RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Growth and Cultivation of Industrial Hemp

I.D. No. AAM-17-15-00011-A
Filing No. 1148
Filing Date: 2015-12-29
Effective Date: 2016-01-13

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

Action taken: Addition of Part 159 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 508

Subject: Growth and cultivation of industrial hemp.

Purpose: To set forth procedures for authorizing and regulating the growth and cultivation of industrial hemp.

Text of final rule: Chapter III of 1 NYCRR is amended by adding thereto a new Subchapter F, to read as follows:

Subchapter F Industrial Hemp
Part 159 Industrial Hemp Agricultural Pilot Programs
§ 159.1 Definitions
For the purpose of this Part, the following terms shall have the following meanings:
(a) "Authorization holder" means an institution of higher education that has been granted authority by the Commissioner to acquire and possess industrial hemp to study its growth and cultivation.
(b) "Commissioner" means the Commissioner of Agriculture and Markets of the State of New York.
(c) "Department" means the Department of Agriculture and Markets of the State of New York.
(d) "Dispose", and any variant thereof, means to render unusable for any purpose.
(e) "Industrial hemp" means the same as that term is defined in subdivision (1) of Agriculture and Markets Law section 505.
(f) "Institution of higher education" means the same as that term is defined in subdivision (2) of Agriculture and Markets Law section 505.
(g) "Person" means an individual, partnership, corporation, limited liability company, association, or any business entity by whatever name designated and whether or not incorporated, unless the context clearly indicates otherwise.
(h) "Registered premises" means any facility, location, or property owned, leased, or licensed, which is under the control of the authorization holder and certified by the Commissioner as a site where industrial hemp may be grown or cultivated, harvested, stored, studied, or disposed of.
(i) "Secured facility" means a building or structure where access is restricted only to authorized persons.
(j) "State" means the State of New York.
§ 159.2 Authorization to grow and cultivate industrial hemp
(a) Industrial hemp and industrial hemp seeds may not be possessed, grown, or cultivated unless an application therefor has been submitted to and authority has been granted by the Commissioner.
(b) Only an institution of higher education may submit an application to the Commissioner for authorization to grow or cultivate industrial hemp.
(c) Industrial hemp may only be grown, cultivated, or processed upon registered premises.
(d) An application to grow and cultivate industrial hemp shall be made upon a form prescribed by the Commissioner and shall include an application fee of $500.00. Each application and renewal application shall provide the information deemed necessary by the Commissioner for the administration of this Part, including but not limited to:
(1) a description of each premises where industrial hemp will be grown or cultivated, harvested, stored, studied or disposed of, by physical address and by GPS co-ordinates;
(2) a diagram for each premises that visually depicts the buildings, structures and improvements on the premises and identifies their use, and that sets forth the relevant activities conducted at the premises; and
(3) a detailed summary of the issues and matters that the applicant intends to study in conjunction with growing, cultivating, or processing industrial hemp which may include:
i. the soils, growing conditions, and harvest methods suitable for the growth or cultivation of various types of industrial hemp in the State;
ii. the cultivars suitable for the growth or cultivation of various types of industrial hemp, including the cost of each cultivar; the yield of industrial hemp attributable to each such cultivar; and the inputs required to assure that each such cultivar, when planted, results in a satisfactory yield of industrial hemp;
iii. the markets that the applicant has identified, in consultation with appropriate commercial interests, that exist or that could feasibly be developed for various types of industrial hemp, including but not limited to markets for apparel, energy, food, paper, and tools;
iv. the means and methods that could feasibly be used to process, market, advertise, expose, or publicize products that contain, in whole or in predominate part, industrial hemp, to facilitate the wholesale and/or retail sale thereof.
(4) a transportation plan, if industrial hemp will be moved from one location on the registered premises to another or from one registered premises to another registered premises, that sets forth information relevant to the security requirements set forth in section 159.6 of this Part.
(5) a security plan that sets forth the measures that the applicant intends to take to ensure that the security requirements set forth in section 159.6 of this Part are complied with.
(e) Applications to grow, cultivate, process, and market industrial hemp

shall be evaluated in the order in which they are received. In the event that two or more applications are received at the same time, the Department will determine the order of receipt at random.

(f) The Commissioner may decline to grant authority to grow, cultivate, process, and market industrial hemp, and may revoke or decline to renew an authorization to grow and cultivate industrial hemp, if he or she finds, after investigation and opportunity to be heard, that:

(1) the application does not set forth the information required pursuant to subdivision (d) of this section and fails to set forth such information within twenty days after the applicant has received notice that the required information was not set forth on the application; or

(2) ten authorizations to grow and cultivate industrial hemp have been issued and are in effect; or

(3) the applicant or authorization holder is not capable for whatever reason of complying, or has failed to comply, with the provisions of this Part or with state or federal law relating to the possession, sale, or cultivation of industrial hemp; or

(4) the Department determines, in its sole discretion, that it is or will be impracticable to regulate the applicant's or authorization holder's adherence to the requirements set forth in this Part; or

(5) the authorization holder has not complied with the requirements set forth in subdivision (e) of section 159.3 of this Part.

(g) Authorization to grow and cultivate industrial hemp shall be for a period of three years from the date application therefor was approved by the Commissioner. Notwithstanding the preceding, the Commissioner may grant or renew an authorization to grow and cultivate industrial hemp for a period of more than three years if he or she determines that the issues and matters that the applicant or authorization holder intends to study or is studying cannot be adequately and fully studied within three years from the date that authorization is granted or renewed.

An application for renewal shall be submitted to the Commissioner no later than thirty days prior to the date that the authorization expires and shall include an application fee of $500.00.

(h) The Commissioner may grant or renew an authorization to grow and cultivate industrial hemp with conditions, including but not limited to one or more of the following:

(1) industrial hemp is grown and cultivated on a limited number of acres; or

(2) industrial hemp is grown and cultivated in a limited volume.

(i) An authorization holder may surrender its authorization at any time; however, the requirements set forth in section 159.6 of this Part shall remain applicable and binding upon such authorization holder until its authorization period would otherwise have expired.

§ 159.3 Requirements

(a) Studies and reports.

(1) An authorization holder shall, no later than three months after the date of application to grow or cultivate industrial hemp was approved by the Commissioner, furnish to the Commissioner a report that provides, in detail, its findings and conclusions regarding the issues and matters set forth in its application to grow or cultivate industrial hemp.

(2) An authorization holder shall every three months after furnishing a report of the type referred to in paragraph (1) of this subdivision, furnish a report that supplements, in detail, the findings and conclusions set forth in earlier report(s).

(3) An authorization holder may study issues and matters different from those set forth in its application to grow or cultivate industrial hemp, with the prior written approval of the Commissioner, and all reports required pursuant to this section, furnished after the date of the Commissioner's approval, shall set forth findings and conclusions regarding such different issues and matters.

(b) Except as provided in subdivision (a) of section 159.6 of this Part and in this subdivision, industrial hemp may be grown or cultivated, harvested, stored, and disposed of only on the registered premises. Industrial hemp that has been harvested shall be stored in a secured facility except when it is being transported within the registered premises, to a laboratory for testing, or to another registered premises or facility approved by the Commissioner.

(c) Industrial hemp may be transported off registered premises only if it is being transported to a laboratory for testing or to another registered premises or facility approved by the Commissioner. Industrial hemp may be transported only in an enclosed, locked compartment of a truck or van where it cannot be seen from the outside of the vehicle, the contents of the vehicle are not disclosed, and the operator of the vehicle has been approved by the authorization holder to transport industrial hemp, as indicated in the record required to be maintained pursuant to paragraph (1) of subdivision (a) of section 159.4 of this Part.

(d) Testing and disposition.

(1) An authorization holder shall prepare, maintain, and make available to the Commissioner, upon request, a record that sets forth an accurate inventory of industrial hemp plants and seeds and shall reasonably ensure that no plant is possessed or grown or cultivated that would not meet the definition of industrial hemp because it contains a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol, on a dry basis.

(2) An authorization holder shall ensure that a representative sample of plants grown or cultivated from each variety of seed used for the purpose of growing or cultivating industrial hemp is analyzed at a laboratory approved by the Commissioner, to determine the concentration of delta-9 tetrahydrocannabinol therein. The authorization holder shall furnish a report that sets forth the results of analysis(es) to the Commissioner promptly after such analysis(es) is made, in a form approved by the Commissioner.

(3) An authorization holder shall dispose of all plants determined, after laboratory analysis, to have a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol on a dry basis, and shall prepare and maintain on the registered premises for a period of two years, a record that sets forth the information required in section 159.4(a)(4)(iii) of this Part. The authorization holder shall make available to the Department such records upon request, in a form and at a location satisfactory to the Commissioner.

(e) An authorization holder shall, no later than fifteen days after having been granted authorization, notify, in writing, the applicable unit or units of law enforcement, including the unit or units of law enforcement in the political subdivision in which the registered premises is located, that it has received such authorization and shall provide such unit or units of law enforcement a copy of the security plan referred to in section 159.2(d)(5) of this Part. The authorization holder shall, no later than fifteen days after having notified such unit or units of law enforcement, provide the Department with a copy of such notification. An authorization holder shall adequately monitor registered premises under its control and shall notify the appropriate unit or units of law enforcement and the Department regarding facts and circumstances that indicate that industrial hemp has been or may be held or possessed in violation of the provisions of this Part.

(f) (1) Notwithstanding any provision of this Part to the contrary, an authorization holder may enter into a contract with a person for that person to be involved in growing or cultivating, harvesting, storing, studying, transporting, and/or disposing of industrial hemp, if:

i. the contract has, prior to execution, been approved by the Commissioner; and

ii. the contract requires such subcontractor to comply with all relevant provisions of this Part.

(2) The Commissioner may decline to renew or may revoke an authorization to grow and cultivate industrial hemp if he or she finds, after investigation, that such subcontractor has failed to comply with all relevant provisions of this Part.

§ 159.4 Recordkeeping

(a) An authorization holder shall create, maintain, and make available accurate records, in a form and at a location satisfactory to the Commissioner, that set forth the following information:

(1) a description of the registered premises at which industrial hemp is grown or cultivated that is in substantially the same form as the description required to be provided pursuant to paragraph (1) of subdivision (d) of section 159.2 of this Part;

(2) the name of the cultivar(s) grown and the volume of each cultivar purchased, acquired and/or used, for the appropriate growing season; and

(3) the volume of industrial hemp grown or cultivated, for the appropriate growing season, and

i. the volume of industrial hemp harvested; and

ii. the volume of industrial hemp studied and the name and address of each person who or that has conducted or been involved in such study; and

iii. the volume of industrial hemp disposed of, the date and location of each disposal, and the method of each disposal.

(b) The records and materials referred to in subdivision (a) of this section shall be maintained on the registered premises and made available to the Commissioner for two years from the date they were made or prepared.

§ 159.5 Inspections

(a) The authorization holder shall inspect the registered premises as often as necessary to ensure compliance with the requirements set forth in this Part.

(b) The registered premises of an authorization holder are subject to inspection by the Commissioner and by his or her authorized agents, employees, or officers, pursuant to Agriculture and Markets Law section 20, as often and to the extent necessary to ensure compliance with the provisions of this Part and state and federal law relating to the possession, sale, or cultivation of industrial hemp. The Commissioner may authorize agents, employees, or officers of the New York State Department of Health and/or local law enforcement to accompany him or her during an inspection of the registered premises of an authorization holder.

§ 159.6 Security measures

(a) An authorization holder shall take all actions necessary to ensure that:

(1) industrial hemp is not removed from registered premises except for transportation to a laboratory for testing pursuant to the provisions of section 159.3(d)(2) of this Part or except as allowed by the Commissioner pursuant to his/her written authorization.

(2) industrial hemp is not acquired, possessed, grown or cultivated, harvested, stored, transported, or disposed of except under conditions that ensure that it will not be removed from registered premises or used in violation of state or federal law.

(b) The authorization holder shall take measures, satisfactory to the Commissioner, to ensure compliance with the requirements set forth in subdivision (a) of this section, including but not limited to:

(1) restricting access to areas of the registered premises where industrial hemp is grown or cultivated; and

(2) posting signs, each of which set forth, in readily observable block letters, the words "NO TRESPASSING. FACILITY CONTAINS INDUSTRIAL HEMP. UNAUTHORIZED POSSESSION OF INDUSTRIAL HEMP IS SUBJECT TO PROSECUTION PURSUANT TO ARTICLE 220 OF THE PENAL LAW". A sufficient number of signs shall be posted so that a sign and the information required to be set forth on a sign can be read, from a distance of not less than 100 feet, from any location around the perimeter of the registered premises where industrial hemp is grown or cultivated, or held; and

(3) providing for equipment and/or other fixtures such as fences that are reasonably designed to prevent unauthorized persons from entering the registered premises and/or having their presence therein undetected.

(c) Nothing in this section is intended to apply to any finished or marketable product which contains industrial hemp but from which the hemp may not practically be extricated in the form of industrial hemp.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 159.2(c), (d)(3), (iv), (e) and (f).

Revised rule making(s) were previously published in the State Register on September 30, 2015.

Text of rule and any required statements and analyses may be obtained from: Chris Logue, Director, Division of Plant Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, email: Chris.Logue@agriculture.ny.gov

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

Changes were made to the last published rule to allow for an institution of higher education that has been authorized to grow and cultivate industrial hemp to, generally, process and market that commodity in addition to being able to grow and cultivate it; these changes are not substantial and do not necessitate revision of the previously published impact statements and analyses.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-16-00003-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health, by adding thereto the positon of Chief Marketing Officer.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Consolidated Regulatory Impact Statement

1. Statutory Authority: The New York State Civil Service Commission is authorized to promulgate rules for the jurisdictional classification of offices within the classified service of the State by Section 6 of the Civil Service Law. In so doing, it is guided by the requirements of Sections 41, 42 and 43 of this same law.

2. Legislative Objectives: These rule changes are in accord with the statutory authority delegated to the Civil Service Commission to prescribe rules for the jurisdictional classification of the offices and positions in the classified service of the State.

3. Needs and Benefits: Article V, Section 6, of the New York State Constitution requires that, wherever practicable, appointments and promotions in the civil service of the State, including all its civil divisions, are to be made according to merit and fitness. It also requires that competitive examinations be used, as far as practicable, as a basis for establishing this eligibility. This requirement is intended to provide protection for those individuals appointed or seeking appointment to civil service positions while, at the same time, protecting the public by securing for it the services of employees with greater merit and ability. However, as the language suggests, the framers of the Constitution realized it would not always be possible, nor indeed feasible, to fill every position through the competitive process. This point was also recognized by the Legislature for, when it enacted the Civil Service Law to implement this constitutional mandate, it provided basic guidelines for determining which positions were to be outside of the competitive class. These guidelines are contained in Section 41, which provides for the exempt class; 42, the non-competitive class and 43, the labor class. Thus, there are four jurisdictional classes within the classified service of the civil service and any movement between them is termed a jurisdictional reclassification.

The Legislature further established a Civil Service Department to administer this Law and a Civil Service Commission to serve primarily as an appellant body. The Commission has also been given rulemaking responsibility in such areas as the jurisdictional classification of offices within the classified service of the State (Civil Service Law Section 6). In exercising this rule-making responsibility, the Commission has chosen to provide appendices to its rules, known as Rules for the Classified Service, to list those positions in the classified service which are in the exempt class (Appendix 1), non-competitive class (Appendix 2), and labor class (Appendix 3).

In effect, all positions, upon creation at least, are, by constitutional mandate, a part of the competitive class and remain so until removed by the Civil Service Commission, through an amendment of its rules upon showing of impracticability in accordance with the guidelines provided by the Legislature. The guidelines are as follows. The exempt class is to include those positions specifically placed there by the Legislature, together with all other subordinate positions for which there is no requirement that the person appointed pass a civil service examination. Instead, appointments rest in the discretion of the person who, by law, has determined the position's qualifications and whether the persons to be appointed possess those qualifications. The non-competitive class is to be comprised of those positions which are not in the exempt or labor classes and for which the Civil Service Commission has found it impracticable to determine an applicant's merit and fitness through a competitive examination. The qualifications of those candidates selected are to be determined by an examination which is sufficient to insure selection of proper and competent employees. The labor class is to be made up of all unskilled laborers in the service of the State and its civil divisions, except those which can be examined for competitively.

4. Costs: The removal of a position from one jurisdictional class and placement in another is descriptive of the proper placement of the position in question in the classified service, and has no appreciable economic impact for the State or local governments.

5. Local Government Mandates: These amendments have no impact on local governments. They pertain only to the jurisdictional classification of positions in the State service.

6. Paperwork: There are no new reporting requirements imposed on applicants by these rules.

7. Duplication: These rules are not duplicative of State or Federal requirements.

8. Alternatives: Within the statutory constraints of the New York State

Civil Service Commission, it is not believed there is a viable alternative to the jurisdictional classification chosen.

9. Federal Standards: There are no parallel Federal standards and, therefore, this is not applicable.

10. Compliance Schedule: No action is required by the subject State agencies and, therefore, no estimated time period is required.

Regulatory Flexibility Analysis

The proposal does not affect or impact upon small businesses or local governments, as defined by Section 102(8) of the State Administrative Procedure Act, and, therefore, a regulatory flexibility analysis for small businesses is not required by Section 202-b of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on small businesses or local governments.

Rural Area Flexibility Analysis

The proposal does not affect or impact upon rural areas as defined by Section 102(13) of the State Administrative Procedure Act and Section 481(7) of the Executive Law, and, therefore, a rural area flexibility analysis is not required by Section 202-bb of such act. In light of the fact that this proposal only affects jurisdictional classifications of State employees, it will not have any adverse impact on rural areas.

Job Impact Statement

The proposal has no impact on jobs and employment opportunities. This proposal only affects the jurisdictional classification of positions in the Classified Civil Service.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-16-00004-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by deleting therefrom the positions of Horticultural Inspector 3 (Apiculture) (1), Horticultural Inspector 3 (Biotechnology) (1) and Horticultural Inspector 3 (Invasive Species) (1) and by adding thereto the positions of Horticultural Inspector 2 (Apiculture) (1), Horticultural Inspector 2 (Biotechnology) (1) and Horticultural Inspector 2 (Invasive Species) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-16-00005-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by deleting therefrom the position of øAffirmative Action Administrator 3 (1) and by adding thereto the position of øAffirmative Action Administrator 4 (1).

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-02-16-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Criminal Justice Services," by decreasing the number of positions of øSecretary 2 from 3 to 2; in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by decreasing the number of positions of Communications Specialist (DHSES) from 3 to 2; and, in the Executive Department under the subheading "Office of Victim Services," by decreasing the number of positions of øSecretary 2 from 3 to 2.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Education Department

EMERGENCY RULE MAKING

School Receivership

I.D. No. EDU-27-15-00008-E
Filing No. 1144
Filing Date: 2015-12-24
Effective Date: 2015-12-26

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

Action taken: Addition of section 100.19 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 211-f(15), 215(not subdivided), 305(1), (2), (20), 308(not subdivided), 309(not subdivided); L. 2015, ch. 56, subpart H, part EE

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

Specific reasons underlying the finding of necessity: The purpose of the proposed rulemaking is to implement section 211-f of Education Law, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, pertaining to school receivership. Section 211-f designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Failing School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Failing Schools, schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (.i.e., the superintendent of schools of the school district vested with the powers a receiver would have under section 211-f) to improve student performance. Should the school fail to make demonstrable progress in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent Receivers are appointed for up to three school years and serve under contract with the Commissioner.

The proposed rulemaking adds a new section 100.19 to align the Commissioner's Regulations with Education Law 211-f, and addresses the Regents Reform Agenda and New York State's updated accountability system. Adoption of the proposed rule is necessary to ensure seamless implementation of the provisions of Education Law § 211-f, and will provide school districts with additional powers to impact improvement in academic achievement for students in the lowest performing schools.

The proposed rule was adopted by emergency action at the June 15-16, 2015 Regents meeting, effective July 1, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 8, 2015. The proposed amendment was substantially revised in response to public comment and, as revised, adopted by emergency action at the September 12-13, 2015 Regents meeting, effective September 21, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on October 7, 2015. The proposed rule was further revised to add procedures for the Commissioner's resolution of collective bargaining issues and, as revised, adopted by emergency action at the October 26-27, 2015 Regents meeting, effective October 27, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on November 10, 2015.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 30-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(4-a) for revised rule makings, would be the January 11-12, 2016 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be January 27, 2016, the date a Notice of Adoption would be published in the State Register. However, the October emergency rule will expire on December 25, 2015, 60 days after its filing with the Department of State on October 27, 2015. A lapse in the rule will disrupt the process of school receivership pursuant to Education Law section 211-f.

Emergency action at the December 2015 Regents meeting is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the October 2015 Regents meeting remains continuously in effect until it can be presented for permanent adoption and take effect as a permanent rule.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the January 11-12, 2016 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period prescribed in the State Administrative Procedure Act for State agency revised rule makings.

Subject: School receivership.

Purpose: To implement Education Law section 211-f, as added by part EE, subpart H of ch. 56 of the Laws of 2015.

Substance of emergency rule: The Commissioner of Education proposes to add a new section 100.19 of the Commissioner's Regulations. The proposed rule was originally adopted as an emergency action at the June 2015 Regents meeting, effective June 23, 2015 and revised and adopted as an emergency action at the September and October 2015 Regents meetings. The revised proposed rule has been readopted by emergency action at the December 2015 Regents meeting, effective December 26, 2015, in order to ensure that the emergency rule adopted at the October 2015 Regents meeting remains continuously in effect until it can be presented for permanent adoption and take effect as a permanent rule. The following is a summary of the substantive provisions of the emergency rule.

Section 100.19(a), Definitions, provides the definitions used in the section, including the definitions of Failing School (Struggling School), Persistently Failing School (Persistently Struggling School), Priority School, School District in Good Standing, School District Superintendent Receiver, Independent Receiver, School District, Community School, Board of Education, Department-approved Intervention Model, School Intervention Plan, School Receiver, Diagnostic Tool for School and District Effectiveness, Consultation and Cooperation, Consultation, Consulting and Day.

§ 100.19(b), Designation of Schools as Failing and Persistently Failing, explains the process by which the Commissioner shall designate schools as Struggling or Persistently Struggling and clarifies that school districts will have the opportunity to present data and relevant information concerning extenuating or extraordinary circumstances faced by the school that should cause it not to be identified as a Struggling or a Persistently Struggling School.

§ 100.19(c), Public Notice and Hearing and Community Engagement, details the process and timeline for notifying parents and the community regarding the Struggling or Persistently Struggling designation, the establishment of a Community Engagement Team, and the role of the Community Engagement Team in the development of recommendations for the identified school. The regulations would require at least one public meeting or hearing annually regarding the status of the school and annual notification to parents of the school's designation and its implications.

The regulations also detail the process by which the hearing shall be conducted and notifications made. Additionally, the subdivision specifies that the district superintendent receiver is required to develop a community engagement plan for approval by the Commissioner.

§ 100.19(d), School District Receivership, specifies that the superintendent shall be vested with the powers of the receiver for Persistently Struggling Schools for the 2015-16 school year and with the powers of the receiver for Struggling Schools for the 2015-16 and 2016-17 school years, provided that there is a Department approved intervention model or comprehensive education plan in place for these school years that includes rigorous performance metrics. The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available. At the end of the 2015-16 school year, the Commissioner will review (in consultation and collaboration with the district) the performance of the Persistently Struggling School to determine whether the school can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school. Similarly, the Department will review the performance of Struggling Schools after two years to determine whether the schools can continue under the superintendent receivership or whether the district must appoint an independent receiver for the school.

§ 100.19(e), Appointment of an Independent Receiver, details the timeline and process for appointment of an independent receiver for Persistently Struggling and Struggling Schools and the process by which the Commissioner approves and contracts with the independent receiver. The section also details the power of the Commissioner to appoint an independent receiver if the district fails within sixty days to appoint an independent receiver that meets the Commissioner's approval. The subdivision clarifies that districts may appoint independent receivers from a department approved list or provide evidence of qualifications of a receiver not on the approved list. Additionally, the subdivision specifies what happens when the Commissioner must appoint an interim receiver.

§ 100.19(f), School Intervention Plan, describes the timeline and process by which the independent receiver will submit to the Commissioner for approval a school intervention plan and the specific components of that plan, including the metrics that will be used to evaluate plan implementation. Each approved school intervention plan must be submitted within six months of the independent receiver's appointment and this approval is authorized for a period of no more than three years. Each approved school intervention plan must be based on input from stakeholders delineated in the subdivision and a stakeholder engagement plan must be provided to the Commissioner within ten days of the independent receiver entering into a contract with the Commissioner. The school intervention plan must also be based upon recent diagnostic reviews and student achievement data. The independent receiver must provide quarterly reports, and plain-language summaries thereof, regarding the progress of implementing the school intervention plan to the local board of education, the Board of Regents, and the Commissioner. In order to provide additional direction to school districts, the regulations further delineate that in converting a school to a community school, the receiver must follow a particular process and meet minimum program requirements. The subdivision further clarifies that if the independent receiver cannot create an approvable plan, the Commissioner may appoint a new independent receiver.

§ 100.19(g), Powers and Duties of a Receiver, delineates the powers and duties of a school receiver, and the powers and duties that an independent receiver has in developing and implementing a school intervention plan. The independent receiver is required to convert the school to a community school and to submit an approvable school intervention plan to the Commissioner. The receiver (both the superintendent receiver and the independent receiver) has powers that may be exercised in the areas of school program and curriculum development; staffing, including replacement of teachers and administrators; school budget; expansion of the school day or year; professional development for staff; conversion of the school to a charter school; and requesting changes to the collective bargaining agreement at the identified school in areas that impact implementation of the school intervention plan. This section also describes the power of the receiver (both the superintendent and the independent receiver) to supersede decisions, policies, or local school district regulations that the receiver, in his/her sole judgment, believes impedes implementation of the school intervention plan.

Under the provisions of this subdivision, the receiver must notify the board of education, superintendent, and principal when the receiver is superseding their authority. The receiver must provide a reason for the supersession and an opportunity for the supersession to be appealed, all within a timeline prescribed in the regulations. This subdivision also delineates a similar process by which the receiver reviews and makes changes to the school budget and supersedes employment decisions regarding staff employed in schools operating under receivership.

§ 100.19(h), Annual Evaluation of Schools with an Appointed Independent Receiver, describes how the Commissioner, in collaboration and consultation with the district, will conduct an annual evaluation of each school to determine whether the school is meeting the performance goals and progressing in implementation of the school intervention plan. As a result of this evaluation, the Commissioner may allow the receiver to continue with the approved plan or require the receiver to modify the school intervention plan.

§ 100.19(i), Expiration of School Intervention Plan, describes the process by which the Commissioner evaluates the progress of the school under the receiver's school intervention plan after a three year period. Based on the results of the evaluation, the Commissioner may renew the plan with the independent receiver for not more than three years; terminate the independent receiver and appoint a new receiver; or determine that the school has improved sufficiently to be removed from Failing or Persistently Failing status.

§ 100.19(j), Phase-out and Closure of Failing and Persistently Failing School, states that nothing in these regulations shall prohibit the Commissioner from directing a school district to phase out or close a school, the Board of Regents from revoking the registration of a school, or a district from closing or phasing out a school with the approval of the Commissioner.

§ 100.19(k), regarding the Commissioner's evaluation of a school receivership program, requires the school receiver to provide any reports or other information requested by the Commissioner, in such form and format and according to such timeline as may be prescribed by the Commissioner, in order for the Commissioner to conduct an evaluation of the school receivership program.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-27-15-00008-EP, Issue of July 8, 2015. The emergency rule will expire February 21, 2016.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law § 207 empowers Regents/ Commissioner to adopt rules to carry out State education laws and functions/ duties conferred by law.

Education Law § 305(1) and (2) provide Commissioner, as chief executive officer, with general supervision over schools and institutions subject to Education Law or education-related statutes, and responsibility for executing all Regents educational policies. § 305(20) provides Commissioner has additional powers/duties as charged by Regents.

Education Law § 211-f, as added by Part EE, Subpart H of Ch. 56, L.2015, provides for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance.

Education Law § 215 authorizes Commissioner to require schools/ districts to submit reports containing information prescribed by Commissioner.

Education Law § 308 authorizes Commissioner to enforce/give effect to Education Law provisions or other general/special law pertaining to education.

Education Law § 309 charges Commissioner with general supervision of schoolboards.

2. LEGISLATIVE OBJECTIVES:

The rule is consistent with the above authority and is necessary to implement Education Law § 211-f, by establishing criteria for appointment of receivers to assist low-performing schools.

3. NEEDS AND BENEFITS:

Education Law § 211-f designates current Priority Schools that have been in most severe accountability status since 2006-07 school year as "Persistently Failing Schools" (identified in rule as "Persistently Struggling Schools"), vests school district superintendent with powers of an independent receiver; and gives superintendent initial one-year period to use enhanced authority of receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or Commissioner will direct that schoolboard appoint independent receiver and submit appointment for Commissioner's approval. Independent receivers are appointed for up to three school years and serve under contract with Commissioner. Additionally, school will be eligible for a portion of $75 million in State aid to support/implement its turnaround efforts over a two-year period. Failing Schools (identified in rule as "Struggling Schools"), schools that have been Priority Schools since 2012-13 school year, will be given an initial two-year period under a "superintendent receiver" (i.e., school district superintendent of schools vested with powers of receiver) to improve student performance. Should school fail to

make demonstrable improvement in two years then district must appoint independent receiver and submit appointment for Commissioner's approval.

§ 211-f provides persons/entities vested with powers of receiver new authority to develop school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in school's budget; expand school day/school year; establish professional development plans; order conversion of school to charter school; remove staff and/or require staff to reapply for employment in collaboration with staffing committee; and negotiate collective bargaining agreements, with unresolved issues submitted to Commissioner for decision.

At end of one- or two-year period in which Persistently Struggling or Struggling school remains under district control, and annually thereafter, Commissioner must determine whether school should be removed from designation, allowed to continue to be operated by school district under superintendent receiver, or be placed under independent receiver appointed by schoolboard with sole responsibility to manage/operate school. Schools operating under independent receiver must be annually evaluated by Commissioner to determine whether school intervention plan should be continued/modified. At end of independent receivership period, Commissioner must decide whether to end receivership, continue it, or appoint new receiver. Additionally, Commissioner may order closure of Struggling school and Regents may revoke school's registration.

4. COSTS:

(a) Costs to State government: $75 million is appropriated for period July 1, 2015 to March 31, 2017 to support turnaround efforts in Persistently Struggling Schools.

(b) Costs to local government: The rule is necessary to implement Education Law § 211-f and, consequently, major mandates of rule are statutorily imposed. SED anticipates because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools/districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on number of factors, including but not limited to: size of school enrollment, demographics of school population and grade configuration of the school; whether independent receiver is assigned to a school and district required to convert school to community school; and degree to which school receiver chooses to use receiver's authority to take actions such as extending school day/school year; expanding/modifying curriculum/program offerings; replacing teachers/administrators; increasing salaries of teachers/administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture, organizational structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing school. SED estimates on average it will cost district approximately $50,000 per school to meet rule's requirements regarding providing written annual notifications to parents of students attending Struggling or Persistently Struggling school; conducting at least one public meeting/hearing annually to discuss school's performance and the construct of receivership; establishing and implementing community engagement team; providing quarterly written reports to schoolboard, Commissioner and the Regents; amending comprehensive school improvement plans or Department-approved intervention plans to meet rule's requirements; and submitting information necessary to allow Commissioner to determine whether school is making demonstrable improvement. SED estimates in event that large high school (2,000 plus students) is placed in independent receivership, is implementing community school program, and independent receiver chooses to utilize all of receiver's authority, annual costs of implementation of receivership could be in range of $4 million to $5.5 million dollars.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: SED has received no additional funding to administrate this program. However, SED estimates it will cost annually between $65,000 and $800,000 per year to conduct additional visits to receivership schools to provide information in support of determinations on whether schools have made demonstrable improvement, depending on size and composition of review teams, length of visits, and type of reports written. SED further anticipates it will need to devote approximately $500,000 per year in staff time to coordinate receivership program, including providing technical assistance/support, evaluating performance, selecting independent receivers, and developing/overseeing their contracts. To extent SED does not receive additional funding, SED will be required to reallocate existing resources and diminish support for other program initiatives.

5. LOCAL GOVERNMENT MANDATES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, major mandates of rule are statutorily imposed.

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall conduct at least one public meeting/ hearing annually to discuss the performance of designated school and receivership, and provide translators and provide reasonable notice to public of meeting/hearing.

No later than twenty days following designation, district shall establish community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop community engagement plan in such form. format and according to such timeline as prescribed by Commissioner and shall submit such plan for Commissioner's approval.

The district shall continue to operate a Persistently Struggling school for an additional school year and a Struggling school for an additional two school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of independent receiver but shall not be required to prepare school intervention plan or convert school to community school.

In the event SED revokes provisional approval or approval of an intervention model or comprehensive education plan, Commissioner shall require district to appoint and submit for Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with community engagement team, in accordance with approved community engagement plan, with respect to modifications to district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, district shall appoint an independent receiver and submit appointment for Commissioner's approval. If district fails to appoint independent receiver that meets the Commissioner's approval, Commissioner shall appoint independent receiver.

The district shall fully cooperate with independent receiver and willful failure to cooperate with or interference with functions of such receiver shall constitute willful neglect of duty under Education Law § 306.

No later than 30 business days prior to presentation of a school budget at budget hearing, the schoolboard shall provide school receiver with a copy of proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and services and resources that the district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the schoolboard shall incorporate the modifications into the proposed budget and present it to the public or return modifications for reconsideration for reasons specified in writing. The school receiver shall notify schoolboard in writing of receiver's decision and determination of the school receiver shall be incorporated into the budget. The school receiver and the schoolboard shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

6. PAPERWORK:

Upon Commissioner's designation of a school as Struggling or Persistently Struggling, the schoolboard shall provide written notice of designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The district shall provide written notice of public meeting/hearing held annually for purposes of discussing the performance of the designated school and receivership.

The superintendent receiver shall provide quarterly written reports regarding implementation of the Department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of school receiver shall be publicly available in school district's offices and posted on school district's website, if one exists.

No later than ten business days after a schoolboard has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling school, or a school that the Commissioner has determined shall be placed into receivership, the schoolboard shall provide school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the schoolboard shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by receiver at its next regularly scheduled meeting. The receiver and schoolboard shall provide Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for Commissioner to conduct an evaluation of the receivership program.

7. DUPLICATION:

The rule is necessary to implement Education Law § 211-f and does not duplicate, overlap or conflict with State or federal legal requirements.

8. ALTERNATIVES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major provisions of the rule are statutorily imposed, and there are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable federal standards for the appointment of receivers pursuant to Education Law § 211-f.

10. COMPLIANCE SCHEDULE:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers for Persistently Struggling Schools and Struggling Schools. Consequently, the major provisions of the proposed rule are statutorily imposed. It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule is necessary to implement Education Law § 211-f, as added by Subpart H of Part EE of Chapter 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirement on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There are currently 17 school districts that have Persistently Struggling Schools and/or Struggling Schools.

2. COMPLIANCE REQUIREMENTS:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major mandates of the proposed rule are statutorily imposed. Major mandates of the proposed rule include: the development of a community engagement plan in a form and format and according to a timeline as prescribed by the Commissioner, the creation of a community engagement team, full cooperation of the district with the independent receiver, and the completion of quarterly reports by the independent receiver. In April 2015, Subpart H of Part EE of Chapter 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the "Persistently Struggling School" or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers a receiver would have under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner.

Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board and shall have the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Persistently Struggling or Struggling School and the Board of Regents may revoke the registration of a school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting/hearing.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be made publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, and a community engagement plan. The superintendent shall be vested with the powers of an independent receiver.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing of the decision and the determination shall be incorporated into the budget. The school receiver and the school

board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

The school district superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

3. PROFESSIONAL SERVICES:

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools. The proposed rule does not impose any additional professional services requirements beyond those inherent in the statute.

4. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to local governments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or restaffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule requires school districts to provide notice to the public regarding public meetings or hearings by posting the notice on a school district website, if one exists. In addition, the School Intervention Plan must be publicly available by the independent receiver in the school district's offices and posted on the school district's website, if one exists. Quarterly reports must be publicly available in the school district's offices and posted on the school district's website, if one exists.

Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables, or to exempt school districts from coverage by the rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may suitably prepare for and implement this requirement. The Department will also take steps to share a variety of resources with school districts to provide guidance with the implementation process.

7. LOCAL GOVERNMENT PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

8. 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 rule is necessary to implement Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

The 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 number 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the date the Notice is published in the State Register.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to those school districts that have:

(1) "Persistently Failing Schools" (identified in the regulation as a "Persistently Struggling Schools"), which are Priority Schools that have been in the most severe accountability status since the 2006-07 school year, and/or

(2) Failing Schools (identified in the regulation as a "Struggling Schools"), which are schools that have been in Priority Schools status since the 2012-13 school year.

There is currently one school district that has one Struggling School located in a rural area (i.e. the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less).

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

The proposed rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student

performance. In April 2015, Subpart H of Part EE of Ch. 56 of the Laws of 2015 created a new Education Law § 211-f. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools" and vests the superintendent of the district with the powers of an independent receiver. The superintendent is given an initial one-year period to use the enhanced authority of a receiver to make demonstrable improvement in student performance at the Persistently Struggling School or the Commissioner will direct that the school board appoint an independent receiver and submit the appointment for approval by the Commissioner. Independent receivers are appointed for up to three school years and serve under contract with the Commissioner. Additionally, the school will be eligible for a portion of $75 million in State aid to support and implement its turnaround efforts over a two-year period. Failing Schools (identified in the regulation as "Struggling Schools"), schools that have been Priority Schools since the 2012-13 school year, will be given two years under a "superintendent receiver" (i.e., the superintendent of schools of the school district vested with the powers of a receiver under § 211-f) to improve student performance. Should the school fail to make demonstrable improvement in two years then the district will be required to appoint an independent receiver and submit the appointment for approval by the Commissioner. Education Law § 211-f provides persons or entities vested with the powers of a receiver new authority to, among other things, develop a school intervention plan; convert schools to community schools providing wrap-around services; reallocate funds in the school's budget; expand the school day or school year; establish professional development plans; order the conversion of the school to a charter school consistent with applicable state laws; remove staff and/or require staff to reapply for their jobs in collaboration with a staffing committee; and negotiate collective bargaining agreements, with any unresolved issues submitted to the Commissioner for decision.

At the end of the one- or two-year period in which a school designated as Persistently Struggling or as Struggling remains under district control, and annually thereafter, the Commissioner must determine whether the school should be removed from such designation; allowed to continue to be operated by the school district with the superintendent receiver; or be placed under an independent receiver who shall be appointed by the school board with the responsibility to manage and operate the school. Schools operating under an independent receiver must also be annually evaluated by the Commissioner to determine whether the school intervention plan should be continued or modified. At the end of the independent receivership period, the Commissioner must decide whether to end the receivership, continue it, or appoint a new receiver. Additionally, the Commissioner may order the closure of a Struggling or Persistently Struggling School and the Board of Regents may revoke the registration of the school.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall conduct at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and receivership. The district shall provide translators and provide reasonable notice to the public of the meeting or hearing.

The superintendent receiver shall provide quarterly written reports regarding implementation of the department-approved intervention model or school comprehensive education plan, and such reports, together with a plain-language summary thereof, shall be publicly available.

No later than twenty days following designation, the school district shall establish a community engagement team, comprised of community stakeholders with direct ties to the school, to develop recommendations for improvement of the school and solicit input through public engagement.

The superintendent receiver shall develop a community engagement plan in such form and format and according to such timeline as may be prescribed by the Commissioner and shall submit such plan to the Commissioner for approval.

The school district shall continue to operate a school identified as Persistently Struggling for one additional school year and a school identified as Struggling for two additional school years, provided there is a Department-approved intervention model or comprehensive education plan in place that includes rigorous performance metrics and goals, as well as a community engagement plan. The superintendent shall be vested with the powers of an independent receiver, except that superintendent is not required to develop a school intervention plan or convert the school to a community school.

In the event the Department revokes the provisional approval or approval of an intervention model or comprehensive education plan, the Commissioner shall require the school district to appoint and submit for the Commissioner's approval an independent receiver to manage and operate the school.

The district shall consult with the community engagement team in accordance with the approved community engagement plan, with respect to modifications to the district's approved intervention model or comprehensive education plan.

Within 60 days of the Commissioner's determination to place a school into receivership, the district shall appoint an independent receiver and submit the appointment to the Commissioner for approval. If the school district fails to appoint an independent receiver that meets the Commissioner's approval, the Commissioner shall appoint the independent receiver.

The school district shall fully cooperate with the independent receiver and willful failure to cooperate with or interfere with the functions of such receiver shall constitute willful neglect of duty under Education Law section 306.

No later than 30 business days prior to the presentation of a school budget at the budget hearing, the school board shall provide the school receiver with a copy of the proposed district budget including any school-based budget, that shall include a specific delineation of all funds and resources the school receiver shall have available to manage and operate the school and the services and resources that the school district shall provide to the school. Upon receipt of the school receiver's proposed budget modifications, the school board shall incorporate the modifications into the proposed budget and present it to the public or return the modifications for reconsideration for reasons specified in writing. The school receiver shall notify the school board in writing with a decision and that determination shall be incorporated into the budget. The school receiver and the school board shall provide the Commissioner with an electronic copy of all correspondence related to modification of the school budget.

Upon the Commissioner's designation of a school as Struggling or Persistently Struggling, the board of education shall provide written notice of the designation to parents/persons in parental relation no later than 30 days following designation, and by June 30th of each school year the school remains so identified.

The school district shall provide written notice of the public meeting or hearing held annually for purposes of discussing the performance of the designated school and receivership.

Quarterly reports of the independent receiver shall be publicly available in the school district's offices and posted on the school district's website, if one exists.

No later than ten business days after a school board has acted upon an employment decision pertaining to staff assigned to a Struggling or Persistently Struggling School, or a school that the Commissioner has determined shall be placed into receivership, the school board shall provide the school receiver with a copy of the action taken, which shall not go into effect until it has been reviewed by the school receiver. Upon receipt of any proposed modifications to an employment decision, the school board shall adopt the modifications at the next regularly scheduled board meeting or return the modification within 10 days for reconsideration with the reasons specified in writing. The board shall approve modifications required by the receiver at its next regularly scheduled meeting. The receiver and school board shall provide the Commissioner with an electronic copy of all correspondence related to such employment decisions.

The school receiver shall provide the Commissioner with any reports or other information requested, in such form and format and according to such timeline as may be prescribed, in order for the Commissioner to conduct an evaluation of the receivership program.

The rule is necessary to implement Education Law § 211-f by establishing criteria for the appointment of receivers to assist low performing schools, and does not impose any additional professional service requirements upon schools in rural areas beyond those inherent in the statute.

3. COMPLIANCE COSTS:

The proposed rule is necessary to implement Education Law § 211-f and, consequently, the major mandates of the proposed rule are statutorily imposed. The Department anticipates that because $75 million has been appropriated to support turnaround efforts in Persistently Struggling Schools during the 2015-16 and 2016-17 school years, there will be no costs to ernments for implementing school receivership in these schools during these years.

There are currently 17 schools districts that may potentially have one or more schools identified as Struggling or Persistently Struggling. Annual costs to implement school receivership will vary widely depending on a number of factors, including but not limited to: the size of school enrollment, the demographics of the school population and the grade configuration of the school; whether an independent receiver is assigned to a school and the district is required to convert the school to a community school; and the degree to which the school receiver chooses to use the receiver's authority to take actions such as extending the school day or school year; expanding or modifying curriculum and program offerings; replacing teachers and administrators; increasing salaries of teachers and administrators; improving hiring, induction, teacher evaluation, professional

development, teacher advancement, school culture and/or organizational structure; adding kindergarten or pre-kindergarten programs; and/or re-staffing the school. The Department estimates that on average it will cost a district approximately $50,000 per school to meet the requirements of the regulations regarding providing written annual notifications to parents of, or persons in parental relation to, students attending a struggling or a persistently struggling school; conducting at least one public meeting or hearing annually for purposes of discussing the performance of the designated school and the construct of receivership; establishing a community engagement team and implementing the provisions of the regulations regarding such teams; providing quarterly written reports to the board of education, the Commissioner and the Board of Regents; amending comprehensive school improvement plans or department approved intervention plans to meet the requirements of the regulations; and submitting information necessary to allow the Commissioner to determine whether a school is making demonstrable improvement. The Department estimates that in the event that a large high school (2,000 plus students) is placed in independent receivership, is implementing a community school program, and the independent receiver chooses to utilize all of the authority of the receiver as specified in subdivision 100.19(g), the annual costs of implementation of receivership could be in the range of $4 million to $5.5 million dollars.

4. MINIMIZING ADVERSE IMPACT:

The rule is necessary to implement Education Law section 211-f by establishing criteria for the appointment of receivers to assist low performing schools. Consequently, the major provisions of the rule are statutorily imposed and it is not feasible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed rule. Nevertheless, a substantial effort was made to involve school districts and other interested parties in the development of this rule, and their comments were considered in drafting the proposed rule.

The Department has taken steps to minimize the possible adverse impact of the proposed rule by including stakeholders in the decision making process. The Department also intends to take steps to provide sufficient notice of the proposed rule to ensure that school districts are made aware of the rule's requirements so they may timely prepare for implementation. The Department will also take steps to share a variety of resources with school districts to provide guidance with implementation.

5. RURAL AREA PARTICIPATION:

With the approval of the Board of Regents at its May 18-19, 2015 meeting, Department staff solicited comments and recommendations from groups that included teams from school districts with one or more eligible priority schools; district superintendents; Statewide representatives of parents, teachers, principals, superintendents, and school boards; educational partnership organizations; representatives of State agencies that provide health, mental health, child welfare, and job services; representatives of organizations involved in and concerned with the education of English language learners, students with disabilities and students in temporary housing; and technical experts in school receivership, expanded learning, and community school models. A meeting of these key stakeholders was held on May 27, 2015, where more than 100 participants provided their feedback on draft express terms that were presented to the Board of Regents in May, and many of their suggestions were incorporated in the proposed rule presented for emergency adoption at the June 15-16, 2015 Regents meeting.

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

Pursuant to State Administrative Procedure Act § 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 rule is necessary to ensure implementation of Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low-performing schools to make demonstrable improvement in student performance. Consequently, the major, substantive provisions of the proposed rule are statutorily imposed and cannot be changed without further Legislative action.

The 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 number 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the date the State Register publishes the Notice.

Job Impact Statement

The proposed rule relates to public school and school district accountability and is necessary to implement and otherwise conform the Commissioner's Regulations to Education Law section 211-f, as added by Part EE, Subpart H of Ch. 56 of the Laws of 2015, by establishing criteria for the appointment of receivers to assist low performing schools to make demonstrable improvement in student performance. The statute designates current Priority Schools that have been in the most severe accountability status since the 2006-07 school year as "Persistently Failing Schools" (identified in the proposed regulation as "Persistently Struggling Schools") and identifies schools that have been identified as Priority since the 2012-13 school year as "Failing Schools" (identified in the proposed regulation as "Struggling Schools") and vests the superintendent of the district with the powers of an independent receiver.

The proposed rule applies to public schools that are Struggling or Persistently Struggling and placed into receivership and will not result in an adverse impact on jobs or employment opportunities. In accordance with Education Law section 211-f(7)(b) and (c), a school receiver may abolish the positions of all members of the teaching and administrative and supervisory staff assigned to the Struggling or Persistently Struggling School and terminate the employment of any principal assigned to such a school and require staff members to reapply for their positions in the school if they so choose. Although the school receiver may choose not to rehire a maximum of fifty percent of the former staff, it is anticipated that those staff members will be replaced by other individuals and will not cause a net loss in positions at the school.

Furthermore, an apportionment of $75 million in State funds will be available to Persistently Struggling Schools for the implementation of the Receivership process during the 2015-16 and 2016-17 school years. Since school districts are expected to use a portion of this allocation to implement strategies that may require hiring of new staff for these schools, this will result in a net gain of jobs. It is also possible that to meet the requirements of school receivership in Struggling Schools, which are not eligible for the $75 million grant, districts may choose to hire additional staff to implement the provisions of receivership.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Public Retirement Systems

I.D. No. DFS-02-16-00001-E
Filing No. 1145
Filing Date: 2015-12-28
Effective Date: 2015-12-28

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

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

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

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

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

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

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, January 7, 2015, April 6, 2015, July 3, 2015, and September 30, 2015.

Subject: Public Retirement Systems.

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

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

§ 136-2.2 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) The Comptroller shall:

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 26, 2016.

Text of rule and any required statements and analyses may be obtained from: Mark McLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.mcleod@dfs.ny.gov

Regulatory Impact Statement

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

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

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

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial

soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

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

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immedi-

ate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

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

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

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

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

2. Compliance requirements: None.

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

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

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

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Job Impact Statement

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

State Liquor Authority

NOTICE OF ADOPTION

Update Outdated Application Procedures and Eliminate Archaic Physical Standards for Certain Licenses Types

I.D. No. LQR-34-15-00029-A
Filing No. 1149
Filing Date: 2015-12-29
Effective Date: 2016-01-13

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

Action taken: Amendment of sections 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2 of Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, sections 64(2), 64-a(3), 99-d(4), 101-b(4) and 109(1)

Subject: Update outdated application procedures and eliminate archaic physical standards for certain licenses types.

Purpose: To update application procedures, codify current online filing practices and eliminate archaic restrictions on certain licenses.

Text of final rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to parts 40.3, 40.4, 46.1, 47.4, 48.4 and 65.2.

§ 40.3 Date for filing

(a) Applications for the renewal of licenses must be filed within the period prescribed by the Liquor Authority, as set forth in the instructions accompanying the renewal [application blanks] *advisory* mailed to licensees.

(b) No application for the renewal of a license will be accepted more than [1] *30* days after the expiration of the preceding license period, except for good cause shown.

§ 40.4 Use of forms

(a) Renewal application forms must be used in the following instances:

(1) Generally. Where there has been no change in the licensee, the location of premises, or the type of license, and there will be no such change at the commencement of the new license period.

(2) Dissolution of partnership. Where one or more members of a

partnership licensee are retiring from the partnership at the commencement of the new license period, and the remaining partners intend to continue the business after that date. In such cases, the renewal application must be accompanied by an [affidavit, in duplicate, setting forth all the facts pertaining to the dissolution] *endorsement application*, signed by the outgoing and the remaining partners. The renewal application must be executed by all the remaining partners.

(3) Death of a licensee. (i) Where the licensee, or one of the members of a licensed partnership dies before the renewal application is filed, and a certificate of endorsement under section 122 of the law [Alcoholic Beverage Control Law] has been applied for and issued, the renewal application must then be made out to conform to the endorsement certificate.

(ii) Where the licensee, or a member of a licensed partnership dies after the renewal application has been filed, the zone office must be immediately notified and instructions thereafter issued by the zone office must be followed.

(b) Renewal application forms may not be used under the following circumstances:

(1) Sale of the licensed business from an individual or corporation to another individual or corporation.

(2) Formation of a new partnership or the addition of a new member to an existing partnership.

In each of the above cases an original form of application must be filed [with the appropriate local board, if a retailer, or the appropriate zone office, if a manufacturer or wholesaler] *on a form and in a manner as designated by the Authority*.

§ 46.1 Applications for corporate change involving two or more licensed premises

(a) Where the same corporation operates two or more premises separately licensed under this chapter (L.1963, ch. 204), the licensee shall file one corporate change application and attach thereto a list of all licenses issued by the Authority in the name of the licensee. The application shall be filed, together with the appropriate fee, with the State Liquor Authority [at its New York City office, if any of the licensed premises is located in Zone I; where none is so located, the application shall be filed and processed at the Authority's Albany office, if any of the licensed premises is located in Zone II; where all are in Zone III, the application shall be filed and processed at the Authority's Buffalo office] *on a form and in a manner as designated by the Authority*.

[(b) Copies of the Authority's determination, either approving or disapproving the corporate change, shall be forwarded for filing in the local board and zone office folders relating to each licensed premises.]

§ 47.4 Applications

Applications for permission to make alterations shall be filed [in triplicate as follows:

Manufacturers, wholesalers and vendors shall file with the New York City Office of the Authority at New York City. Retail licensees, except holders of vendors licenses, shall file with the appropriate local A.B.C. Board] *on a form and in a manner as designated by the Authority*.

§ 48.4 Physical standards

(a) No on-premises licenses shall be issued except where the premises comply with all statutory requirements. In addition, each such premises, when situated on or about the street level, shall have one or more windows which shall be so constructed as to afford clear visibility from the exterior and throughout the interior of said premises.

(b) No on-premises licenses shall be issued to premises described in subdivisions (b), (d), (e) and (f) of section 48.1 of this Part unless a particular location or locations shall be designated for the sale and service of alcoholic beverages which, if approved by the Authority, shall be deemed the licensed premises.

(1) Each such premises shall be under the exclusive dominion and control of the licensee and the sale and service of alcoholic beverages and the consumption of liquor and wine shall be confined thereto.

(2) In premises described in subdivisions (d), (e) and (f) of section 48.1 of this Part, the licensed premises shall be enclosed by a permanent wall or partition at least eight feet high.

(c) On-premises licenses may be issued to premises described in subdivision (c) of section 48.1 of this Part with due regard for the functional and traditional layouts of such premises. Any stand-up bar shall be in an area where seating at tables is provided for patrons [and where such premises is in a bowling establishment, such area shall be enclosed by permanent walls or partitions at least eight feet high].

(d) General physical standards. The following standards shall be applicable to all on-premises licenses:

(1) Each premises licensed hereunder shall have seating for patrons at tables, except that the Authority, in its discretion, may permit a bar in any premises described in subdivision (b) of section 48.1 of this Part without requiring seating at tables.

(2) Each premises licensed hereunder shall provide separate sanitary facilities for both sexes. The provision of such facilities may be waived by the Authority provided there is a satisfactory showing that such facilities are in an area adjacent or proximate to the licensed premises and available to the patrons thereof.

[(3) Each premises licensed hereunder shall, at all times during the hours such premises is open for business, be illuminated by sufficient lighting such as will permit a person therein to read nine-point print of the kind generally used in the average newspaper. Nothing herein contained shall, however, be construed as prohibiting temporary dimming of lights during a period of regular entertainment or other special occasions and during any performance in any premises described in subdivision (b) of section 48.1 of this Part.]

§ 65.2 Filing of schedules

(a) Each schedule filed under this section shall identify the filer by name, address and license number and set forth such information as is required by subdivision 3(a) or 3(b) of section 101-b of the (Alcoholic Beverage Control Law), whichever is appropriate. In addition, the brand label registration number of each brand of liquor or wine listed therein shall also be designated.

(b) Where a schedule of prices to wholesalers is filed by the brand owner, the listing of items of brands owned by the filer should be preceded by the words "as brand owner". Where filed as agent the listing of items should be preceded by the words "as agent" followed by identification of the brand owner.

(c) In schedules of prices to retailers the listing of brands owned by the filer should be preceded by the words "as brand owner"; the listing of brands for which the filer is the brand agent should be preceded by the words "as agent"; and where the filer is neither the brand owner nor brand agent the listing should be preceded by the name of the licensee who registers the brand label.

(d) Where a manufacturer or wholesaler holds more than one license, a separate schedule of prices to retailers shall be filed by such licensee for each licensed premises.

(e) There shall be filed with the State Liquor Authority's *website* [Wholesale Bureau in Albany six] *a* copy[ies] of each schedule of prices to wholesalers and [six copies of] each schedule of prices to retailers *on a form and in a manner as designated by the Authority*.

(f) Schedules of prices to wholesalers and the applicable affirmation shall be filed on or before the 25th day of each month and shall become effective on the first day of the second succeeding calendar month, unless otherwise ordered by the authority. When the 25th day of the month falls on a Saturday, Sunday or legal holiday, such schedules and affirmation shall be filed on the following business day.

(g) Schedules of prices to retailers shall be filed on or before the fifth calendar day of each month unless otherwise ordered by the Liquor Authority. When the fifth day of the month falls on a Saturday, Sunday or legal holiday, such schedules shall be filed on the following business day.

(h) [Six copies of each a]*A*mended schedule*s* of prices to retailers shall be filed *on a form and in a manner as designated by the Authority* no later than the 20th day of the month prior to the effective date of the schedule being amended. When the 20th day of the month falls on a Saturday, Sunday or legal holiday, such amended schedule may be filed on the following business day.

(i) The schedules filed each month which contain a listing of all brands of liquor and wine which are to be sold shall be known as master schedules. The Liquor Authority may permit or require the filing of short form schedules for any particular month in place of the master schedule. Short form schedules shall show all new items, price changes, or items discontinued since the last filing of a master schedule. All schedules shall contain such statements as the Liquor Authority may permit or require.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 40.3 and 65.2.

Text of rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

Revised Job Impact Statement

The express terms of the proposed rule were changed merely to remove outdated references to blank renewal applications being mailed to renewal applicants in Part 40.3, as well as to six (6) copies being necessary for amended price postings pursuant to Part 65.2(h). Said non-substantive revisions merely conform to current agency practices. As such, the changes made to the previously published rule do not necessitate that the previously published statement in lieu of job impact statement be revised.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Update Outdated Freedom of Information Law Procedures Utilized by Authority

I.D. No. LQR-02-16-00002-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 amend Part 95 of Title 9 NYCRR.

Statutory authority: Public Officers Law, section 87(1)(b)

Subject: Update outdated Freedom of Information Law procedures utilized by Authority.

Purpose: To update Authority procedures and ensure compliance with Freedom of information Law requirements under Public Officers Law, art. 6.

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to parts 95.1, 95.2, 95.3, 95.5, 95.6, 95.7, 95.8, and 95.9. In addition, Part 95.4 is hereby repealed.

§ 95.1 Purpose and scope

(a) The people's right to know the process of government decision-making and the documents and statistics leading to determinations is basic to our society. Access to such information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality.

(b) This Part provides information concerning the procedures by which records may be obtained.

[(c) Personnel shall furnish to the public the information and records required by the Freedom of Information Law and those which were furnished to the public prior to its enactment.

(d) Any conflicts among laws governing public access to records shall be construed in favor of the widest possible availability of public records.]

§ 95.2 Designation of records access officer

(a) The Chairman of the State Liquor Authority is responsible for insuring compliance with the regulations in this Part and [designates the following persons as] *designating an Authority employee as the* [r]*R*ecords [a]*A*ccess [o]*O*fficer[s:

(1) Secretary to the Authority.

(2) Deputy commissioner in charge of compliance bureau.

(3) Deputy commissioner in charge of Zone II office.

(4) Deputy commissioner in charge of Zone III office].

(b) *The* Records [a]*A*ccess [o]*O*fficer[s are] *is* responsible for insuring appropriate agency responses to public requests for access to records. [However, the public shall not be denied access to records through officials who have in the past been authorized to make records or information available.] *The* Records [a]*A*ccess [o]*O*fficer[s] shall assure that personnel:

(1) Maintain an up-to-date subject matter list.

(2) Assist [the requester] in identifying requested records, if necessary.

(3) Upon locating the records, take one of the following actions in accordance with section 95.6(b) of this Part:

(i) Make records promptly available for inspection; or

(ii) Deny access to the records in whole or in part and explain in writing the reasons therefor.

(4) Upon request for copies of records:

(i) Make a copy available upon payment or offer to pay established fees, if any, in accordance with section 95.8 of this Part; or

(ii) Permit the requester to copy those records.

(5) Upon request, certify that a [transcript] *record* is a true copy of records copied.

(6) Upon failure to locate records, certify that:

(i) The State Liquor Authority is not the legal custodian for such records, or

(ii) The records of which the State Liquor Authority is the legal custodian, after diligent search, cannot be found.

§ 95.3 [Designation of fiscal officer] *Record Maintenance*

(a) The [director of manpower management is designated the fiscal officer, who shall certify the payroll and respond to requests, in accordance with section 95.6(b) of this Part, for an itemized record setting forth the name, address, title and salary of every officer or employee of the agency.] *Secretary to the Authority will maintain a record of the final vote of each member in every proceeding in which the members vote.*

(b) [Either the chief executive officer or the fiscal officer shall make the payroll items listed above available to any person including bona fide members of the news media as required under section 88(1)(g), (1)(i), and (10) of the Freedom of Information Law.] *The Chairman of the Authority or his designee shall maintain a record setting forth the name, public office address, title and salary of every officer or employee of the Authority.*

(c) The Records Access Officer shall maintain a reasonably detailed current list, by subject matter, of all records in the possession of the Authority.

§ 95.5 Hours for public inspection *and location of records*

(a) Requests for public access to records shall be accepted and records produced between [10] *8:30* a.m. and 4*:30* p.m. on all days when the Authority is regularly open for business.

(b) Records shall be available for public inspection and copying at:

(1) 317 Lenox Avenue, New York, NY 10027; and

(2) 80 South Swan Street, Suite 900, Albany, NY 12210; and

(3) 535 Washington Street, Buffalo, NY 14230.

(c) No records may be removed by the requester from the office where the record is located without the permission of the Records Access Officer.

§ 95.6 Requests for public access to records

(a) A request for records shall be in writing *and should be sufficiently detailed to identify the records.* [However, written requests shall not be required for records that have been customarily available without written request.] *Whether a request is made in writing, via email or in person, where possible, the requester should supply information regarding dates, titles, file designations or other information which may help identify the records. All requests for records may be submitted to FOIL@sla.ny.gov or mailed to: Records Access Officer, New York State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210*

(b)[(1) Except under extraordinary circumstances, officials shall respond to a request for records no more than five business days after receipt of the request, whether the request is oral or in writing.

(2) If, because of extraordinary circumstances, more than five business days are required to respond to a request, receipt of the request shall be acknowledged within five business days after the request is received. The acknowledgment shall state the reason for delay and estimate the date when a reply will be made.

(c) A request for access to records should be sufficiently detailed to identify the records. Where possible, the requester should supply information regarding dates, titles, file designations or other information which may help identify the records.

(d)(1) A current list of all records, by subject matter, shall be available for public inspection and copying. The list shall be sufficiently detailed to permit the requester to identify the file category of the records sought.

(2) The subject matter list shall be updated periodically and the date of the most recent updating shall appear on the first page.

(e) No records may be removed by the requester from the office where the record is located without the permission of a records access officer or the chief executive officer.] *The Records Access Officer shall:*

(1) Make the requested record available; or

(2) Deny access to the requested record in writing; or

(3) Furnish written acknowledgment of the request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied.

§ 95.7 *Appeal of* [D]*d*enial of access to records

(a) Denial of access to records shall be in writing stating the reason therefor and advising the requester of the right to appeal to the individuals authorized to hear appeals.

(b) If *a* request[ed] *for* records [are] *is* not [provided promptly, as required in] *responded to in accordance with* section 95.6(b) of this Part, such [failure] *request* shall also be deemed a denial of access.

(c) [Any one of the following persons shall hear appeals for denial of access to records under the Freedom of Information Law:

(1) Chief Executive Officer 2 World Trade Center, New York City.

(2) Counsel to the Authority 2 World Trade Center, New York City.

(3) Deputy Commissioner in charge of Licensing--Statewide 2 World Trade Center, New York City.] *The Chairman shall appoint an attorney within the Authority to serve as the FOIL Appeals Officer to hear appeals for denial of access to records.*

(d) The time for deciding an appeal by the individuals designated to hear appeals shall commence upon receipt of written appeal identifying:

(1) The date of the appeal.

(2) The date and location of the requests for records.

(3) The records to which the requester was denied access.

(4) [Whether the denial of access was in writing or was by failure to provide records promptly as required by section 95.6(b) of this Part.

(5)] The name and return address of the requester.

(e) The individual designated to hear appeals shall inform the requester of his decision in writing within [seven] *ten* business days of receipt of an appeal.

(f) A final denial of access to a requested record, as provided for in subdivision (e) of this section, shall be subject to court review, as provided for in article 78 of the Civil Practice Law and Rules.

§ 95.8 Fees
(a) There shall be no fee charged for
(1) Inspection of records.
(2) Search for records, except that a reasonable fee may be charged in the discretion of the [chief executive officer or the secretary to] *Chairman of* the Authority where such search will entail an inordinate length of time.
(3) Any certification pursuant to this Part.
(b) *Fees shall be charged for:*
(1) Except as otherwise provided by the rules of the Authority, copies of records shall be provided at a fee of 25 cents per page not exceeding 8 1/2 inches by 14 inches in size.
(2) The fees for other types of copies or transcripts and for certification shall be such reasonable amounts as the [chief executive officer or the secretary to] *Chairman of* the Authority shall establish. Notwithstanding the above, the [aforesaid chief executive officer or the secretary to] *Chairman of* the Authority may, in his discretion, waive all or any portion of the fees authorized by this section for any records or class of records.
§ 95.9 Public notice
A notice containing the job title and business address of the [r]*R*ecords [a]*A*ccess [o]*O*fficer[s and fiscal officer]; the job title, business address and telephone number of the appeal person or persons or body, and the location where records can be seen or copied, shall be posted [in a conspicuous location wherever records are kept] *on the Authority's website*.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.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

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 95.1, 95.2, 95.3, 95.5, 95.6, 95.7, 95.8, and 95.9 as well as the repeal of Part 95.4 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that no person is likely to object to their adoption as written. Part 95.1 sets forth the purpose and scope of Part 95 and the proposed changes merely simplify the directives to Authority staff and codify current practices. Part 95.2 sets forth the designation of multiple Records Access Officers and the proposed change would clarify that the designation of a single Records Access Officer shall be the responsibility of the Chairman of the Authority, thereby alleviating confusion and enhancing transparency in the FOIL process. Part 95.3 sets forth the designation of a Fiscal Officer, and the proposed changes would eliminate that outdated position and clearly set forth the recordkeeping responsibilities of several Authority staff in keeping with statutory requirements, thereby merely codifying current practices. Part 95.4 sets forth locations for public inspection of records, including outdated references to Authority office locations, and the Authority seeks repeal of this Part in its entirety. Part 95.5 sets forth hours for public inspection of Authority records and the proposed changes would expand the hours for public inspections as well as set forth updated Authority office locations, thereby enhancing transparency and alleviating confusion in the FOIL process. Part 95.6 sets forth procedures for public requests for access to Authority records, and the proposed changes would simplify the procedures as well as provide for electronic mail requests, thereby codifying current practices. Part 95.7 sets for procedures available to persons upon a denial of a request for access to records, and the proposed changes simplify and codify the FOIL appeals process as well as establish a single FOIL Appeals Officer to be appointed by the Chairman thereby alleviating confusion and enhancing transparency. Part 95.8 sets forth fees associated with FOIL requests and the proposed changes clarify that the Chairman shall have the sole discretion to charge certain fees associated therewith thereby alleviating confusion. Part 95.9 sets forth the public notice requirements enabling the public to locate the Authority's Records Access Officer and the proposed changes provide for the Authority's website to be utilized for that purpose.

Consistent with the definition of "consensus rule" as set forth in section 102(11) of the State Administrative Procedure Act, the Authority has determined that these proposals, which update multiple outdated references to Authority FOIL procedures to enhance transparency and public accountability, are non-controversial in nature and, therefore, no person is likely to object to their adoption as written.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 95.1, 95.2, 95.3, 95.5, 95.6, 95.7, 95.8, and 95.9 as well as the repeal of Part 95.4 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that they have no impact on jobs or employment opportunities in New York. These proposed amendments merely update multiple outdated references to Authority FOIL procedures to enhance transparency and public accountability. As a result, the Authority has determined that these proposed amendments will have no substantial adverse impact on any private or public sector jobs or employment opportunities and a full Job Impact Statement is not warranted.

Long Island Power Authority

NOTICE OF ADOPTION

Rates and Charges Set Forth in LIPA's Tariff for Electric Service

I.D. No. LPA-07-15-00003-A
Filing Date: 2015-12-29
Effective Date: 2015-12-29

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

Action taken: The Authority adopted a 3-year rate plan prepared by PSEG-LI and the Authority's staff and recommended by the Department of Public Service upon due consideration by the Authority's board of trustees.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u); Public Service Law, section 3-b(3)(a)

Subject: The rates and charges set forth in LIPA's Tariff for Electric Service.

Purpose: To set rates and charges at the lowest level consistent with sound fiscal and operating practices and safe and adequate service.

Text or summary was published in the February 18, 2015 issue of the Register, I.D. No. LPA-07-15-00003-P.

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

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

Assessment of Public Comment

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Dynamic Load Management Programs Including Direct Load Control, Peak Shaving, and Contingency Load Relief

I.D. No. LPA-02-16-00014-P

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

Proposed Action: The Long Island Power Authority ("LIPA") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to establish dynamic load management programs consistent with tariff revisions approved by the New York PSC for the regulated utilities.

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

Subject: Dynamic load management programs including direct load control, peak shaving, and contingency load relief.

Purpose: To establish dynamic load management programs consistent with tariff revisions approved by the PSC for the regulated utilities.

Public hearing(s) will be held at: 10:00 a.m., Feb. 29, 2016 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., Feb. 29, 2016 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("the Authority") proposes to modify the Tariff for Electric Service ("Tariff") effective April 1, 2016 to authorize three dynamic load management programs: (1) a Direct Load Control program; (2) a Commercial System Relief Program; and (3) a Distribution Load Relief Program. These programs are proposed to conform with NY Public Service Commission ("PSC") policy for innovative demand response programs consistent with the New York Reforming the Energy Vision ("REV") initiative.

The three dynamic load management programs that the Authority proposes are similar to programs that the NY PSC has authorized for each of the major regulated electric utilities in the State and have been designed to provide similar benefits to both participants and the electric system.

The Direct Load Control program will pay customers to install devices that allow the utility to turn off or limit the use of selected end uses, such as air conditioners and pool pumps. The Distribution Load Relief Program will create the opportunity for market participants to identify and implement load relief measures that would be called upon to address reliability problems as may occur at specific locations along the transmission and distribution system. The Commercial System Relief Program would create the opportunity for market participants to identify and implement load relief measures that would be called upon in anticipation of peak system loads, thereby reducing the need to expand or reinforce the transmission and distribution system.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Community Distributed Generation Net Metering, Remote Net Metering, and Size Limits for Fuel Cells

I.D. No. LPA-02-16-00015-P

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

Proposed Action: The Long Island Power Authority ("LIPA") is considering a proposal to modify its Tariff for Electric Service to authorize community distributed generation net metering and to modify provisions regarding remote net metering and size limits for fuel cells.

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

Subject: Community distributed generation net metering, remote net metering, and size limits for fuel cells.

Purpose: To authorize community distributed generation net metering and to modify provisions for remote net metering and fuel cells.

Public hearing(s) will be held at: 10:00 a.m., Feb. 29, 2016 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., Feb. 29, 2016 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("the Authority") proposes to modify the Tariff for Electric Service ("Tariff") effective April 1, 2016 to: (1) authorize Community Distributed Generation ("DG") Net Metering; (2) modify existing Tariff provisions relating to Remote Net Metering to conform to NY Public Service Commission ("PSC") practices for the regulated utilities; and (3) modify other Tariff provisions to conform to amendments to Public Service Law § 66-j regarding eligibility and size limits for net metering.

Net metering, also known as net energy metering, allows customers with certain types of generation to reduce their energy bill in two ways: (1) electricity generated and used immediately reduces the amount of electricity that is bought from the Authority; and (2) electricity generated in excess of the customer's immediate need is injected into the grid to displace other sources of generation, for which the customer receives a credit to offset later energy needs, further reducing the customer's electricity bill.

The Authority proposes to expand the eligibility for customer participation in net metering by, among other things, allowing for Community Net Metering. Community DG Net Metering allows residential customers to participate in renewable generation at some central location and share the benefits of the renewable generation among the members.

The Authority proposes to authorize Community DG Net Metering, allowing customers to associate with a project sponsor (the "host account") that would be responsible for building the Community DG generation facility, interconnecting it to the utility grid, and then owning or operating it in conformance with net metering requirements of the Tariff for Electric Service. The host site would have a non-residential account and any excess generation (net of energy consumed on-site) produced by the host account would be allocated among the members (the "satellite accounts") in proportions to be designated by the host account. Any generation allocated to a satellite account in excess of that account's energy usage would be used to offset future energy use at that account or cashed out on the account's annual anniversary date, just as if that account was net metered on an individual basis.

The Authority's proposal would also increase eligibility for remote net metering to include Farm Waste and update the size limits applicable to Non-Residential Fuel Cells.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

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

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

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

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

Public Service Commission

NOTICE OF ADOPTION

Amendments to P.S.C. No. 9—Gas

I.D. No. PSC-03-15-00003-A

Filing Date: 2015-12-23

Effective Date: 2015-12-23

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

Action taken: On 12/17/15, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff filing to make amendments establishing a new provision under General Information Section 3.8, contained in P.S.C. No. 9—Gas.

Statutory authority: Public Service Law, section 66(1) and (12)

Subject: Amendments to P.S.C. No. 9—Gas.

Purpose: To approve Con Ed's tariff filing to make amendments to P.S.C. No. 9—Gas.

Substance of final rule: The Commission, on December 17, 2015, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff filing to make amendments establishing a new provision under General Information Section 3.8 — Metering and Billing Titled Automated Meter Reading/Advanced Metering Infrastructure Meter Opt-Out,

contained in P.S.C. No. 9 — Gas, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-G-0571SA1)

NOTICE OF ADOPTION

Amendments to P.S.C. No. 10—Electricity

I.D. No. PSC-03-15-00004-A

Filing Date: 2015-12-23

Effective Date: 2015-12-23

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

Action taken: On 12/17/15, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff filing to make amendments establishing General Rule 6.10, contained in P.S.C. No. 10 — Electricity.

Statutory authority: Public Service Law, section 66(1) and (12)

Subject: Amendments to P.S.C. No. 10—Electricity.

Purpose: To approve Con Ed's tariff filing to make amendments to P.S.C. No. 10—Electricity.

Substance of final rule: The Commission, on December 17, 2015, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff filing to make amendments establishing General Rule 6.10 – Automated Meter Reading/Advanced Metering Infrastructure Meter Opt-Out, contained in P.S.C. No. 10—Electricity, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0570SA1)

NOTICE OF ADOPTION

Submetering of Electricity

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

Filing Date: 2015-12-24

Effective Date: 2015-12-24

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

Action taken: On 12/17/15, the PSC adopted and order authorizing 325 Lex Condominium (325 Lex) to submeter electricity at 325 Lexington 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: Submetering of electricity.

Purpose: To authorize 325 Lex to submeter electricity at 325 Lexington Avenue, New York, New York.

Substance of final rule: The Commission, on December 17, 2015, adopted and order authorizing 325 Lex Condominium to submeter electricity at 325 Lexington Avenue, New York, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0181SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-17-15-00005-A

Filing Date: 2015-12-24

Effective Date: 2015-12-24

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

Action taken: On 12/17/15, the PSC adopted and order authorizing Cottage Street Apartments LLC (Cottage) to submeter electricity at 31 Cottage 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: Submetering of electricity.

Purpose: To authorize Cottage to submeter electricity at 31 Cottage Street, Troy, New York.

Substance of final rule: The Commission, on December 17, 2015, adopted and order authorizing Cottage Street Apartments LLC to submeter electricity at 31 Cottage Street, Troy, New York, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-E-0200SA1)

NOTICE OF ADOPTION

Revisions to the UBP

I.D. No. PSC-32-15-00004-A

Filing Date: 2015-12-23

Effective Date: 2015-12-23

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

Action taken: On 12/17/15, the PSC adopted an order authorizing revisions to the Uniform Business Practices (UBP) reducing the on-cycle gas switching timeline from 15 to 10 calendar days.

Statutory authority: Public Service Law, sections 5(1), 65(1), (2), (3), 66(1), (2), (3), (5), (8), (9) and (12)

Subject: Revisions to the UBP.

Purpose: To authorize revisions to the UBP.

Substance of final rule: The Commission, on December 17, 2015, adopted an order authorizing revisions to the Uniform Business Practices reducing the on-cycle gas switching timeline from 15 to 10 calendar days, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(12-M-0476SA11)

NOTICE OF ADOPTION

Petition for Waivers

I.D. No. PSC-39-15-00009-A
Filing Date: 2015-12-28
Effective Date: 2015-12-28

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

Action taken: On 12/17/15, the PSC adopted an order denying Dorothy Bedor's petition for waivers of 16 NYCRR 100.3 and Niagara Mohawk Power Corporation d/b/a National Grid tariff rules P.S.C. No. 219 — Gas, Rule 10.4 and P.S.C. No. 220 — Electricity, Rule 16.6.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Petition for waivers.

Purpose: To deny Dorothy Bedor's petition for waivers.

Substance of final rule: The Commission, on December 17, 2015, adopted an order denying Dorothy Bedor's petition for waivers of 16 NYCRR 100.3 and Niagara Mohawk Power Corporation d/b/a National Grid tariff rules P.S.C. No. 219 — Gas, Rule 10.4 and P.S.C. No. 220 — Electricity, Rule 16.6, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(15-M-0272SA1)

NOTICE OF ADOPTION

Use of an Electric Submeter

I.D. No. PSC-41-15-00003-A
Filing Date: 2015-12-24
Effective Date: 2015-12-24

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

Action taken: On 12/17/15, the PSC adopted an order approving Siemens Industry, Inc.'s (Siemens) petition to use the Siemens Embedded Micro Metering Module (SEM3) for residential electric submetering applications in New York State.

Statutory authority: Public Service Law, section 67(1)

Subject: Use of an electric submeter.

Purpose: To approve Siemens' petition to use the SEM3.

Substance of final rule: The Commission, on December 17, 2015, adopted an order approving Siemens Industry, Inc. 's petition to use the high accuracy version of the Siemens Embedded Micro Metering Module submeter with solid core transformers for residential electric submetering applications in New York State, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(14-E-0561SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Application of the Earnings Sharing Mechanism Related to a Partial Year Period

I.D. No. PSC-02-16-00007-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Orange and Rockland Utilities, Inc. to address the application of the earnings sharing mechanism related to a partial year period (a period less than 12 months).

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

Subject: Application of the earnings sharing mechanism related to a partial year period.

Purpose: To consider Orange and Rockland Utilities, Inc.'s petition to address the application of the earnings sharing mechanism.

Substance of proposed rule: The Public Service Commission is considering a petition by Orange and Rockland Utilities, Inc. to change the application of the earnings sharing mechanism related to a partial year period (a period less than 12 months). The Commission may adopt, reject or modify, in whole or in part, the petition and may resolve 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: John Pitucci, Department of Public Service, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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-E-0408SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment of the Regulatory Regime and Financing Applicable to Certain Electric Transmission Facilities

I.D. No. PSC-02-16-00008-P

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

Proposed Action: The Commission is considering a petition filed by New York Transco LLC for approval of a lightened regulatory regime and financing in connection with certain electric transmission facilities.

Statutory authority: Public Service Law, sections 2(12), (13), 5(1)(b), 5-b, 18-a, 64-69, 69-a, 70, 71, 72, 72-a, 75, 76, 105-114, 114-a, 115, 117, 118, 119-a, 119-b and 119-c

Subject: Establishment of the regulatory regime and financing applicable to certain electric transmission facilities.

Purpose: Consideration of a lightened regulatory regime and financing for certain electric transmission facilities.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by New York Transco LLC on December 15, 2015, requesting approval of a lightened regulatory regime and financing in connection with certain electric transmission facilities that transmit electric power in the wholesale electricity market. The petitioner requests an order providing that the petitioner will be regulated as an electric corporation under a lightened regulatory regime consistent with that imposed on the owners-operators of competitive wholesale generators and interstate transmission companies engaged in the transmission of electricity in interstate commerce. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-E-0743SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Revisions to SC Nos. 1 and 2 to Include Net Metering Services for Solar and Wind Generation

I.D. No. PSC-02-16-00009-P

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

Proposed Action: The Commission is considering a proposal by the Salamanca Board of Public Utilities to revise Service Classification (SC) Nos. 1 and 2, residential and non-residential, to include net metering services for solar and wind generation.

Statutory authority: Public Service Law, sections 4(1), 5(1), 65(1), 66(1), (4), (5), (12), 66-j and 66-l

Subject: Proposed revisions to SC Nos. 1 and 2 to include net metering services for solar and wind generation.

Purpose: To consider revisions to SC Nos. 1 and 2 to include net metering services for solar and wind generation.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications proposed by the Salamanca Board of Public Utilities (Salamanca) to Service Classification (SC) Nos. 1 and 2, residential and non-residential, contained in P.S.C. No. 1 – Electricity. Salamanca proposes to amend SC Nos. 1 and 2 to include net metering services for solar and wind generation. Salamanca's proposed provisions will apply to residential and non-residential customers receiving service under SC Nos. 1 and 2, respectively, and who own or operate solar or wind generating equipment with a rated capacity of no more than 15 kW located and used on their premises. The aggregate maximum purchase by Salamanca of solar or wind generation will be 200 kW, or one percent of Salamanca's average system load. The proposed amendments have an effective date of April 1, 2016. The Commission may adopt, modify, or reject, in whole or in part, the relief proposed and may resolve 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: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-E-0753SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2015 Electric Emergency Response Plans for New York's Six Major Electric Utilities

I.D. No. PSC-02-16-00010-P

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

Proposed Action: The Commission is considering New York's six major electric utilities' 2015 Electric Emergency Response Plans filed on 12/15/15.

Statutory authority: Public Service Law, sections 5(1)(b) and 66(21)(a)

Subject: 2015 Electric Emergency Response Plans for New York's six major electric utilities.

Purpose: To consider the 2015 Electric Emergency Response Plans for New York's six major electric utilities.

Substance of proposed rule: The Public Service Commission is considering the 2015 Electric Emergency Response Plans for Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively referred to hereinafter as Utilities). The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-E-0689SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Proposed Tariff Revisions Intended to Clarify HEFPA Requirements Related to Court Orders for Gaining Access to Meters

I.D. No. PSC-02-16-00011-P

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

Proposed Action: The Commission is considering a proposal by Orange and Rockland Utilities, Inc. to modify its electric tariff schedule, P.S.C. No. 3, General Information Section 7.4, to clarify HEFPA requirements related to court orders for gaining access to meters.

Statutory authority: Public Service Law, sections 39, 47 and 66(12)

Subject: Proposed tariff revisions intended to clarify HEFPA requirements related to court orders for gaining access to meters.

Purpose: To consider tariff revisions intended to clarify HEFPA requirements related to court orders for gaining access to meters.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications proposed by Orange and Rockland Utilities, Inc. (O&R or the Company) to P.S.C. No. 3 – Electricity. O&R proposes to revise General Information Section 7.4 – Metering and Billing, to clarify the Home Energy Fair Practices Act (HEFPA) requirements related to court orders for gaining access to customer meters. O&R proposes to align its language to more closely match the HEFPA language contained in 16 NYCRR § 11.13(e), stating that if the Company intends to obtain a court order, it shall inform the customer by certified or registered letter after the second appointment request. The proposed amendments have an effective date of March 31, 2016. The Commission may adopt,

modify, or reject, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(15-E-0754SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYSEG's Procedures, Terms and Conditions of its Targeted Financial Assistance Program

I.D. No. PSC-02-16-00012-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 New York State Electric and Gas Corporation for a waiver or modification of provisions in two of its Non Rate Economic Development Programs.

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

Subject: NYSEG's procedures, terms and conditions of its Targeted Financial Assistance Program.

Purpose: Provide additional economic development program assistance for a new manufacturing facility.

Substance of proposed rule: The Public Service Commission is considering a petition filed by New York State Electric and Gas Corporation requesting a waiver for the provisions of its Targeted Financial Assistance and Natural Gas Infrastructure Investment Programs which would allow the Company to provide a grant, from its accumulated economic development reserve fund, to a new manufacturing facility having appreciable economic merit. The Commission may adopt, reject or modify the petition, in whole or in part, the relief proposed and may address any related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: John.Pitucci@dps.ny.gov

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

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

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

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

(15-M-0708SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Revisions Intended to Clarify HEFPA Requirements Related to Court Orders for Gaining Access to Meters

I.D. No. PSC-02-16-00013-P

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

Proposed Action: The Commission is considering a proposal by Orange and Rockland Utilities, Inc. to modify its gas tariff schedule, P.S.C. No. 4, General Information Section 6, to clarify HEFPA requirements related to court orders for gaining access to meters.

Statutory authority: Public Service Law, sections 39, 47 and 66(12)

Subject: Tariff revisions intended to clarify HEFPA requirements related to court orders for gaining access to meters.

Purpose: To consider tariff revisions intended to clarify HEFPA requirements related to court orders for gaining access to meters.

Substance of proposed rule: The Public Service Commission (Commission) is considering modifications proposed by Orange and Rockland Utilities, Inc. (O&R or the Company) to P.S.C. No. 4 – Gas. O&R proposes to revise General Information Section 6 – Metering and Billing, to clarify the Home Energy Fair Practices Act (HEFPA) requirements related to court orders for gaining access to customer meters. O&R proposes to align its language to more closely match the HEFPA language contained in 16 NYCRR § 11.13(e), stating that if the Company intends to obtain a court order, it shall inform the customer by certified or registered letter after the second appointment request. The proposed amendments have an effective date of March 31, 2016. The Commission may adopt, modify, or reject, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(15-G-0755SP1)

Office of Victim Services

NOTICE OF ADOPTION

Attorney's Fees for Representation Before the Office and/or Before the Appellate Division Upon Judicial Review

I.D. No. OVS-45-15-00008-A

Filing No. 1147

Filing Date: 2015-12-29

Effective Date: 2016-01-13

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

Action taken: Addition of section 525.3(h); and amendment of section 525.9 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3) and 626(1)

Subject: Attorney's fees for representation before the office and/or before the appellate division upon judicial review.

Purpose: The purpose of this rule change is to limit attorney's fees pursuant to article 22 of the Executive Law.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. OVS-45-15-00008-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Reduction or Denial of a Claim Based on Victim's Conduct Contributing

I.D. No. OVS-45-15-00009-A
Filing No. 1146
Filing Date: 2015-12-29
Effective Date: 2016-01-13

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

Action taken: Amendment of section 525.6(b); and addition of section 525.12(m) to Title 9 NYCRR.

Statutory authority: Executive Law, sections 623(3) and 631(5)

Subject: Reduction or denial of a claim based on victim's conduct contributing.

Purpose: Create standards for the reduction or denial of a claim based on the victim's conduct contributing.

Text or summary was published in the November 10, 2015 issue of the Register, I.D. No. OVS-45-15-00009-P.

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

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

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.