously published in the State Register** on December 24, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Dave Wick, Executive Director, Lake George Park Commission, 75 Fort George Road, P.O. Box 749, Lake George, NY 12845, (518) 668-9347, email: dave@lgpc.state.ny.us

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2015, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

##### 1. Introduction

The Lake George Park Commission (Commission) published a Notice of Revised Proposed Rule Making in the State Register on December 24, 2013. The Commission received the following comments on the revised regulations and prepared the following responses:

Comment #1: John Campbell

Mr. Campbell is a resident of Putnam Station on the east side of Lake George, and is concerned about the travel time to one of the five proposed inspection stations. He advocates for the Commission to provide for a “roving technician” to visit the launch sites on the east side of the lake.

Response: The Commission’s originally planned five regional inspection stations have been increased to six stations to better accommodate launches on the east side of the Lake, in particular the Huletts Landing area of the lake. Through a contractual agreement with Huletts Landing Marina, a full inspection and decontamination facility will be located on its property. This new site is anticipated to address the majority of the launches in that area of the lake. The concept of a “roving technician” was envisioned to provide for staffing as the needs arose at the existing inspection stations in times of high traffic. The concept was not intended to mean a technician would travel from launch site to launch site in anticipation of boat traffic, which would result in difficulty for the boating public who wouldn’t know when a technician would be at any given location. The Commission will continually evaluate launch data on the lake, and will work to modify the logistics of inspection stations as needed to best meet the needs of the boating public on Lake George.

Comment #2: Bernie Gambacorta

Mr. Gambacorta asked whether the Commission Marine Patrol could have divers inspecting boats in various bays when the patrol is working in those areas. He also noted that private marinas could possibly do a cursory check of boats prior to launch.

Response: The Commission’s proposed AIS prevention program focuses on a mandatory inspection of all trailered vessels prior to launch into Lake George. As such, there would be no need for divers doing in-lake inspections, nor would marinas be required to do their own AIS inspections, as they would have been inspected at the Commission regional inspection stations. A marina would be required to register its launch site with the Commission and would have responsibility to check to see if the boat has an inspection tag in place and to remove the tag, to place a tag on boats exiting the lake that meet the cleaned and dried standard, and to maintain records of launches and inspection tags. More details on the program are available in the Commission’s AIS Prevention Plan and Generic Environmental Impact Statement, located on the Commission’s website.

Comment #3: Tim Post

Mr. Post advocates for the Commission to not implement the mandatory inspection program, but to continue with the voluntary program. He expresses concerns over cost to the user, and is concerned that the lake will be essentially closed to outside boaters due to cost and access. He notes that there should be no fees associated with the cleaning of boats.

Response: As proposed, there will be no cost to the boater for the implementation of the pilot program. All costs are being borne by the State of New York and by local municipalities and nonprofit organizations. The mandatory pilot program as proposed in these regulations was deemed by the Commission to provide the highest practical level of protection against the introduction of new aquatic invasive species into Lake George, while also minimizing inconvenience to boaters. Inspection stations and decontamination stations would be placed close to primary launch sites on

Lake George to minimize delay in launching. The three most highly used launch sites are Norowal Marina, Mossy Point and Roger's Rock. It is expected that an inspection/decontamination station will be located at these locations to minimize impacts to boaters and reduce out-of-way travel time to an inspection site. In addition, there would be two other inspection stations located in Queensbury and Lake George, and another station in Hulett's Landing to minimize travel issues on the eastern side of the lake. The six proposed inspection/decontamination stations around the lake will provide an effective means of containing costs of the program while offering an appropriate level of convenience to boaters who will not be required to travel an excessive distance to get to an inspection station. In order to address the concern about early morning launches at public launch sites, the Commission is anticipating partnering with the New York State Department of Environmental Conservation to develop a means to accommodate reasonable access for early morning boaters by expanding the hours of certain inspection stations, starting at 3 a.m., and allowing means for those vessels who have been inspected to legally comply with the program regardless of the time of day through drop boxes and/or other means. In addition, the Commission has reviewed data from the Lake George Association steward program to determine the times and locations of high volume at launch sites. As a result, the Commission will address these concerns with additional staffing at the various sites during expected high volume times.

Comment #4: Tim Dorian

Mr. Dorian appreciates the efforts of the Commission regarding the Asian clam control work in Glenburnie, where he is a resident. He inquires as to what is planned with the Town of Putnam owned launch site at Glenburnie if a mandatory inspection program is put into effect. He notes that the Glenburnie area residents use this launch.

Response: The Town of Putnam has sole operating authority over their launches on Lake George. However, under the proposed program, it would be illegal to launch an uninspected boat into Lake George from any launch site, regardless of the owner of the launch. Putnam Town Supervisor John LaPointe has noted that this site is not actually a public launch site, and its use is limited to fire protection access only. Operations at this site are not the purview of the Commission, but rather of the Town of Putnam. Discussions between the Commission and the Town of Putnam are ongoing.

Comment #5: Joseph Bode

Mr. Bode agrees with the regulations and the need for a mandatory boat inspection program on Lake George. He noted that all users of the lake, if ultimately required to contribute financially to this program, should contribute equally regardless of whether or not they are "Lake George Only" boats. He offered a few suggestions:

- After-hours, perhaps a seal could be just put on the trailer if no attendants are in place
- Perhaps keep 24 hour staffing at two public launch points during the peak season

Response: There will be no cost to any boaters for the mandatory inspection program during the period of the proposed regulations. If the program were to continue beyond the pilot period, a new rulemaking would be required with an opportunity for public review and comment. Tagging just the trailer would not work with the existing program, as the boat could be launched anywhere else and the tag would remain in place (i.e., no means to show compliance). The Commission anticipates that the most-used launch sites, Rocky Point, Norowal, and Rogers Rock, will be staffed 7 days a week for 9 to 24 hours per day through the busiest boating seasons. The Commission is partnering with the New York State Department of Environmental Conservation to develop a means to accommodate reasonable access for early morning boaters by expanding the hours of certain inspection stations, starting at 3 a.m., and allowing means for those vessels who have been inspected to legally comply with the program regardless of the time of day through drop boxes and/or other means. The Commission is open to ideas and ongoing dialogue about how to best implement this pilot program and make it as efficient and effective as possible for Lake George's boating public.

## Power Authority of the State of New York

### NOTICE OF ADOPTION

#### Rates for the Sale of Power and Energy

**I.D. No.** PAS-42-13-00007-A

**Filing Date:** 2014-02-04

**Effective Date:** 2014-02-04

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

**Action taken:** Decrease the Fixed Costs component of the production rates.

**Statutory authority:** Public Authorities Law, section 1005(5)

**Subject:** Rates for the Sale of Power and Energy.

**Purpose:** To Recover the Authority's Fixed Costs.

**Substance of final rule:** The Power Authority's Notice of Proposed Rulemaking published October 16, 2013, proposed to decrease the Fixed Costs component of the production rates by 5.3% to be charged to the New York City Governmental Customers ("Customers"). Comments on the proposal were received from the Customers. Based on those comments and further analysis by staff, the Authority determined that the Fixed Costs component of the production rates should be decreased by 9.9%. This decrease is greater than that proposed in the Notice of Proposed Rulemaking. The new rates will be effective commencing with the January 2014 billing period.

**Final rule as compared with last published rule:** Substantial revisions were made in the First Part.

**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 - 11P, White Plains, New York 10601, (914) 390-8085, email: karen.delince@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.

### NOTICE OF ADOPTION

#### Rates for the Sale of Power and Energy

**I.D. No.** PAS-42-13-00008-A

**Filing Date:** 2014-02-04

**Effective Date:** 2014-02-04

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

**Action taken:** Increase in Production Rates.

**Statutory authority:** Public Authorities Law, section 1005(5)

**Subject:** Rates for the Sale of Power and Energy.

**Purpose:** To align rates and costs.

*Text or summary was published* in the October 16, 2013 issue of the Register, I.D. No. PAS-42-13-00008-P.

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

*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: karen.delince@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.

## Public Service Commission

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Water Rates and Charges**

**I.D. No.** PSC-07-14-00011-P

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

**Proposed Action:** United Water New York Inc. requests a Long-Term Water Supply Surcharge to recover certain costs of the Haverstraw Water Supply Project. Implementation of the surcharge on a temporary basis, subject to refund or reparation, is one option to be considered.

**Statutory authority:** Public Service Law, sections 4, 5, 89-a, 89-b, 89-c, 113 and 114

**Subject:** Water rates and charges.

**Purpose:** Implementation of Long-Term Water Supply Surcharge on a temporary basis, subject to refund or reparation.

**Public hearing(s) will be held at:** 10:30 a.m., April 9, 2014 at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

\*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 13-W-0246.

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

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

**Substance of proposed rule:**

The Commission is considering 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 first through January 28, 2014 and then again through July 28, 2014.

The Company’s petition is available on the Commission’s website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Commission Documents — Search for Case 13-W-0246. The Commission may approve, modify or reject the petition, in whole or in part, or adopt counterproposals filed by other parties in response to the petition or otherwise take action related to the petition consistent with the record developed in this proceeding. One option the Commission may consider is the implementation of the surcharge on a temporary basis, subject to refund or reparation.

The schedule for consideration of this matter, including the date for a hearing, may be modified in response to requests from the parties or otherwise to accommodate the needs for efficient administration of this matter. Persons interested in following the course of the proceeding are therefore urged to consult the Commission website for updates and further developments in the case.

*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](mailto:secretary@dps.ny.gov)

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

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

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

(13-W-0246SP3)

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Water Rates and Charges**

**I.D. No.** PSC-07-14-00012-P

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

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

**Statutory authority:** Public Service Law, sections 4, 5, 89-a, 89-b and 89-c

**Subject:** Water rates and charges.

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

**Public hearing(s) will be held at:** 10:30 a.m., April 9, 2014 at Department of Public Service, Three Empire State Plaza, 3rd Fl., Albany, NY.

\*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Case 13-W-0246.

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

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

**Substance of proposed rule:** The Commission is considering 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 first through January 28, 2014 and then again through July 28, 2014.

The Company’s petition is available on the Commission’s website ([www.dps.ny.gov](http://www.dps.ny.gov)) under Commission Documents — Search for Case 13-W-0246. The Commission may approve, modify or reject the petition, in whole or in part, or adopt counterproposals filed by other parties in re-

sponse to the petition or otherwise take action related to the petition consistent with the record developed in this proceeding.

The schedule for consideration of this matter, including the date for a hearing, may be modified in response to requests from the parties or otherwise to accommodate the needs for efficient administration of this matter. Persons interested in following the course of the proceeding are therefore urged to consult the Commission website for updates and further developments in the case.

*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](mailto: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](mailto:secretary@dps.ny.gov)

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

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

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

(13-W-0246SP2)

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

**Refueling Options for the Dunkirk Generating Station Located in Dunkirk, New York, and Alternatives**

**I.D. No.** PSC-07-14-00004-P

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

**Proposed Action:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposed agreement between Dunkirk Power LLC and Niagara Mohawk Power Corporation d/b/a National Grid to refuel the Dunkirk generating plant.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

**Subject:** Refueling options for the Dunkirk generating station located in Dunkirk, New York, and alternatives.

**Purpose:** To establish whether utility plans should include refueling options for the Dunkirk generating station, or other alternatives.

**Substance of proposed rule:** The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, the proposed agreement filed with the Commission between Dunkirk Power LLC and Niagara Mohawk Power Corporation d/b/a National Grid to refuel the Dunkirk generating plant located in Dunkirk, New York, and may address alternatives and other related matters.

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

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

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

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

(12-E-0577SP3)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-07-14-00005-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Rudin Management Company to submeter electricity at 130 West 12th Street, New York, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of Rudin Management Company to submeter electricity at 130 West 12th Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Rudin Management Company to submeter electricity at 130 West 12th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

*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](mailto: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](mailto: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-0582SP1)

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

**2014 Budget for the Customer-Sited Tier (CST) of the Renewable Portfolio Standard Program (RPS)**

**I.D. No.** PSC-07-14-00006-P

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

**Proposed Action:** NYSERDA proposes to allocate \$11.6 million of the total of unencumbered funds from the 2013 CST budget to ADG with the balance going to a general pool for future disbursement, and permission to allocate 2014 unencumbered budget funds to the pool in 2015.

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

**Subject:** The 2014 budget for the Customer-Sited Tier (CST) of the Renewable Portfolio Standard Program (RPS).

**Purpose:** To allow NYSERDA to rollover and reallocate 2013 CST unused and unencumbered budget funds to 2014 CST program budgets.

**Substance of proposed rule:** The Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of the New York State Energy Research and Development Authority (NYSERDA) to reallocate approximately \$20.8 million of unencumbered funds from the 2013 Renewable Portfolio Standard Program (RPS) Customer-Sited Tier (CST) budget to 2014 CST program budgets. In particular, the Commission is considering NYSERDA's "Petition Regarding Unencumbered CST Funds" dated January 31, 2014, which proposes that the Commission approve the reallocation of \$11.6 million of unencumbered 2013 CST budget funds specifically to Anaerobic Digester Generation Technology while reserving the remaining \$9.2 million in a general funding pool to allow NYSERDA the flexibility to better meet the market demand and funding needs of each program technology. NYSERDA also requests this funding flexibility for 2015 as well. The Commission may grant or deny the peti-

tion and may make other changes to the RPS CST program as necessary to address the issues raised in the petition.

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

**Data, views or arguments may be submitted to:** 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.

(03-E-0188SP46)

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

**Consideration of the National Fuel Gas Distribution Management Audit Implementation Plan**

**I.D. No.** PSC-07-14-00007-P

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

**Proposed Action:** The Commission is considering whether to approve, modify or reject, in whole or in part, the Management Audit Implementation Plan submitted by National Fuel Gas Distribution Corporation for review and approval as Ordered on August 21, 2013.

**Statutory authority:** Public Service Law, section 66(19)b

**Subject:** Consideration of the National Fuel Gas Distribution Management Audit Implementation Plan.

**Purpose:** To approve, modify or reject, in whole or in part, National Fuel Gas Corporation's Management Audit Implementation Plan.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, the Management Audit Implementation Plan submitted by the National Fuel Gas Distribution Corporation (NFGDC) in response to the Commission's August 21, 2013 Order in Case 11-G-0580. NFGDC initially filed its implementation plan on September 18, 2013, but the company subsequently provided a revised implementation plan on January 17, 2014.

NFGDC's implementation plan, as revised, addresses the 76 recommendations contained in the Final Audit Report that was prepared by Schumaker & Company in regards to the comprehensive management and operations audit of NFGDC.

**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.

(11-G-0580SP1)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-07-14-00008-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 West 5th Street, et al.

**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:** Petition for submetering of electricity.

**Purpose:** To consider the request of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 West 5th Street, et al.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 West 5th Street, 127, 129, 266, 268 West 4th Street, 254 and 262 South 9th Street, 329, 333, 337, 338, 342, 343, 346, 347, 350, 351, 403, 407, 408, 416 8th Ave. and 257 South 10th Avenue and 69 West 5th Street, located in the territory of Consolidated Edison Company of New York, Inc.

**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.

(12-E-0409SP1)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-07-14-00009-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 whether to grant, deny or modify, in whole or part, the petition filed by Rudin Management Company to submeter electricity at 130-155 11th Street and 140-160 West 12th Street, New York, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of Rudin Management Company to submeter electricity at 130-155 11th Street, et al.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Petition of Rudin Management Company, Inc. to submeter electricity at 130-155 11th Street and 140-160 West 12th Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**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-0583SP1)

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

**Petition for Submetering of Electricity****I.D. No.** PSC-07-14-00010-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition of 172 River Street Assoc., LLC to submeter electricity at 172-176 River Street, Troy, New York, located in the territory of Niagara Mohawk Power Corporation.

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

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

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

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

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

(14-E-0018SP1)

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

**Petition for Submetering of Electricity****I.D. No.** PSC-07-14-00013-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 855 MRU LLC to submeter electricity at 855 Sixth Avenue, New York, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of 855 MRU LLC to submeter electricity at 855 Sixth Avenue, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 855 MRU LLC to submeter electricity at 855 Sixth Avenue, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(14-E-0024SP1)

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

**Petition for Submetering of Electricity****I.D. No.** PSC-07-14-00014-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 whether to grant, deny or modify, in whole or part, the petition filed by Dock Street Rental LLC to submeter electricity at 60 Water Street, Brooklyn, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of Dock Street Rental LLC to submeter electricity at 60 Water Street, Brooklyn, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Dock Street Rental LLC to submeter electricity at 60 Water Street, Brooklyn, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(14-E-0029SP1)

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

**Establish a Deferral Cost Recovery Method****I.D. No.** PSC-07-14-00015-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 whether to approve, modify, or reject, in whole or in part, a proposal by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to establish a deferral cost recovery method in P.S.C. No. 220 — Electricity.

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

**Subject:** Establish a deferral cost recovery method.

**Purpose:** To allow NMPC to establish a deferral cost recovery method.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, the method of deferral cost recovery proposed by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) in its petition filed in Case 14-E-0026 on January 28, 2014. The Public Service Commission, on January 28, 2014, adopted an order waiving, on a one-time basis, the requirements of certain tariff provisions of NMPC related to the method by which mass market customers (residential and small commercial customers) are billed so that

the Company can apply a credit to customers to mitigate the impacts of the extreme weather effects on commodity prices. In that Order, the Commission denied NMPC's proposed deferral cost recovery method pending further review and public comment.

**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 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.

(14-E-0026SP2)

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

**Electric Vehicle Charging Stations**

**I.D. No.** PSC-07-14-00016-P

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

**Proposed Action:** The Commission is considering a tariff filing by Consolidated Edison Company of New York, Inc. (Con Ed) proposing revisions to its tariff schedule PSC No. 10—Electricity to become effective May 12, 2014.

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

**Subject:** Electric Vehicle Charging Stations.

**Purpose:** To make tariff revisions to Special Provision B of SCs 2, 8, 9, 12 and 13 regarding electric vehicle charging stations.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) to make revisions to P.S.C. No. 10 - Electricity, regarding Electric Vehicle Charging Stations, to become effective May 12, 2014. Special Provision B of Service Classifications ("SCs") 2, 8, 9, 12, and 13 indicates that the Customer cannot make a specific charge for the electric service furnished under those SCs unless the service is submetered pursuant to Rider G - Submetering. The Company proposes to revise Special Provision B of SCs 2, 8, 9, 12, and 13 to indicate that the Customer cannot make a specific charge for the electricity unless the electricity is submetered pursuant to Rider G "or the electricity is provided by a publicly available electric charging station providing electric vehicle charging services to the public."

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

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

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

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

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

(14-E-0030SP1)

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

**Petition for Submetering of Electricity**

**I.D. No.** PSC-07-14-00017-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bridge Land West LLC to submeter electricity at 460 Washington Street, New York, New York.

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

**Subject:** Petition for submetering of electricity.

**Purpose:** To consider the request of Bridge Land West LLC to submeter electricity at 460 Washington Street, New York, New York.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bridge Land West LLC to submeter electricity at 460 Washington Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(14-E-0032SP1)

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

**Minor Electric Rate Filing**

**I.D. No.** PSC-07-14-00018-P

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

**Proposed Action:** The Commission is considering a tariff filing by the Village of Freeport, requesting approval to increase its annual revenues by approximately \$927,719 or 2.5% in P.S.C. No. 9 — Electricity, to become effective June 1, 2014.

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

**Subject:** Minor electric rate filing.

**Purpose:** To approve an increase in annual electric revenues by about \$927,719 or 2.5%.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the Village of Freeport, requesting approval to increase its annual revenues by about \$927,719 or 2.5% to P.S.C. No. 9 — Electricity. The proposed filing has an effective date of June 1, 2014.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(14-E-0035SP1)

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

**Monthly Cost of Gas and Annual Reconciliation of Purchased Gas Expenses and Gas Cost Recoveries**

**I.D. No.** PSC-07-14-00019-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 or approve or reject, in whole or in part, a proposal by Niagara Mohawk Power Corporation d/b/a National Grid to make various changes to the rates, charges, rules and regulations contained in P.S.C. No. 219 — Gas.

**Statutory authority:** Public Service Law, sections 65 and 66(12)

**Subject:** Monthly cost of gas and annual reconciliation of purchased gas expenses and gas cost recoveries.

**Purpose:** To update and clarify the various gas expenses, gas charges and revenue adjustments included in the monthly gas calculations.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (the Company) to clarify the tariff provisions related to the calculation of the monthly cost of gas and the annual reconciliation of purchased gas expenses and gas cost recoveries. Specifically, the Company is updating and clarifying the various gas expenses, gas charges and revenue adjustments that are included in these calculations. The Company is also proposing to update the General Information Section to include definitions for off-system transactions and asset management agreement. The filing has an effective date of June 1, 2014. The Commission may apply its decision here to 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) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0031SP1)

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

**Water Rates and Charges**

**I.D. No.** PSC-07-14-00020-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 the Village of Pelham, requesting approval to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the Village of Pelham.

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

**Subject:** Water rates and charges.

**Purpose:** To have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes.

**Substance of proposed rule:** The Commission is considering whether to

approve, modify or reject, in whole or in part, a petition by the Village of Pelham, requesting approval per the Laws of New York, Chapter 433, requiring the Commission to issue an order to United Water New Rochelle, Inc. to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes and apportioned among all customers located within the Village of Pelham. Although this rate change will have a revenue neutral impact on the utility's annual revenues, it will result in an increase to all customers within the municipality of the Village of Pelham.

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

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

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

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

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

(14-W-0027SP1)

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## Department of Transportation

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

**Financial Security Requirements (Insurance and Bonding) for Permits to Perform Work on State Highways**

**I.D. No.** TRN-07-14-00001-P

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

**Proposed Action:** This is a consensus rule making to repeal section 125.3 and Part 127; addition of sections 127.1 and 127.8; and amendment of section 129.3 of Title 17 NYCRR.

**Statutory authority:** Highway Law, sections 52 and 10; and Vehicle and Traffic Law, sections 1182 and 1182-a

**Subject:** Financial security requirements (insurance and bonding) for permits to perform work on state highways.

**Purpose:** To set minimum standards for insurance, bonding and other alternative means of protection for permitted activity.

**Substance of proposed rule (Full text is posted at the following State website: [www.dot.ny.gov/Part127Rulemaking](http://www.dot.ny.gov/Part127Rulemaking)):** The revisions to Part 127 consolidate all NYS Department of Transportation requirements for insurance and bonding in connection with permitted work and activity within the state highway right-of-way under the revised title "Financial Security."

The primary difference to the insurance requirements is to eliminate the current requirement that permittees purchase "protective liability insurance" for most permits. The requirement for protective liability coverage will remain in two cases: for residential driveways permits where the permittee is the property owner, and for and large commercial projects where the value of work within the state highway right-of-way is valued at \$250,000 or more. Permittees will not otherwise be required to buy protective liability insurance. Permittees desiring permits for residential driveways may continue to pay the \$25 insurance fee rather than purchase a policy.

The revision substitutes, in most cases, the current "protective liability" requirement with a formal requirement that permittees have "general liability insurance" (usually commercial general liability or "CGL" insurance) of their own regarding the project that brings them to work on the state highway. In most cases the aggregate level of insurance protection remains unchanged at \$1,000,000. Contractors performing work on residential driveways are required to have liability insurance with limits of only \$500,000. The difference is that permittees must assure that the State of New York is also afforded insurance under this policy against claims that arise out of the permittee's work, by adding the state as an additional insured.

The changes to the insurance requirements incorporate types and levels of insurance that permittees typically already have, necessitating only that the permittee's insurance agent be notified and providing a certificate of insurance to document the required coverage. In order to assure coverage under the contractor's policy, a previously-existing indemnification requirement is being formalized in the regulations, requiring that permittees defend and indemnify the State of New York against claims that arise out of their permit work. For permitted work that poses a high risk of claims because of construction that includes either excavation to a depth of five feet or more, or work at elevated locations, or work valued at \$250,000 or more, a higher level of protection, to \$5,000,000 is required.

The changes also incorporate insurance requirements that are currently applied for several kinds of permits that are not currently issued pursuant to regulations called "special use permits." The revision also incorporates workers' compensation requirements already imposed by section 57 of the workers' compensation law.

The revision consolidates the performance bond and deposit requirement previously found at section 125.3 affording the same options for security as before, but also providing an additional security option of posting a "letter of credit." The revision continues to provide the slightly reworded alternative of posting an undertaking for municipalities, utilities, public benefit corporations and railroads that continues to excuse these permittees from both insurance and bonding requirements in return for a contractual promise to accept responsibility.

**Text of proposed rule and any required statements and analyses may be obtained from:** David E. Winans Esq., Associate Counsel, NYS Department of Transportation, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: david.winans@dot.ny.gov

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

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

#### **Consensus Rule Making Determination**

Statement of Agency Determination that No Person is Likely to object to Rule as Written Concerning Revisions to 17 NYCRR Part 127 on Financial Responsibility for Permits

SAPA Section 202(1)(b)(i)

The Department of Transportation is revising its rules relating to the financial responsibility requirements (insurance and bonding) necessary to obtain permits for work or other activities within state highway right-of-way. Although the wording is being changed for ease of application, the only substantive change is to substitute a kind of insurance that most permittees already have, for the type of insurance that is currently required. There is a need to effect these changes quickly because of widespread non-compliance with the existing rule that requires the purchase of "protective liability" insurance for the benefit of the State of New York or the payment of an "insurance fee" by certain eligible permittees. Because the Department expects no objections to the proposed changes and because the changes will make compliance with permit requirements faster and easier, we are advancing these changes as a consensus rule.

**Background Information.** Work within the state highway right of way requires a permit from the Department. Highway Law Section 52. Work on the state highway that is not related to a state highway project without the required permit is a violation of Vehicle & Traffic Law Section 1220-c. Other activities in the state highway right-of-way require adherence to the laws that govern vehicles and pedestrians. In some instances the regulation of non-highway uses are regulated by the Department. See, Vehicle & Traffic Law Section 1182 as relates to "speed contests and races" and Section 1182-a as relates to multi-jurisdictional contests, races and events. Other activities within the state highway right-of-way that do not conform to the "rules of the road" fall under the commissioner's jurisdiction because of her general duties and powers to control highways and bridges. See, Highway Law Section 10.

The Department has for many years regulated the non-highway use of state right-of-way through a system of licensing or permits that are issued to those seeking to perform or host the work, activity or event. The relationship between the Department and the persons seeking permission for such activities is that of an owner and a permittee. In all cases, the State retains ownership of the state property, while giving permission to the "Permittee" to perform the work, engage in the activity, or host the event that is sanctioned by the approved permit. In regulating activities under a permit, the paramount concerns of the Department are (1) public safety, (2) the orderly flow of transportation, and (3) the preservation of state property, including possible liability that could be attached to the permitted work or activity. Thus, conditions have long been imposed upon Permittee activity either through regulations found at Parts 125, 126, 127, 128, 129, 130, 131, 132, and 134, or through internal Department procedures (particularly in the case of Special Use Permits for races, parades, and other events). These conditions include, among other things, rules on traffic control, acceptable designs, limitations on use, and requirements for insurance and bonding.

The department issues between 6,500 and 7,500 highway work permits each year. Over half of these are issued for various utility activities and operations. The remaining non-utility permits are issued for major commercial developments, residential and minor commercial driveways, residential and commercial improvements, traffic control signals, Adopt-a-Highway groups, and a variety of other miscellaneous construction activities and work operations. The Department has also instituted policies and procedures for the issuance of Special Use permits.

**Financial responsibility Requirements Attached to Permitted Activity.** The Department has long required that, as a condition of permitted activity, that the Permittee meet minimum standards of financial responsibility calculated to protect the State from potential liability that might arise from the permitted activity. This insurance requirement is set forth in Part 127. There is a similar insurance requirement in Section 129.3 for annual maintenance permits.

Over the last ten years the Department has become aware of only a few claims arising from permit work. Three of these claims resulted in action against the State. It is believed that there are other accidents related to permit work that have resulted in claims against the permittees. Although NYSDOT regulations do not currently require that permittees carry insurance, it is believed that all or almost all of them do, so that the claims that have arisen very seldom involve the State. Typical claims involve motorists who sustain minor property damage because of a condition relating to the permitted work or because of a collision with a vehicle being used in connection with the work.

The Department also imposes requirements for performance security as a condition of issuing most permits. Section 125.3 sets forth the requirements for bonds or deposits for driveways or other entrances. References are made to bonding requirements in Section 126.6 for permits in general, in Section 129.3 for maintenance permits, in Section 131.16 for utility permits, and in Section 134.5 for vegetation control permits.

**Problem Necessitating Changes to part 127.** The primary problem with the existing regulations concerns compliance with the requirement for protective liability insurance (OCP for owners and contractors liability insurance). OCP insurance covers ONLY the State of New York and provides no protection to the Permittee or for the benefit of the public. OCP insurance is written on a project-specific basis for the specific location of the permitted activity. Permittees who are required to get OCP coverage need to go to an insurance company and buy it each and every time that they apply for a permit.

Although OCP is priced based upon the value of the labor for the project, it is generally subject to a minimum premium that varies from one insurance agent to another. This minimum premium might be as high as \$5,000. What this means is that in order to comply with the current insurance requirements that have been in place since 1993, a Permittee must purchase a special policy for the State on every project. The limits of liability that the existing regulations require are generally unavailable because the policies are generally written for \$1 million per occurrence. The premium for the OCP may be several times the cost of the project being performed. The OCP policy covers only the State of New York. There is no requirement that the Permittee have any other kind of insurance, even those mandated by Article 7 of the Vehicle & Traffic Law. There is no requirement for workers' compensation insurance as is required by Workers' Compensation Law Section 57.

Fortunately, the more conventional types of insurance for workers' compensation, auto liability and general liability do not seem to be a problem for permittees. Proof of insurance is furnished to the Department using a certificate of insurance. In many cases where the certificate has been examined closely, we have found that the type of insurance actually documented is commercial general liability (CGL) and not the required OCP insurance. This discrepancy has put the Department in the position of either enforcing a high-cost insurance requirement or ignoring the Department's own regulations or not issuing the permits required to perform essential activities.

**Purpose of Changes.** The purpose of the revised revision to part 127 is to make it easier and less expensive for permittees to obtain permits from the Department by modifying the insurance requirements, while also preserving the condition that the Permittee take responsibility for the risks associated with the permit work, use, or activity. The revised regulations accomplish this by conforming the insurance that will be required from a policy that is expensive and hard to get (OCP), to an insurance that most permittees already have (CGL). Because residential driveway work involves very little risk and because CGL coverage is not afforded by normal homeowners insurance, we are eliminating the insurance requirement for homeowners. We are also introducing a Letter of Credit alternative to the forms of performance security that may be provided by permittees.

Because the proposed changes to part 127 serve to make it easier for permittees to comply with bonding and insurance requirements, the Department of Transportation has concluded that no person is likely to object to these changes.

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

The proposed rule changes should not have any impact on jobs because the resulting permit activity should be unaffected. The New York State Department of Transportation (NYSDOT) is only substituting a type of insurance that is generally available at little or no extra cost for a type of insurance that is often expensive and/or commercially unavailable. The other changes are a restatement of requirements that have been in place for many years. The changes should make permit issuance faster and more efficient, but it is not expected that the changes will result in more or fewer jobs relating to work performed pursuant to a NYSDOT permit.

**2. Categories and numbers affected:**

NYSDOT issues between 6,500 and 7,500 highway work permits each year. Over half of these permits are issued for various utility activities and operations. Almost all of the utility permits are issued based, in part upon an "undertaking" procedure that will be unaffected by the changes in the regulations. Some of the remaining 3,250-3,750 permits are also issued by using an undertaking however, the existing regulations require the purchase of an insurance policy naming the State of New York as the only insured, or the payment of an "insurance fee." The only significant changes in the regulations will change the requirement that the permittee buy a special insurance policy for the State, and allow permittees to utilize insurance that they should already have. Neither the number of permits nor the number of jobs relating to permit work should change.

**3. Regions of adverse impact:**

No disparate adverse impact on jobs in any region is anticipated. There should be no impact on insurance cost even in the most densely urbanized areas where medical expenses are highest, where the attitude is more litigious and where the cost of insurance claims is correspondingly higher. This is because permittees already operate in this environment and the levels and costs of insurance that permittees should already have is not expected to change.

**4. Minimizing adverse impact:**

The purpose of the rule is to substitute a type of insurance that is generally available and already in place, for a requirement that permittees buy a policy of insurance that may be expensive and not commercially available.